

FILED

NOV 21 2022

DEPT. OF REAL ESTATE

By                     

1 Department of Real Estate  
2 320 West 4th Street, Ste. 350  
3 Los Angeles, California 90013-1105  
4 Telephone: (213) 576-6982  
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8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of	)	DRE No. H-05261 SD
	)	OAH No. 2022020074
	)	
12 MARTA QUIROZ JAVIER,	)	<u>STIPULATION AND AGREEMENT;</u>
	)	<u>AND DECISION AFTER REJECTION</u>
13 Respondents.	)	
	)	

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16 The California Department of Real Estate ("Department") filed a Accusation  
17 against MARTA QUIROZ JAVIER ("Respondent") on January 12, 2022.

18 On June 2, 2022, a hearing was held before Administrative Law Judge Kimberly  
19 J. Belvedere ("ALJ") of the Office of Administrative Hearings of San Diego, California via  
20 teleconference. Department Counsel, Diane Lee, represented the Complainant. Respondent  
21 personally appeared and represented herself at the hearing. Oral and documentary evidence were  
22 received, and the matter was submitted.

23 On June 17, 2022, the ALJ issued a Proposed Decision, which revoked  
24 Respondent's licenses and endorsements; provided, however, that the revocation be stayed, and a  
25 restricted license be issued to Respondent pursuant to certain terms and conditions, including,  
26 but not limited to, paying \$1,120.45 in investigation and enforcement costs. On August 3, 2022,  
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1 the Commissioner rejected the Proposed Decision of June 17, 2022.

2 The parties wish to settle this matter without further proceedings.

3 IT IS HEREBY STIPULATED by and between Respondent and the Department,  
4 acting by and through Diane Lee, as follows for the purpose of settling and disposing of the  
5 Accusation filed on January 12, 2022 in this matter.

6 1. It is understood by the parties that the Real Estate Commissioner may adopt  
7 the Stipulation and Agreement ("Stipulation") as his decision in this matter, thereby imposing the  
8 penalty and sanctions on Respondent's real estate license as set forth in the below "Decision and  
9 Order." In the event the Commissioner in his discretion does not adopt the Stipulation, the  
10 Stipulation it shall be void and of no effect; and the Commissioner will review the evidence in  
11 the case, and will issue his Decision After Rejection as his Decision in this matter.

12 2. This Stipulation is based on the factual allegations contained in the Accusation  
13 filed on January 12, 2022 in this matter. In the interest of expedience and economy, Respondent  
14 chooses not to contest these allegations, but to remain silent, and understands that, as a result  
15 thereof, these factual allegations, without being admitted or denied, will serve as a prima facie  
16 basis for the disciplinary action stipulated to herein. The violations of Respondent, as described  
17 in the Accusation, are in violation of California Business and Professions Code sections  
18 475(a)(1), 480(d), 490, 10177(a), and 10177(b), and are therefore a basis for discipline of  
19 Respondent's license and license rights as violation of the Real Estate Law. The Real Estate  
20 Commissioner shall not be required to provide further evidence to prove said allegations.

21 3. By reason of the foregoing and solely for the purpose of settlement without  
22 further administrative proceedings, it is stipulated and agreed that the following shall be adopted  
23 as the Commissioner's Decision:

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1 Restricted Salesperson Change Application (RE 214A), which shall certify:

2 a. That the employing broker has read the Decision which granted the right to a  
3 restricted license; and

4 b. That the employing broker will exercise close supervision over the  
5 performance by the restricted licensee relating to activities for which a real estate license is  
6 required.

7 5. Respondent shall notify the Commissioner in writing within seventy two (72)  
8 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real  
9 Estate, P.O. Box 137000, Sacramento, CA 95813-7000. The letter shall set forth the date of  
10 Respondent's arrest, the crime for which Respondent was arrested and the name and address of  
11 the arresting law enforcement agency. Respondent's failure to timely file written notice shall  
12 constitute an independent violation of the terms of the restricted license and shall be grounds for  
13 the suspension or revocation of that license.

14 6. Respondent shall, within nine (9) months from the effective date of this  
15 Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has,  
16 since the most recent issuance of an original or renewal real estate license, taken and successfully  
17 completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate  
18 Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the  
19 Commissioner may order the suspension of Respondent's license until Respondent presents such  
20 evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to  
21 the Administrative Procedure Act to present such evidence.

22 7. Respondent shall, within six (6) months from the effective date of this  
23 Decision, take and pass the Professional Responsibility Examination administered by the  
24 Department of Real Estate including the payment of the appropriate examination fee. Proof of  
25 completion of taking and passing the Professional Responsibility Examination must be delivered  
26 to the Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-  
27 7013. If Respondent fails to satisfy this condition, suspension of Respondent's licenses shall go

1 into effect automatically and remain in effect until Respondent takes and passes the Professional  
2 Responsibility Examination, and delivers such proof to the Department of Real Estate.

3 II.

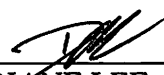
4 Pursuant to California Business and Professions Code section 10106, Respondent  
5 shall pay \$1,120.45 for the Commissioner's cost for investigation and enforcement of the matter.  
6 Said payment shall be made no later than four (4) months after the effective date of this  
7 Decision. Said payment shall be in the form of a cashier's check or certified check made payable  
8 to the Department of Real Estate.

9 If payment is not timely made as provided for herein, suspension of Respondent's  
10 licenses shall go into effect automatically and remain in effect until payment is made in full, until  
11 Respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or  
12 until a decision providing otherwise is adopted following a hearing held pursuant to this  
13 condition.

14 III.

15 Unless otherwise stated herein, all proof required by this Decision shall be  
16 submitted to the Department of Real Estate at: Department of Real Estate, Flag Section at P.O.  
17 Box 137013, Sacramento, CA 95813-7013.

18 DATED: 10/17/2022

  
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DIANE LEE, Counsel for  
Department of Real Estate

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
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Respondent's signature below constitutes acceptance and approval of the terms and conditions of this Stipulation. Respondent agrees, acknowledges, and understands that by signing this Stipulation, Respondent is bound by its terms as of the date of her signature and that this agreement is not subject to rescission or amendment at a later date except by a separate Decision and Order of the Real Estate Commissioner.

DATED:  10/17/2022

   
MARTA QUIROZ JAVIER, Respondent

\* \* \*

The foregoing Stipulation and Agreement is hereby adopted as my Decision as to Respondent MARTA QUIROZ JAVIER, and shall become effective at 12 o'clock noon on December 12, 2022.

IT IS SO ORDERED 11.15.22

DOUGLAS R. McCAULEY  
REAL ESTATE COMMISSIONER





FILED

AUG 18 2022

DEPT. OF REAL ESTATE

By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of ) DRE No. H-05261 SD  
MARTA QUIROZ JAVIER, ) OAH No. 2022020074  
Respondent. )

NOTICE

TO: MARTA QUIROZ JAVIER, Respondent

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated June 17, 2022, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated June 17, 2022, is attached hereto for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on Thursday, June 02, 2022, and any written argument hereafter submitted on behalf of respondent and complainant.

Written argument of respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of Thursday, June 2, 2022, at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good cause



1 shown.

2 Written argument of complainant to be considered by me must be submitted within  
3 15 days after receipt of the argument of respondent at the Los Angeles Office of the Department of  
4 Real Estate unless an extension of the time is granted for good cause shown.

5 DATED: 8.3.22.

6 DOUGLAS R. McCAULEY  
7 REAL ESTATE COMMISSIONER

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

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

**MARTA QUIROZ JAVIER, Respondent**

**Agency Case No. H-05261 SD**

**OAH No. 2022020074**

**PROPOSED DECISION**

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter using the Microsoft Teams videoconference application on June 2, 2022.

Diane Lee, Counsel, represented complainant, Maria Suarez, Supervising Special Investigator, Department of Real Estate (department), State of California.

Marta Quiroz, Javier, respondent, represented herself.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on June 2, 2022.

## **FACTUAL FINDINGS**

1. On June 20, 2007, the department issued to respondent conditional real estate salesperson license number S/01809390, pending completion of an education requirement. Respondent completed the education requirement and her license status became unrestricted as of July 21, 2009. Respondent's license is current and will expire on July 10, 2023, unless renewed or revoked.

2. On August 27, 2013, in the Superior Court of California, County of San Diego, in Case Number SCN293983, respondent was convicted of a misdemeanor violation of Penal Code section 505, subdivision (b)(1), presenting an insurance claim with false facts. The conviction stemmed from a false report respondent made to her insurance company, and to the police, regarding her vehicle being stolen, when, in fact, it had not been stolen. As a result of the conviction, the court placed respondent on three years of summary probation, ordered her to perform 50 hours of community service, and pay fines and fees.

3. Respondent filed renewal applications for her real estate salesperson license on July 11, 2015, and June 13, 2019. On both renewal applications, when asked if respondent had ever been convicted of a crime, she checked the "no" box.

4. Thereafter, the department learned that respondent had, in fact, been convicted of the previous mentioned crime and failed to report it on either her 2015 or 2019 application. An investigation ensued. Respondent admitted to the department during its investigation in July of 2021 that she had been so convicted and that she made the false report regarding her vehicle because, at the time of her conviction, she had been experiencing financial problems.

5. On January 10, 2022, complainant filed the accusation in her official capacity alleging respondent's failure to report her conviction on the 2019 renewal application as a basis to discipline respondent's license, and the failure to report the conviction on her 2015 renewal application as a factor in aggravation. The conviction itself is not a basis for discipline. Respondent timely filed a notice of defense, and this hearing followed.

6. Respondent's testimony is summarized as follows: Respondent begged not to have her license revoked. She has been working since February 2022 to have the conviction dismissed pursuant to Penal Code section 1203.4, and it finally was dismissed the day before the hearing (however, she did not have any documentation to support that claim). Respondent did not intentionally lie on either the 2015 or 2019 renewal application, rather, it was just a "mistake." She apologized to anyone affected by her mistake and noted she has never been in any kind of trouble, other than the conviction.

7. Respondent did not submit any documentary evidence or call any witnesses.

## **LEGAL CONCLUSIONS**

### **Applicable Law**

1. The purpose of administrative proceedings involving the discipline of a professional license is to protect the public. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.)

2. In an action seeking to impose discipline against the holder of a real estate license, the burden of proof is on complainant to establish the charging allegations by clear and convincing evidence. (*Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212.)

3. Business and Professions Code section 10177, subdivision (a), authorizes the commissioner to impose discipline against a licensee if the licensee procures or attempts to procure a real estate license or license renewal by fraud, misrepresentation, deceit, or by making a material misstatement of fact in an application for a real estate license or license renewal.

4. Business and Professions Code section 10186.2, provides:

(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.

5. Pursuant to California Code of Regulations, title 10, section 2910, subdivision (e), an act is substantially related to the qualifications, functions, or duties of a licensee if it involves the employment of deceit or a falsehood to achieve an end.

6. "Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee. If appellant's offense reflects unfavorably on his honesty, it may be said to be substantially related to his qualifications." (*Golde v. Fox* (1979) 98 Cal.App.3d 167, 176.) "[T]here is more to being a licensed professional than mere knowledge and ability. Honesty and integrity are deeply and daily involved in various aspects of the practice." (*Ibid.*)

## **Evaluation and Conclusion**

7. Cause exists under Business and Professions Code section 10177, subdivision (a), to impose discipline against respondent's license for procuring her renewal license by making a material misstatement of fact on her June 13, 2019, renewal application when she marked the box "no" indicating she had not been convicted of a crime when, in fact, she had suffered a conviction on August 27, 2013.

8. Cause exists under Business and Professions Code section 10186.2, subdivision (b), to impose discipline against respondent's license because she did not report her 2013 conviction to the department, as required.

9. Both causes for discipline are substantially related to the qualifications, functions, and duties of a real estate salesperson. A real estate licensee is required to be honest, truthful, and ethical. Respondent called her failure to report the conviction a "mistake," however, the questions on the license renewal application are clear. Respondent likely failed to report the conviction because she knew it might affect her ability to continue practicing as a real estate salesperson. In that respect, respondent's conduct involved the employment of deceit or a falsehood to achieve an end. Respondent's failure to report her conviction to the department and material misstatement on her 2019 license renewal application are acts substantially related to the qualifications, functions, and duties of a real estate salesperson pursuant to California Code of Regulations, title 10, section 2910, subdivision (e).

10. Cause also exists to consider, as a fact in aggravation, the fact that respondent made a material misstatement of fact on her July 11, 2015, application, when she failed to disclose her 2013 conviction, in violation of Business and Professions Code section 10177, subdivision (a).

11. Respondent did not provide any rehabilitation evidence, other than her lukewarm apology for, what she called, "a mistake." Normally, when faced with sustained misconduct involving dishonesty and insufficient rehabilitation evidence, revocation of a license is warranted. However, respondent's license was issued in 2007 and she has not previously been disciplined by the department. Although her error was a serious one, in that she failed to report something of great import to the department, respondent has likely learned from her error. The public will be protected by permitting respondent to apply for and hold a restricted real estate salesperson license to ensure she exemplifies the honesty and integrity expected of a real estate salesperson going forward.



## **Recovery of Reasonable Costs of Investigation and Enforcement**

11. Business and Professions Code section 10106 authorizes the department to seek its investigation and enforcement costs.

12. The department incurred costs of investigation and enforcement of this matter in the total amount of \$1,120.45. This included \$568.45 for the services of a special investigator and a supervising investigator and \$552 for the services of real estate counsel. These costs were supported by a spreadsheet and breakdown of the hourly rates for each employee, duties performed, and hours spent on each task.

*Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, sets forth factors to be considered in determining a reasonable cost assessment for disciplined licensees. Factors to be considered include 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, and the extent of the licensee's financial ability to make payments. Finally, full costs may not be assessed when a "disproportionately large investigation" was conducted given the circumstances of the case. Finally, the department should consider the public interest in regulating the targeted conduct.

In consideration of the *Zuckerman* factors, the total costs of \$1,120.45 are reasonable. Respondent did not provide any evidence of an inability to pay. She shall pay to the department the total costs in the amount of \$1,120.45.

## **ORDER**

All licenses and licensing rights issued to respondent Marta Quiroz Javier, real estate salesperson license number S/01809390, under the Real Estate Law are revoked; provided, however, that a restricted real estate salesperson license shall be issued to respondent under Business and Professions Code section 10156.5 if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the issuance of such a restricted license and \$1,120.45 in investigation and enforcement costs within 90 days from the effective date of this Decision, unless otherwise ordered by the department pursuant to a payment plan. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and shall be subject to the following limitations, conditions and restrictions imposed under authority of Business and Professions Code section 10156.6:

1. During the period of restriction, respondent shall report any arrest to the board within 72 hours of the occurrence of the arrest, or if incarcerated following arrest, within 72 hours of release from incarceration.
2. The restricted license issued to respondent may be suspended prior to hearing by order of the commissioner in the event of respondent's conviction or plea of nolo contendere to a crime that 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 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 and order.

5. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the bureau certifying that:

(a) the employing broker has read the decision and order in this matter; and

(b) the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

6. Respondent shall, within nine months from the effective date of this decision and order, 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.

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

DATE: June 17, 2022

Handwritten signature of Kimberly J. Belvedere in black ink.

KIMBERLY J. BELVEDERE

Administrative Law Judge

Office of Administrative Hearings