

**FILED**

NOV 08 2017

BUREAU OF REAL ESTATE

By B. Nicholas

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of

GORDON JIN,

Respondent.

) CalBRE No. H-6542 SAC

) OAH No. 2017061056

DECISION

The Proposed Decision dated October 2, 2017, 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 Bureau 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 Bureau's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first.

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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 NOV 29 2017.

IT IS SO ORDERED

10/31/17

WAYNE S. BELL  
REAL ESTATE COMMISSIONER



By: DANIEL J. SANDRI  
Chief Deputy Commissioner

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

In the Matter of the Amended Accusation  
Against:

GORDON JIN,

Respondent.

Case No. H-6542 SAC

OAH No. 2017061056

**PROPOSED DECISION**

This matter was heard before Tiffany L. King, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, on September 12, 2017, in Sacramento, California.

Adriana Z. Badilas, Legal Counsel, represented Tricia D. Parkhurst (complainant), Supervising Special Investigator, Bureau of Real Estate (Bureau), Department of Consumer Affairs, State of California.

Anh V. Nguyen, Attorney at Law, represented Gordon Jin (respondent), who was present.

Evidence was received, the record was closed, and the matter was submitted for decision on September 12, 2017.

**FACTUAL FINDINGS**

1. On August 22, 2013, the Bureau issued salesperson license number 01939077 to respondent. Respondent's license was in full force and effect at all times relevant to the allegations in the Accusation. It expired on August 21, 2017.<sup>1</sup> There is no history of prior discipline of respondent's license.

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<sup>1</sup> "The lapsing or suspension of a license by operation of law or by order or decision of the department or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the department of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against such licensee, or to render a decision suspending or revoking such license." (Bus. & Prof. Code, § 10103.)

2. Complainant, in her official capacity, signed and filed the Accusation on May 9, 2017, and the Amended Accusation on June 27, 2017. The Amended Accusation seeks to revoke respondent's license on grounds that he was convicted of a felony and failed to report the felony charge or conviction to the Bureau. Respondent timely filed a Notice of Defense. This hearing followed.

### *Respondent's Conviction*

3. On August 17, 2016, in the Sacramento County Superior Court, case number 16FE012531, respondent pled no contest to, and was convicted of, violating Health and Safety Code section 11359 (possession of marijuana for sale), a felony. Imposition of sentencing was suspended and respondent was placed on formal probation for five years. He was ordered to serve 90 days in jail, but was allowed to serve that time through the sheriff's work program. He was further ordered to register as a drug offender pursuant to Health and Safety Code section 11590, and to participate in a drug rehabilitation program under the direction of his probation officer. Finally, he was ordered to pay fines and fees totaling approximately \$4,000. On July 24, 2017, upon respondent's petition, the court re-designated his conviction from a felony to a misdemeanor. It also converted his probation from formal for five years, to informal for three years. Other than these changes, all other terms and conditions from the original probation order remained.

4. The circumstances underlying the incident occurred on June 22, 2016.<sup>2</sup> The police conducted a three-location raid, including a residential property located on Matson Drive and owned by respondent. Inside the residence, officers discovered over 250 growing marijuana plants and 87 small plants, as well as irrigation, wall coverings, lights, pots, dirt, and air filtering equipment. They also found \$3,000 in cash and over five pounds of processed, drying marijuana along with scales, and packaging and shipping equipment. Respondent, his wife, and their four-year-old son were present at the property during the raid. After being advised of his *Miranda*<sup>3</sup> rights, respondent admitted to packaging and selling marijuana to his friends.

### *Failure to Report*

5. Respondent did not report the felony charge or conviction to the Bureau within 30 days as required under Business and Professions Code section 10186.2, subdivision (a). Respondent offered no explanation for this failure at hearing.

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<sup>2</sup> The Sacramento Police report was admitted pursuant to the holding in *Lake v. Reed* (1997) 16 Cal.4<sup>th</sup> 448.

<sup>3</sup> *Miranda v. Arizona* (1966) 384 U.S. 436 (establishing constitutional rights, including the right to remain silent.)

### *Respondent's Evidence*

6. Respondent is 44 years old. He has been married for five years. He and his wife have a four-year-old son. Respondent and his family live with his sister.

7. At the time of the raid, respondent and his family did not reside at the Matson Drive property. Instead, they lived with respondent's sister on 19<sup>th</sup> street. His sister's house was also one of the properties searched as part of the June 22, 2016 raid, though there was no evidence that any contraband was found at that location. At the time of respondent's arrest, no one resided at the Matson Drive property; respondent used it exclusively to grow marijuana.

8. Respondent testified he uses marijuana for medicinal purposes, specifically, to deal with stress. He introduced a physician's statement, dated November 23, 2015, from R. David Ferrera, M.D., approving respondent's authorization to use marijuana for medicinal purposes for one year pursuant to the Compassionate Use Act of 1996 (Health & Saf. Code, § 11362.5 et seq.)<sup>4</sup> Dr. Ferrera also authorized respondent to grow up to 50 marijuana plants and possess eight pounds of marijuana for his yearly medical needs.<sup>5</sup> Respondent testified that, at the time, he was unaware he was growing more marijuana plants than was permitted by law. At no time was respondent licensed or certified to cultivate marijuana for sale.

9. At hearing, respondent denied growing or possessing marijuana with the intent to sell. He asserted he would share his supply with friends, but did not charge them for it. He admitted telling the police that he packaged the marijuana and sold it to his friends, explaining that he thought it would expedite the resolution of any forthcoming criminal charges brought against him. However, respondent disputed the number of growing marijuana plants discovered by the police, and also denied that the police found shipping and packaging materials at the Matson residence during the raid.

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<sup>4</sup> Dr. Ferrera's statement was admitted as administrative hearsay pursuant to Government Code section 11513, subdivision (d), which provides, in relevant part:

Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

<sup>5</sup> Pursuant to the Medical Marijuana Program Act, which implements the Compassionate Use Act, a qualified patient may possess no more than eight ounces of dried cannabis, and maintain no more than six mature or 12 immature cannabis plants. (Health & Saf. Code, § 11362.77, subd. (a).) Notwithstanding these restrictions, "[i]f a qualified patient . . . has a physician's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient . . . may possess an amount of cannabis consistent with the patient's needs." (Health & Saf. Code, § 11362.77, subd. (b).)

10. Respondent no longer grows marijuana. He has paid all court-ordered fines and fees. He completed his hours with the sheriff's work program in March 2017. He has not registered as a drug offender nor enrolled in a drug rehabilitation program, testifying he was not required to do so by his probation officer. In July 2017, the court converted his probation from formal to informal, and reduced the term from five to three years.

11. From September 2013 to May 2014, respondent was employed as a salesperson by Keller Williams, on a commission-only basis. He could not recall closing any transactions while employed there. Since May 2014, respondent has worked as a salesperson at iHome Real Estate in Sacramento, on a commission-only basis. His supervising broker is Mayue Lin Carlson. He does not work there full-time; his workload depends on his client list. He last earned a commission in January or February 2017. Respondent testified he informed Ms. Carlson of his conviction.

12. Respondent's wife worked as a part-time caregiver and housekeeper in early 2017. She received her last paycheck in June 2017, and is currently unemployed. With no present income, respondent and his family are using their savings to support themselves.

#### *Discussion*

13. The rehabilitation criteria applicable in this matter are set forth in California Code of Regulations, title 10, section 2912. Relevant rehabilitation criteria include: (1) the passage of not less than two years from the most recent criminal conviction; (2) successful completion or early discharge from probation or parole; (3) payment of any fine imposed in connection with the criminal conviction that is the basis for revocation of the license; (4) 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 in question; (5) stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction; (6) significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems; and (7) change in attitude from that which existed at the time of the commission of the criminal acts in question.

14. Respondent's conviction, and the underlying criminal conduct, occurred less than two years ago. Although he has paid all court-ordered fines and fees, respondent remains on criminal probation until August 2019. He no longer grows marijuana, and has a stable family life. He offered no evidence of significant or conscientious involvement in the community. Nor did he demonstrate a change in attitude since engaging in the criminal conduct. Significantly, respondent did not accept responsibility for the crime for which he was convicted, an essential step towards rehabilitation. (See, *Seide v. Com. of Bar Examiners of the State Bar of Cal.* (1989) 49 Cal.3d 933, 940 ["Fully acknowledging the wrongfulness of his actions is an essential step towards rehabilitation"].)

15. Respondent's attempt to collaterally attack the facts underlying his conviction was unpersuasive. In an administrative proceeding, a respondent cannot challenge the validity of a prior conviction. (*Thomas v. Dept. of Motor Vehicles* (1970) 3 Cal.3d 335; *Matanky v. Bd. of Medical Examiners* (1979) 79 Cal.App.3d 293; *Arneson v. Fox* (1980) 28 Cal.3d.440, 449.) Respondent's version of the events was not only unbelievable, but further demonstrated his lack of rehabilitation since the commission of his crime.

16. When all the relevant evidence is considered, it would be contrary to the public interest, safety, and welfare to allow respondent to remain a real estate licensee. Consequently, his license must be revoked.

#### *Costs*

17. Complainant has requested that respondent be ordered to pay investigation costs in the amount of \$264.85, and enforcement costs in the amount of \$400.50, for total costs of \$665.35. The investigation costs are supported by a Certified Statement of Investigation Costs which provided detail regarding the general tasks performed, the time spent on each task and the method of calculating the costs. Complainant also submitted a Certified Statement of Costs to support its prosecution costs which included similar detailing of the tasks performed, time spent, and calculation method used. The scope of work and amount of time spent listed are reasonable in light of the allegations in this matter.

### LEGAL CONCLUSIONS

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. Board 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. Superior Court* (2005) 130 Cal.App.4th 586, 594.) Once cause for discipline is established, the burden of proof shifts to respondent to demonstrate sufficient rehabilitation.

2. A real estate license may be disciplined if the licensee has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee. (Bus. & Prof. Code, §§ 490, subd. (a); 10177, subd. (b).) The Bureau deems a conviction to be substantially related to the qualifications, functions, or duties of a licensee, if it involves an "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." (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).)

3. Cause exists to discipline respondent's license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b). As set forth in Findings 3 and 4,

and Legal Conclusion 2, respondent's conviction is substantially related to the qualifications, functions, and duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivision (a)(8), because he unlawfully sold marijuana with the intent of conferring a financial or economic benefit upon himself.

4. A real estate licensee shall report the bringing of an indictment or charging of a felony against him to the Bureau, or any conviction, to the Bureau in writing within 30 days. (Bus. & Prof. Code, § 10186.2, subs. (a)(1)(A)-(B), (a)(2).) Failure to make such report shall constitute a separate cause for discipline. (Bus. & Prof. Code, § 10186.2, subd. (b).)

5. Cause exists to discipline respondent's license pursuant to Business and Professions Code section 10186.2. As set forth in Finding 5, respondent failed to report the bringing of felony charges against him or his felony conviction to the Bureau within 30 days.

6. Respondent's conviction and his failure to demonstrate adequate rehabilitation, establishes that it would be contrary to the public interest, safety and welfare to allow him to continue to practice real estate in California. For all the reasons set forth in Findings 13 through 16, respondent's license must be revoked.

#### *Costs*

7. Business and Professions Code section 10106 authorizes the commissioner to request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered when determining the reasonableness of costs sought pursuant to statutory provisions like Business and Professions Code section 10106. These factors include: (a) whether the licensee has been successful at hearing in getting charges dismissed or reduced; (b) the licensee's subjective good faith belief in the merits of his or her position; (c) whether the licensee has raised a colorable challenge to the proposed discipline; (d) the financial ability of the licensee to pay; and (e) whether the scope of the investigation was appropriate in light of the alleged misconduct.

8. As set forth in Finding 17, complainant seeks \$665.35 for its investigation and enforcement costs. When all the *Zuckerman* factors are considered, this amount is reasonable. Thus, respondent should be ordered to pay these costs in full to the Bureau.

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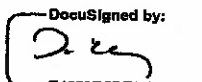


ORDER

1. All licenses and licensing rights of respondent Gordon Jin under the Real Estate Law are REVOKED.

2. Respondent shall pay enforcement costs to the Bureau in the amount of \$665.35 within 30 days after the effective date of this Decision.

DATED: October 2, 2017

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TIFFANY L. KING  
Administrative Law Judge  
Office of Administrative Hearings