

FILED

JUN 26 2024

BEFORE THE DEPARTMENT OF REAL ESTATE

DEPT. OF REAL ESTATE

STATE OF CALIFORNIA

By _____

* * *

In the Matter of the Accusation of:

MEHRAN DAVID ALAEI,

Respondent.

} DRE No. H-05721 SD

} OAH No. 2023060722

DECISION

The Proposed Decision dated June 07, 2024, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

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

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 JUL 26 2024.

IT IS SO ORDERED 6/26/2024

Chika Sunquist
REAL ESTATE COMMISSIONER



By: Marcus L. McCarther
Chief Deputy Real Estate Commissioner

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

In the Matter of the Second Amended Accusation Against:

MEHRAN DAVID ALAEI, Real Estate Broker License

ID 01811352, Respondent

Agency Case No. H-05721 SD

OAH No. 2023060722.1

PROPOSED DECISION

Alan R. Alvord, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on May 15, 2024, by videoconference.

Julie L. To, Counsel, Department of Real Estate (department), represented complainant Veronica Kilpatrick, Supervising Special Investigator.

Mehran David Alaei, respondent, represented himself.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on May 15, 2024.

DECISION SUMMARY

The department sought to discipline respondent's real estate broker license and licensing rights based on unlicensed real estate activity, failure to register his fictitious business name, criminal convictions, discipline against respondent by the State Bar, and failure to report the convictions and discipline to the department. On this record, the only remedy that ensures public protection is revocation of respondent's license and licensing rights.

PROTECTIVE ORDER SEALING THE RECORD

Complainant requested that Exhibit 6 be sealed to protect the confidential information of individuals mentioned in the documents. The motion was granted and a protective order sealing the exhibit was issued.

FACTUAL FINDINGS

Jurisdictional Matters

1. The department issued Real Estate Broker License No. 01811352 to respondent on September 13, 2007. The license is in full force and effect and expires August 14, 2024, unless renewed.
2. Complainant signed and filed the Accusation against respondent's license on May 11, 2023. On April 11, 2024, complainant signed and filed the Second Amended Accusation against respondent's license. The accusations were made in complainant's official capacity.

3. Respondent submitted a timely notice of defense and requested a hearing. The original hearing was set to take place on November 29, 2023, at 1:00 p.m. The Administrative Law Judge at that hearing waited until 2:00 p.m. for respondent to appear. Respondent did not appear at the hearing and a default was entered. The matter was remanded to the department for default decision under Government Code section 11520. On November 29, 2023, at 4:10 p.m., respondent sent an email to the department's attorney stating "I'm so sorry. My calendar didn't remind me of today's hearing. Can we reschedule?" This request was deemed a request to set aside the default, which request the department granted. The matter was reopened with OAH and set for the present hearing. This hearing followed.

Motion to Amend the Second Amended Accusation Granted

4. At the hearing, complainant moved to amend the Second Amended Accusation on page 5 (page A97 in the hearing record), line 22, to read "Paragraphs 12 and 13" instead of "Paragraphs 11 and 12." The unopposed motion was granted, and the amendment noted on the document in Case Center.

Unlicensed Real Estate Broker Activity

5. Real estate broker licenses must be renewed every four years. The department issued a real estate broker license to respondent on September 13, 2007. The license expired on September 12, 2011, and was renewed one day late, on September 13, 2011. The license expired on September 12, 2015, and was renewed three months late, on December 12, 2015. The license expired on December 11, 2019, and was renewed eight months late, on August 15, 2020.

6. Between the license expiration in December 2019 and its late renewal on August 15, 2020, respondent conducted real estate activity requiring a valid license on

at least one transaction. On August 6, 2020, respondent entered into a Residential Listing Agreement to act as real estate broker for the sale of property located at 1427 Gowin Street, Spring Valley, California. Respondent signed the listing agreement with Alaei Realty listed as the real estate broker firm. Also on August 6, 2020, the buyer and seller executed a Residential Purchase Agreement and Joint Escrow Instructions for the sale of 1427 Gowin Street. Alaei Realty was listed as the brokerage firm for both the seller and the buyer; respondent was listed as the agent for the seller and the buyer.

7. Other documents in the transaction, most of which were dated August 6, 2020, included Disclosure Regarding Real Estate Agency Relationship, Possible Representation of More Than One Buyer or Seller – Disclosure and Consent, Wire Fraud and Electronic Funds Transfer Advisory, Seller's Advisory, California Consumer Privacy Act Advisory, Contingency Removal No. 1, Trust Advisory, Disclosure Regarding Agency Relationship, Possible Representation of More Than One Buyer or Seller – Disclosure and Consent, Buyer's Inspection Advisory, and Real Estate Transfer Disclosure Statement. Where signatures were required on these documents, respondent was identified as the agent for both the seller and buyer, and Alaei Realty was identified as the real estate broker firm.

8. Respondent testified at the present hearing that he was going through a difficult time at the end of 2019 and forgot about renewing his real estate license. He had moved and, although he submitted a postal forwarding address request, he did not receive, or missed, the notice from the department reminding him that his license was due to expire. He also forgot to update his address with the department. He believes he later received another notice from the department that his license had lapsed and that is what prompted him to renew it in August 2020. He does not know the date he received that notice.

9. At the time he entered into the real estate transaction for 1427 Gowin Street, he believed he was fully licensed and had all licensing rights. He testified it was simply a good faith mistake that he missed the renewal. He did not intend any bad faith.

Failure to Register Alaei Realty with the Department

10. Respondent did not file a fictitious business name statement with the department showing that he had filed a fictitious business name statement to do business under the name of Alaei Realty. In fact, he had not registered Alaei Realty as a fictitious business in San Diego County or any other county where he was conducting business under that name.

11. Respondent testified that that he did not realize he was required to file a fictitious business name statement because he was using his own name. He testified and provided a copy of a Fictitious Business Name Statement that he filed in San Diego County on February 15, 2024, three months before the present hearing. The statement listed the fictitious name Alaei Realty. The document received in evidence shows that respondent's application was "pending." Respondent testified that he is still required to publish the application before it can be approved. As of the date of the hearing, respondent had not completed the fictitious business application process, and had not notified the department of the filing.

2021 Domestic Violence Misdemeanor Convictions – Pled as Aggravating Factors

12. On June 2, 2020, a misdemeanor complaint was filed in *The People of the State of California v. Mehran Alaei*, San Diego Superior Court Case No. M26015DV. The complaint alleged two misdemeanor counts of violating Penal Code section 243,

subdivision (e)(1), battery against a spouse, significant other, or parent of the defendant's child. On October 26, 2021, respondent entered a plea of guilty to both counts.

13. As a result of the convictions, imposition of sentence was suspended, and respondent was placed on summary probation for three years with terms and conditions that included payment of fines, fees, and restitution; performing public service; and attending individual counseling for 52 weeks. He testified he has paid all fines, fees, and completed all conditions associated with this conviction.

14. At this hearing, respondent did not provide details of the facts and circumstances underlying the convictions. The court records in that criminal matter contain information about what was alleged to have happened. The incidents that led to the convictions occurred, according to the misdemeanor complaint, on February 29, 2020, and March 3, 2020.

15. Respondent entered into the plea agreement in the domestic violence case on the day of the trial. The City Attorney, representing the people, had filed a trial brief with the court. The trial brief stated that on February 29, 2020, respondent, the victim, and two other people were having drinks together at a bar. The victim realized that trying to socialize with respondent was a bad idea, and she tried to leave. Respondent wanted to drive her home and followed her down the street. Witnesses observed him screaming at her. Witnesses saw him drag her from behind approximately 10 to 15 feet, then drop her in the bushes. Witnesses recorded respondent with their phones and two witnesses called police.

16. The prosecution's trial brief stated that, on March 3, 2020, respondent was in his vehicle parked behind the victim's vehicle, waiting for her to return. When

the victim arrived at her vehicle, respondent exited and began yelling at her, asking where she was and who she was with. The victim had their child with her. She was attempting to place the child in the car seat when respondent started grabbing at the victim and shoved her away and took over placing the child in the car seat. An argument ensued about whether respondent had placed a GPS tracker on the victim's vehicle.

17. The trial brief also stated that the people were prepared to provide evidence of similar uncharged incidents between respondent and the victim on more than ten other occasions. The brief listed 14 law enforcement officers and eight lay witnesses, including the alleged victim, whom the people would call to testify to the events.

18. In this hearing, respondent declined to offer any details of the incidents or to tell his side of the story. He testified it was a "stupid mistake and I regret it to this day." He denied that he ever laid a hand on the mother of his child, dragged her, or shoved her. He testified that he felt pressured to take the plea deal although the alleged victim was ready to testify at the criminal trial that he had not laid a hand on her. He testified in the present hearing that he and the mother of his child are "trying to work things out" for the benefit of their daughter, who is now nine years old. The alleged victim did not testify at this hearing.

19. It is noted that the department alleged these domestic violence convictions as separate cause for discipline in the original accusation but did not allege these convictions as a separate basis for discipline in the Second Amended Accusation; instead, they are alleged as aggravating factors.

2023 Misdemeanor Conviction for Attempt to Induce False Testimony

20. On September 30, 2020, a misdemeanor complaint was filed against respondent in *The People of the State of California v. Mehran Alaei*, San Diego Superior Court Case No. M095319, alleging that in November and December 2019, respondent knowingly induced a person to give false testimony and withhold true testimony pertaining to a crime, a violation of Penal Code section 137(c). The alleged conduct occurred between November 8, 2019, and December 16, 2019. The case went to trial; the jury found respondent guilty on November 9, 2023, of attempt to induce false testimony, under Penal Code sections 664 and 137, subdivision (c).

21. Respondent was sentenced to 48 hours in custody and ordered to complete a 16-hour ethics training focusing on certain rules of professional conduct, because respondent is an attorney, by November 8, 2024. He was placed on summary probation. Respondent testified he is still in the process of completing the ethics course; he expects to finish it before the November deadline. The court also issued a protective order for one year prohibiting him from having contact with the victims. As of the date of this hearing, respondent was still on criminal probation.

22. Respondent testified at this hearing that he was "truth seeking" trying to help a friend of a friend get counsel. He discovered something disturbing, which he did not elaborate about in his testimony despite questioning. He testified he believed a criminal defendant was innocent and attempted to help get him out of jail for something he did not do. "The DA did not like me intruding in his playground." He testified he was entrapped and set up. He believes the jury was confused and he had a "really bad lawyer who was not prepared at all." He testified the judge would not allow him to cross examine witnesses. He has appealed the conviction and is awaiting the appeal. He testified he recently paid for the transcript to file it with the appellate court.

State Bar Interim Suspension of Respondent's Attorney License

23. Respondent was admitted to the State Bar in June 2012. On May 18, 2022, the State Bar records show it received transmittal of a conviction record concerning respondent. There was no evidence that this transmittal resulted in any action by the State Bar against respondent's license.

24. On December 27, 2023, the State Bar Office of Chief Trial Counsel (OCTC) transmitted to the State Bar Court the conviction records from respondent's 2023 conviction for attempt to induce false testimony. The OCTC asserted that the crime involved moral turpitude per se. Respondent was given an opportunity to file a response to the OCTC's assertion. He did not file a response. On February 29, 2024, the State Bar Court ordered that respondent's misdemeanor conviction involved moral turpitude. Based on that finding, the State Bar Court entered an interim suspension of respondent's State Bar license effective March 25, 2024, pending final disposition of the State Bar proceedings.

25. Respondent filed a request with the State Bar Court to delay or temporarily stay his interim suspension on February 29, 2024. The OCTC filed opposition to this request on March 1, 2024. On March 15, 2024, the State Bar Court denied respondent's motion to delay or temporarily stay the interim suspension.

26. As of the date of the hearing, a Consumer Alert appeared on the State Bar's public website indicating that respondent was placed on involuntary inactive status and is ineligible to practice law in California effective March 25, 2024.

27. Respondent testified in the present case that he has hired an attorney and is collecting character letters from clients and other attorneys to try to fight the State Bar discipline. He has had to withdraw from several cases and give notice to

clients. He continues to assert that he was "truth seeking" and honestly intended to act on the truth in the underlying case that led to his conviction for attempting to induce false testimony, and that he was wrongfully convicted.

Failure to Report Criminal Convictions and State Bar Discipline to the Department

28. Respondent did not report his criminal convictions or his State Bar suspension to the department. He testified that he did not realize he was required to report misdemeanors; he thought he only needed to report felonies. He also did not realize he was required to report discipline by another licensing agency to the department. Because these things had nothing to do with real estate, he did not think he was required to report them.

2022 DUI Arrest and Guilty Plea

29. Respondent admitted at the hearing that he was arrested for driving under the influence in March 2022. He testified that his attorney entered a guilty plea to a reduced charge on his behalf the day of this hearing. He testified he will report the details to the department. This conviction is not pled as a basis for discipline in the accusation.

Respondent's Additional Testimony

30. Respondent testified he currently runs a homeowner's association, which requires his real estate license. He is unable to practice law, and if he cannot sell real estate and run the homeowner's association, he does not know what he will do for work. He has been living on credit and needs to pay attorneys and the fees associated with appealing his conviction.

Cost Recovery

31. Complainant submitted declarations establishing that it has incurred investigation costs of \$3,103.70, and enforcement and prosecution costs of \$3,036. The fact that respondent failed to appear at the originally set hearing in this matter contributed to the department's cost. Respondent testified he cannot afford to pay complainant's costs.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant has the burden of proving cause for discipline against respondent by clear and convincing evidence to a reasonable certainty. (*The Grubb Co., Inc. v. Department of Real Estate* (2011) 194 Cal.App.4th 1494, 1505.) This means the burden rests on complainant to adduce proof that is clear, explicit, and unequivocal – so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487.)

Criminal Convictions as a Basis for License Discipline

2. The object of an administrative proceeding aimed at revoking a real estate license is to protect the public. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) The purpose of discipline is not to punish, but to protect the public by eliminating practitioners who are dishonest, immoral, disreputable, or incompetent. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.)

3. Business and Professions Code section 10050.1 states:

Protection of the public shall be the highest priority for the Department of Real Estate in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

4. Business and Professions Code section 10177, subdivision (b), provides that the Department may suspend or revoke the license of a real estate licensee who has "been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee." Similarly, Business and Professions Code section 490, subdivisions (a) and (b), provide that a board may suspend or revoke a license, or exercise any authority to discipline a licensee, for conviction of a crime that is substantially related to the qualifications, functions or duties of the business or profession for which the license was issued.

Requirement to Have Real Estate License

5. Business and Professions Code section 10130 states that it is unlawful for any person to engage in the business of, act in the capacity of, advertise as, or assume to act as a real estate broker without first obtaining a real estate license from the department. A real estate broker is a person who, for compensation or expectation of compensation, negotiates to sell, offers to sell or buy, solicits prospective sellers or buyers, solicits or obtains listings of, or negotiates the purchase, sale, or exchange of real property. (Bus. & Prof. Code § 10131.)

6. Any person acting as a real estate broker without a license or license endorsement, or who advertises words indicating that he or she is a real estate broker

without being so licensed is guilty of a public offense punishable by a fine not exceeding \$20,000, or by imprisonment for a term not exceeding six months, or both. (Bus. & Prof. Code § 10139.)

Requirement to Register and be Licensed Under Fictitious Business Name

7. A person applying for a real estate license who desires to have the license issued under a fictitious business name shall file with the application a certified copy of their fictitious business name statement filed with the county clerk. (Bus. & Prof. Code § 10159.5.) A licensee shall not use a fictitious name in the conduct of any activity for which a license is required unless the licensee is the holder of a license bearing the fictitious name. The department may issue a license to a broker under a fictitious name if the broker presents evidence of having complied with Business and Professions Code sections 17910 and 17917. (Cal. Code Regs., tit. 10, § 2731.) Anyone who transacts business under a fictitious name must file a fictitious business name statement not later than 40 days from the time the person commences to transact business. (Bus. & Prof. Code § 17910.) The fictitious business name statement must be filed in the county in which the person has their principal place of business. (Bus. & Prof. Code § 17910.) The fictitious business name statement must be published in a newspaper of general circulation within 45 days after filing; and an affidavit of publication filed with the county clerk within 45 days of the publication. (Bus. & Prof. Code § 17917.)

Requirement to Report Convictions and Other Agency Discipline

8. A licensee must report to the department a conviction, including a plea of guilty or no contest, of any felony or misdemeanor. (Bus. & Prof. Code § 10186.2,

subd. (a)(1)(B).) In addition, a licensee must report to the department any disciplinary action taken by another licensing entity or authority of California or of another state, or an agency of the federal government. (Bus. & Prof. Code § 10186.2, subd. (a)(1)(C).) Failure to make a report shall constitute a cause for discipline. (Bus. & Prof. Code § 10186.2, subd. (b).)

Substantial Relationship to the Duties of a Real Estate Licensee

9. California Code of Regulations, title 10, section 2910, subdivision (a), contains the criteria for determining if a criminal conviction, or the underlying conduct, is substantially related to the qualifications, functions, or duties of a real estate licensee. A crime or conduct is substantially related if it involves: the uttering of a false statement (Cal. Code Regs., tit. 10, § 2910, subd. (a)(2)); the employment of bribery, fraud, deceit, falsehood, or misrepresentation to achieve an end (Cal. Code Regs., tit. 10, § 2910, subd. (a)(4)); or demonstrates a pattern of repeated and willful disregard of law. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(10).)

10. The conviction of a crime constituting an attempt to commit any of these acts or omissions may also be deemed substantially related to the qualifications, functions, or duties of a real estate licensee. (Cal. Code Regs., tit. 10, § 2910, subd. (b).)

11. When determining whether to deem an offense to be substantially related to the qualifications, functions, or duties of a licensee, the nature and gravity of the offense, the number of years that have elapsed since the date of the offense, and the nature and duties of a real estate licensee shall be taken into consideration. (Cal. Code Regs., tit. 10, § 2910, subd. (c).)

12. Respondent was convicted in 2023 of attempting to induce a person to give false testimony in late 2019. This is serious conduct involving dishonesty, fraud,

deceit, and falsehood. The department requires, and the public expects, that real estate brokers will act with honesty and integrity. Respondent's conduct and conviction are substantially related to the qualifications, functions, or duties of a real estate licensee. Respondent's testimony that he was "truth seeking" may not be considered. A criminal conviction, by itself, is conclusive proof of all acts necessary to constitute the offense. While respondent was entitled to introduce evidence of extenuating circumstances, mitigation, and explanation, as well as evidence of rehabilitation, he is not permitted to impeach his conviction. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.)

Cause for Discipline Was Established

13. Cause to discipline respondent's license was established under Business and Professions Code section 10177 and section 490 for his 2023 misdemeanor conviction of knowingly attempting to induce a person to give false testimony. The crime is substantially related to the qualifications, functions, or duties of a real estate licensee.

14. Cause to discipline respondent's license was established under Business and Professions Code sections 10177, 10130, 10131, and 10139 based on respondent's acts and omissions as an unlicensed real estate broker in the purchase and sale of the property located at 1427 Gowin Street while his license was lapsed and had not been renewed.

15. Cause to discipline respondent's license was established under Business and Professions Code sections 10159.5, 17910, and California Code of Regulations, title 10, section 2731, based on respondent's conduct engaging in business under a

fictitious name without having registered the fictitious name with the county and having obtained a license to do business under the fictitious name.

16. Cause to discipline respondent's license was established under Business and Professions Code sections 10186.2, based on respondent's failure to report his criminal convictions and State Bar discipline to the department.

Rehabilitation and Mitigation

17. 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.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940), but mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991; see also *In re Schwartz* (1982) 31 Cal.3d 395, 400-401, citing *In re Conflenti* (1981) 29 Cal.3d 120, 124-125 [where petitioner's criminal acts occurred just two years prior to his discipline hearing, evidence was insufficient to demonstrate rehabilitation].)

18. Good behavior while on criminal probation is generally entitled to little weight as evidence of rehabilitation, since people have a strong incentive to obey the law while under the supervision of the criminal justice system. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

19. The department has developed criteria of rehabilitation that are to be considered in evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of a license has

been initiated. (Cal. Code Regs., tit. 10, § 2912, subds. (a)-(m).) The criteria applicable to respondent's case have been considered.

Evaluation of Disciplinary Remedy

20. Respondent did not present any evidence of rehabilitation. He has not yet completed the ethics course the court ordered him to take as a result of his 2023 conviction. He gave no evidence about what he has learned or how he has changed after 52 weeks of individual therapy following his domestic violence convictions. He did not provide any evidence about other steps he has taken to learn from his mistakes and change his conduct. He has not taken responsibility for his actions. He continues to deny that he attempted to induce false testimony despite being convicted by a jury of doing so. He continues to insist he was "truth seeking" and blames the district attorney, the jury, his own attorney, and the judge for the outcome of his trial.

21. Respondent's continued insistence that he never touched his daughter's mother and that he did not attempt to induce false testimony may not be considered in light of his convictions. His criminal acts took place five years ago and his conviction was one year ago. He is still on criminal probation. There was no character evidence. There was no evidence of significant and conscientious involvement in community programs. There was no evidence of a change of attitude from that which existed at the time of the criminal acts.

22. Attempting to explain his many failures to comply with real estate law, respondent's frequent refrain was to claim ignorance. He did not know he was supposed to register a fictitious name and apply for a license in that name when he was using his own name for the business. In fact, he was not using his own name; the

business name was Alaei Realty. He did not know he was supposed to report his criminal convictions, despite having answered that question on his application and every renewal. He did not know he was supposed to report his State Bar discipline. He forgot to renew his license because the department's reminder did not reach him. He forgot to update his address with the department when he moved. He did not think any of his conduct in his criminal cases involved real estate even though his honesty, integrity, and mistreatment of others were implicated by his convictions.

23. Respondent is an attorney. He testified he is a "real estate attorney"; he should know that fictitious business names must be registered and that a licensing agency needs to know about criminal convictions. His claims of ignorance lack credibility.

24. Respondent's unlicensed real estate activity for eight months, by itself, may not have resulted in severe disciplinary consequences if it were the only violation alleged. But his carelessness in dealing with his license exists in the context of his actions that led to his conviction of attempting to induce false testimony and conviction of domestic violence, along with his consistent failures to comply with the department's rules for registering a fictitious business and reporting his convictions and other discipline. Respondent's DUI arrest in 2022, which led to a plea of guilty on the day of this hearing, shows that respondent continues to violate the law.

25. On this record, the only remedy that ensures public protection is to revoke respondent's real estate license.

Cost Recovery

26. In any order resolving a disciplinary proceeding, the commissioner may request the administrative law judge to direct a licensee found to have committed a

violation to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case. (Bus. & Prof. Code § 10106.) In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the court held that cost recovery administrative statutes do not violate due process. The court identified factors to consider in evaluating cost recovery: (1) whether the licensee used the hearing process to obtain dismissal or a reduction in the severity of the discipline imposed; (2) whether the licensee had a "subjective good faith" belief in the merits of his/her position; (3) whether the licensee raised a colorable challenge to the proposed discipline; (4) whether the licensee had the financial ability to make payments; and (5) whether the scope of the investigation was appropriate to the alleged misconduct.

27. Respondent did not offer any evidence to obtain dismissal or reduction in the severity of the discipline. He may have had a subjective good faith belief in the merits of his position, but that belief was not justified based on the evidence. He did not raise any colorable challenge to the department's case. His carelessness in failing to appear at the first setting of this hearing caused additional costs for the department. This is especially striking given that he is an attorney who should understand the importance of having systems in place to avoid missing court appearances and the consequences of failing to appear. Respondent testified at the hearing that he cannot afford to pay the department's costs; he did not offer any evidence of his financial ability to make payments.

28. The department's investigation and enforcement costs totaling \$6,139.70 were reasonable. Applying the *Zuckerman* factors, a cost award of \$6,139.70 is appropriate. The department should allow respondent to repay the costs in installments.

ORDER

Respondent Mehran David Alaei's real estate broker license and licensing rights are revoked. Investigation and enforcement costs of \$6,139.70 are awarded to the department.

DATE: June 7, 2024



ALAN R. ALVORD

Administrative Law Judge

Office of Administrative Hearings