

FILED

BEFORE THE DEPARTMENT OF REAL ESTATE

SEP 21 2023

STATE OF CALIFORNIA

DEPT. OF REAL ESTATE

By



* * *

In the Matter of the Accusation of:

SHERYL LUONGO,

Respondent.

) DRE No. H-05298 SD

) OAH No. 2022110783

DECISION

The Proposed Decision dated August 15, 2023, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

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

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.

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The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on ~~OCT 23 2023~~.

IT IS SO ORDERED 9/15/23

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

Steve Le
for Doug McCauley

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

In the Matter of the Accusation Against:

SHERYL LUONGO, Respondent

Agency Case No. H-05298 SD

OAH No. 2022110783

PROPOSED DECISION

Administrative Law Judge Traci C. Belmore, Office of Administrative Hearings, State of California, heard this matter on July 18, 2023, by videoconference.

Counsel Kevin H. Sun represented complainant, Veronica Kilpatrick, Supervising Special Investigator, Department of Real Estate, State of California (department).

Attorney Nicole Weil represented respondent, Sheryl Luongo, who was present.

The record was closed, and the matter was submitted for decision on July 18, 2023.

FACTUAL FINDINGS

1. Respondent Sheryl Luongo is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code as

a salesperson. Respondent has been licensed as a salesperson since March 17, 1987. Her license is scheduled to expire on April 16, 2025.

2. On May 16, 2019, complainant Veronica Kilpatrick filed an accusation in her official capacity as Supervising Special Investigator. The accusation alleges that respondent is subject to discipline for conviction of substantially related crimes; and failure to report the filing of a felony complaint and the conviction. Complainant also sought the investigation and prosecution costs.

Conviction

3. On May 22, 2019, a felony complaint was filed in the Superior Court of California, County of San Diego, charging respondent and a co-defendant with felony violations of Penal Code section 550, subdivisions (a)(1), presenting a false insurance claim; (b)(1), presenting false information supporting an insurance claim (insurance fraud); (b)(2), making a false statement supporting an insurance claim; (b)(3), concealing an event affecting an insurance claim and Penal Code section 186.10, subdivision (a), money laundering.

4. On September 16, 2019, in the Superior Court of California, County of San Diego, respondent was convicted, on her guilty plea, of violating Penal Code section 550, subdivision (b)(1), insurance fraud, a misdemeanor. Imposition of sentence was suspended, and respondent was placed on summary probation for three years with terms and conditions which included serving one day in the county jail and paying restitution, fines, and fees.

5. The facts and circumstances underlying the conviction were that respondent filed an insurance claim after her house flooded. In support of her claim for rental expenses, respondent submitted a lease agreement for a property where she

did not live. Further, respondent submitted checks that she paid to her co-defendant who thereafter refunded her the monies in cash.

6. Respondent did not report either her felony charges or her conviction to the department in a timely manner.

7. On November 29, 2021, respondent submitted a conviction detail report. In that report, respondent claimed she did not know there was any reason to notify the insurance company of the change in rental locations because the price was the same. She stated that the insurance company had used the criminal charges as a way to avoid paying her claim. In the space on the form asking her to list her rehabilitation efforts, she listed none. Instead, she wrote "If I had thought there was a reason to inform them of the rental change, I would have!"

Respondent's Evidence

8. Respondent's testimony is summarized as follows. She has been licensed for over 30 years with no other disciplinary or criminal history. She was under a tremendous amount of stress at the time of her misconduct. Her house was flooded, her eldest son was a firefighter and was in the midst of fighting a large wildfire and was incommunicado, her mother was dying, and she was suffering from migraines. Respondent had to change to the generic form of her migraine medication. It required three times as much of the generic medication to match the effect of Imitrex (the name brand migraine medication she previously took). She took too much of her generic medication and it made her do "stupid things." The generic medication made her irrational. She has stopped taking the medication because it "screwed up her life." She is using more natural remedies to treat her migraines.

She understands that she submitted a false statement to her insurance company. She was going to lease the location she claimed she stayed at while her house was being repaired, but could not "get the keys." Instead, she leased a second location, but the owner would not give her a signed lease because they were not supposed to lease the location. When filing her insurance claim, she submitted the signed lease for the first location. Her life is more stable now. She has engaged in therapy and last saw her therapist approximately one month ago. She has volunteered for breast cancer and Alzheimer's organization, and Habit for Humanity.

9. Respondent downplayed her misconduct, blaming it on stress and her medication. Her testimony regarding her volunteer work did not establish that any of the volunteer work had been done since her conviction. Respondent submitted a written statement, signed June 30, 2023, which was very similar to her testimony, except that she did not mention any volunteer work and claimed that she had changed her business practices.

10. Susan Altman wrote a letter of support and testified on behalf of respondent. Altman availed herself of respondent's services as a real estate agent. She is aware of respondent's convictions and the circumstances surrounding the conviction. Altman stated respondent is competent, and "extremely good at what she does." She believes respondent should retain her license because she is the most responsible agent she knows and a "wonderful person."

11. Carole Ferris wrote a letter of support and testified on behalf of respondent. Ferris was the office manager of a real estate agency where respondent previously worked. Ferris stated she reviewed respondent's transactions and there were no issues. She has had no business dealings with respondent since 2009. Since then, their relationship has been personal in nature. She is aware of respondent's

conviction and the facts and circumstances underlying the conviction. She believes it was a "one-off." She was aware that respondent was under a tremendous amount of stress at the time of the wrongdoing and believes that respondent will conduct real estate transactions with honesty. She had very strong opinions about the character of respondent's co-defendant.

12. Respondent submitted a letter from Deputy Public Defender Jennifer Gerstenzang. Gerstenzang is working with respondent to have her conviction expunged. The letter stated the petition for expungement was filed with the court on June 27, 2023. Gerstenzang expects that the petition will be granted.

13. Respondent submitted 10 additional letters of support. Six of the authors gave no indication they were aware of respondent's criminal conviction. Mark Atherton, respondent's responsible broker, wrote of her honesty, integrity, and personal commitment to her clients. Dan Holbrook, a former employer of respondent's, wrote that the conviction seems to be "issues of circumstance and not character." Bobbie Ryberg, a colleague, wrote that respondent is known for her "high standard of ethics." Ryberg stated she is aware of respondent's "unfortunate accusation" but goes on to state that she was "also aware of the verbal authorization from the other agent." Shawn Soleimani, a client, stated that respondent informed him of the allegations but stated that he was "impressed by [respondent's] unwavering integrity, honesty, and professional conduct. Shem Bostick, Kathleen Harvey, John Tucker, clients, wrote mainly of their experience with respondent as a real estate agent. Suzanne Daneshvari, a former colleague, wrote of respondent's professionalism. Hilary Benfiel, respondent's escrow officer, wrote of respondent's "high degree of ethics, disclosure, and honesty." Jef Wassom, respondent's transaction coordinator, wrote of

respondent's "high level of professionalism, integrity, and commitment to excellence and her clients (*sic*) needs. Respondent also submitted several 5-star Zillow reviews.

Costs

14. In connection with the investigation and enforcement of this accusation, complainant requests an award of costs in the total amount of \$3,111.95. These costs reflect \$950.40 in legal services and \$2,161.55 in investigator services. The request for investigator services is supported by declarations that comply with the requirements of California Code of Regulations, title 1, section 1042. These costs are reasonable. The request for legal services is not supported by compliant declarations. As such, it cannot be found that these costs are reasonable.

LEGAL CONCLUSIONS

1. The burden of proof is on the complainant to show cause for discipline by clear and convincing evidence. (*Small v. Smith* (1971) 16 Cal.App.3d 450,457; Evid. Code, § 500.) The burden is on respondent to show rehabilitation by a preponderance of the evidence. (Evid. Code, §§ 115, 500.)

2. Business and Professions Code sections 490 and 10177, subdivision (b), authorize the Commissioner to suspend or revoke the license of a licensee who has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a licensee. California Code of Regulations, title 10, section 2910, sets forth the criteria to be used when determining whether a crime or act is substantially related to the qualifications, functions, or duties of a real estate licensee. Employing fraud, deceit, falsehood, or misrepresentation is substantially related. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(4).) Respondent's conviction insurance fraud (Factual Finding 4) is

substantially related to the qualifications, functions, or duties of a real estate licensee. Cause exists to discipline respondent's license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b).

3. Business and Professions Code section 10186.2 establishes the duty of a licensee to report the bringing of a criminal complaint charging a felony (subd. (a)(1)(A)), and any conviction of a misdemeanor or felony to the department within 30 days (subd. (a)(1)(B)), and provides that failure to do so constitutes cause for discipline. Business and Professions Code section 10177, subdivision (d), authorizes the Commissioner to impose license discipline for willful disregard or violation of the Real Estate Law. As set forth in the Factual Findings above, respondent failed to notify the department of the felony criminal complaint or her conviction for insurance fraud within 30 days. Consequently, cause exists to suspend or revoke respondent's license under Business and Professions Code sections 10177, subdivision (d), and 10186.2.

4. The goal of license discipline proceedings is not punishment but rather to protect the public. (Bus. & Prof. Code, § 10050.1.) Having established that cause for discipline exists, the question is what level of discipline is required to protect the public.

5. The criteria for evaluating rehabilitation of a licensee who has been convicted of a crime are set forth in California Code of Regulations, title 10, section 2912, and have been considered. The relevant criteria include: the nature and severity of the crime or act, the licensee's criminal history, the time that has elapsed since the commission of the acts, compliance with probation, change in attitude, and significant and conscientious involvement in community programs. Of the many rehabilitation criteria, a change in attitude is "arguably the most important in predicting future conduct." (*Singh v. Davi* (2012) 211 Cal.App.4th 141, 149.)

6. Respondent completed probation. Respondent submitted very little evidence of rehabilitation. The community service she testified about was scant and it was unclear if any of it had been served since her conviction. More importantly, she has not fully accepted responsibility for her misconduct, instead blaming her actions on stress and medication. Respondent may not impeach or collaterally attack her conviction under the guise of explaining her offense. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.)

At hearing, respondent attempted to blame her misconduct on her medication. In her conviction detail report, respondent makes no mention of medication and instead claims the criminal charges were levied against her to prevent the insurance company from paying her claim. Fully acknowledging the wrongfulness of one's actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.)

Respondent has been convicted of a crime substantially related to the qualifications, functions, or duties of a real estate licensee, and failed to report the felony charges or the conviction to the department in a timely manner. She has failed to fully accept responsibility for her misconduct and has provided very little evidence of rehabilitation. Given these circumstances it would be against the public interest to allow respondent to retain her license, even on a restricted basis.

Costs

7. Business and Professions Code section 10106 authorizes the department to recover its reasonable costs of investigation and enforcement in disciplinary proceedings. Based on Factual Finding 13, respondent is ordered to pay \$2,161.55 pursuant to this section.

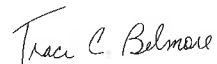
8. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the California Supreme Court set forth standards for determining whether costs should be assessed in the particular circumstances of each case, to ensure that licensees with potentially meritorious claims are not deterred from exercising their right to an administrative hearing. Those standards include whether the licensee has been successful at hearing in getting the charges dismissed or reduced, the licensee's good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. None of these considerations supports a reduction in cost recovery here.

ORDER

1. All licenses and licensing rights of Sheryl Luongo under the Real Estate Law are revoked.

2. Respondent shall pay to the department its cost of investigation in the amount of \$2,161.55.

DATE: August 15, 2023



TRACI C. BELMORE

Administrative Law Judge

Office of Administrative Hearings