BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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FILED

MAY 17 2019

DEPARTMENT OF REAL ESTATE

By L. Knopp

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| In the Matter of the Accusation of: JOSE JUAN CORONA-VALENCIA, JR., Respondent. | DRE No. H-6773 SAC<br><br>OAH No. 2019020660 |

DECISION

The Proposed Decision dated April 11, 2019, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

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 JUN 07 2019.

IT IS SO ORDERED May 16, 2019

DANIEL J. SANDRI
ACTING REAL ESTATE COMMISSIONER

Daniel J. Sandri

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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| In the Matter of the First Amended Accusation of:<br><br>JOSE JUAN CORONA-VALENCIA, JR.,<br><br>Respondent. | Case No. H-6773 SAC<br><br>OAH No. 2019020660 |

## PROPOSED DECISION

Administrative Law Judge Sean Gavin, Office of Administrative Hearings, State of California, heard this matter on March 20, 2019, in Sacramento, California.

Jason Lazark, Staff Counsel, represented Tricia D. Parkhurst (complainant), Supervising Special Investigator, Department of Real Estate (DRE or Department), State of California.

Jose Juan Corona-Valencia, Jr. (respondent) appeared on his own behalf.

The record was closed and the case was submitted for decision on March 20, 2019.

## FACTUAL FINDINGS

1. On October 28, 2015, the Department issued salesperson license number S/01975121 (license) to respondent. The license is in full force and effect and will expire on October 27, 2019, unless renewed or revoked.

2. On March 5, 2019, complainant, acting solely in her official capacity, filed a First Amended Accusation wherein she alleged cause to discipline respondent's license on grounds that he was convicted of crimes that are substantially related to the qualifications, functions, or duties of a real estate licensee.

3. Respondent timely filed a Notice of Defense, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500, et seq.

*Respondent's Criminal Convictions*

4. On December 18, 2017, in the Superior Court of California, County of Sacramento, Case No. 17FE021832, respondent was convicted, on his plea of nolo contendere, of violating Penal Code section 236 (false imprisonment), a misdemeanor. Respondent was sentenced to four days in jail, placed on three years of informal probation, ordered to take anger management courses, and ordered to pay restitution, fines and fees. One of the terms of respondent's probation was that he obey all laws. In addition, the court issued a restraining order requiring respondent not to have contact with K.A. for three years.

The facts underlying the conviction occurred on November 16, 2017, when respondent got into a physical confrontation with his ex-girlfriend, K.A.[1], and took her phone and car keys from her. K.A.'s cousin called the police, who arrived and arrested respondent.

5. On January 24, 2019, in the Superior Court of California, County of Sacramento, Case No. 18MI024746, respondent was convicted, on his plea of nolo contendere, of violating Penal Code section 594, subdivision (a) (vandalism), a misdemeanor. Respondent was sentenced to 90 days in jail, to be served on the sheriff's Work Release Program. Respondent was still serving that sentence at the time of hearing. Respondent was also placed on three years of informal probation, and ordered to pay restitution, fines and fees. Probation is scheduled to terminate in January 2022.

The facts underlying the conviction occurred on December 24, 2018 when respondent, after getting into an argument with K.A., punched her windshield, cracking it. The restraining order was still in effect at this time. Respondent was arrested.

*Respondent's Evidence*

6. Respondent is 26 years old. His early childhood was unstable, and he joined a gang in 2004, when he was 12. He was actively involved in the gang for approximately 10 years, but began to want a different lifestyle in 2011, following the birth of his daughter. In 2013, respondent's grandmother's house was hit with gunfire, one of his close friends died, and another friend received a 10-year prison sentence. In 2013, respondent and K.A. had a son, and respondent decided to leave the gang and move his family to a different neighborhood for a fresh start.

7. Following respondent's move, he began to explore a career in real estate based on his interest in television shows related to real estate and his background in selling drugs. Respondent explained, "I didn't stop the hustle I just changed the product." In October 2015, respondent became a licensed real estate agent, and he worked continually until approximately February 2019, when the Sacramento Association of Realtors suspended him

[1] The victim, who was respondent's ex-girlfriend at the time of the confrontation but who has variously been respondent's girlfriend, ex-girlfriend, and fiancée over the past 10 years, will be referred to by the initials "K.A." to protect her privacy.

pending the outcome of this administrative action. He has closed approximately 50 real estate sales; he enjoys the work and believes he is well-suited for it. Furthermore, he is focused on building a business and a legacy for his family that is different from his previous gang-related lifestyle. He began to receive professional mentorship and to "think bigger" about his life and goals after embarking on a real estate career.

8. Respondent lives with his mother. He and K.A. have two children together. Respondent does not have legal custody rights to his children, but while K.A. was in school, respondent was their primary caregiver at her request. Respondent is actively involved in his children's lives, and he currently coaches his daughter's softball team.

Despite leaving the gang and his old neighborhood, respondent still carries a lot of unresolved anger, which has led to multiple outbursts of rage. One such outburst led to respondent's conviction for false imprisonment. In that circumstance, respondent and K.A. were separated, and respondent suspected her of dating other people. At their child's school, respondent took K.A.'s phone and searched it. Angered by what he found, respondent followed K.A. her back to her house and confronted her. While K.A. was seated in her car, respondent opened the door and removed her keys from the ignition. Respondent later described the event as a "fight, which got physical." Respondent was arrested and subsequently convicted of false imprisonment. As noted in the police report, the responding police officer observed minor bruising and swelling on K.A.'s left cheek and an approximately three-inch long abrasion on her chest.

9. Respondent's anger also led to his conviction for vandalism. In that circumstance, respondent became upset when K.A. told him she was going to keep their children with her on Christmas day, which was a departure from their original plan. After arguing, respondent punched and cracked K.A.'s windshield. As part of his court-ordered restitution, respondent has replaced the damaged windshield.

10. Respondent and K.A. attended church and couples counseling together, but they are presently separated. K.A. has a restraining order against respondent, and they coordinate the co-parenting of their children via email and through family members. Respondent acknowledged "[K.A.] and I can no longer have any communication for the next three years as well."

11. Following respondent's December 2017 conviction, he completed 18 hours of court-ordered anger management classes. Respondent testified that he took the classes seriously and participated fully. He enjoyed the classes and tries to use the techniques he learned to help avoid and manage his anger. Respondent testified candidly about his difficulties managing his emotions, particularly anger, and reflected, "I struggle with anger, but I'm not an angry person." He acknowledged that he is "on [his] path to rehabilitation, but [he is] not fully there yet."

12. Following his first conviction, respondent became heavily involved in Elevate Life Church. In June 2018, he was baptized by Pastor Sergio Limon, who provided a written

statement of support wherein he described respondent as "focused and determined to make a change in his life for the better." Respondent has informed Pastor Limon of his convictions and the circumstances surrounding them. Respondent is now an usher at the church, serves in the children's ministry, and recently participated in a mission trip to Mexico.

13. Respondent also submitted written statements of support from Peggy Fava, Douglas Gaffney, and K.A.

(a) Ms. Fava is the executive director of Bridge Network, a non-profit organization that provides support and advocacy for at-risk youth. Respondent has volunteered with Bridge Network since 2016, serving as a youth mentor, tutor, coach, and advocate. Respondent also contracts with Bridge Network's workforce development program, through which he provides job readiness training and motivational classes. Ms. Fava described respondent as "teachable and eager to develop as a youth leader and community member." Ms. Fava's letter does not indicate whether she is aware of respondent's convictions.

(b) Mr. Gaffney, in addition to being respondent's friend, mentor, and entrepreneurial leadership coach, is a real estate broker in respondent's office. Mr. Gaffney has observed that respondent has "turned away from his old ways" and "done a lot to get his life back in order." For those reasons, Mr. Gaffney recommended that respondent be permitted to continue being a real estate salesperson. Respondent has informed Mr. Gaffney of his conflicts with K.A.

(c) K.A. wrote a letter dated March 4, 2019 "in the intent to help and support" respondent. She characterized respondent as "a really good father" and observed that she has seen respondent "making changes." She further indicated that she is "sure now more than ever [respondent] will be more responsible of the choices [*sic*] he makes in life." K.A.'s letter is unsigned.

14. Respondent is not currently practicing as a real estate salesperson because the Sacramento Association of Realtors has suspended his license pending the outcome of this administrative action. Respondent completed an online ethics course through the National Association of Realtors in December 2018 and filed the appropriate documentation to notify DRE of his January 2019 conviction.

*Discussion*

15. Pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(8), a crime is substantially related to the qualifications, functions, or duties of a licensee if it involves doing an unlawful act with the intent or threat of doing substantial injury to the person or property of another. Applying this standard, respondent's crimes of false

imprisonment and vandalism are both substantially related to the qualifications, functions, or duties of a licensee.

16. Pursuant to California Code of Regulations, title 10, section 2912, the DRE has adopted criteria for determining whether a licensee who has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee is sufficiently rehabilitated such that he is capable of continuing to engage in licensed activities in a manner consistent with public protection, safety, and welfare. (Bus. & Prof. Code, § 482, subd. (b)). The relevant criteria include:

> (a) The time that has elapsed since commission of the act(s) or offense(s):
>
> > (1) The passage of less than two years after the most recent criminal conviction or act of the licensee that is a cause of action in the Bureau's Accusation against the licensee is inadequate to demonstrate rehabilitation.
>
> (b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee, or escheat to the State of these monies or other properties if the victim(s) cannot be located.
>
> (c) Expungement of the conviction(s) which culminated in the administrative proceeding to take disciplinary action.
>
> [¶] . . . [¶]
>
> (e) Successful completion or early discharge from probation or parole.
>
> [¶] . . . [¶]
>
> (g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.
>
> [¶] . . . [¶]
>
> (i) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.

(j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.

(k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

(l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) Change in attitude from that which existed at the time of the commission of the criminal acts in question . . .

17. Respondent has not satisfied the majority of the rehabilitation criteria: Both of his convictions occurred in the past two years, one within two months of hearing; neither conviction has been expunged; respondent was on probation for his first crime when he committed his second crime, and he still has 33 of months left on his 36-month probation term; he has fulfilled some of his parental responsibilities, but being violent toward his children's mother demonstrates instability in his family life; he has not completed or enrolled in any economic self-improvement courses; and he has acknowledged that he is "on [his] path to rehabilitation, but [he is] not fully there yet."

18. Respondent's evidence of rehabilitation showed that he has made significant efforts towards improving his life following his departure from gang affiliation, but those efforts predate his convictions. As a result, they do not demonstrate rehabilitation from respondent's criminal convictions, but rather rehabilitation from his previous gang lifestyle. Respondent's efforts in the years following his gang membership, including support from his pastor, colleagues, and community[2], show he is willing to work toward rehabilitation, with appropriate supports in place.

19. One of the DRE's primary objectives is protecting the public. Given a real estate salesperson's frequent contact with the public, and the sensitive nature of real estate transactions, the DRE must have assurances that respondent will not engage in the sort of angry and erratic behavior that led to his convictions. While he took an 18-hour anger management course, he completed that course *prior* to his second offense. The course was not sufficient for respondent to address his anger management issues.

Respondent has not had sufficient time to demonstrate whether or not he has addressed his anger issues and is rehabilitated. It is expected that a person will act "in an exemplary fashion" while on probation. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) But when respondent was on probation for his first offense, he was convicted of a similar violent offense. He has not offered the DRE any assurance that he is not a danger to the public.

[2] K.A.'s letter was unsigned and is therefore afforded little weight.

Given the above factual findings, it would be contrary to the public health, safety, and welfare to allow respondent to retain his real estate salesperson license.

*Costs*

20. Under Business and Professions Code section 10106, the DRE may recover reasonable costs of the investigation and enforcement of a case. DRE has incurred $1,152.85 in total costs of investigation and enforcement. The costs of investigation and enforcement are supported by declarations dated January 14, 2019, and March 17, 2019, which describe the general tasks performed, the time spent on each task, and the method of calculating the costs. The reasonableness of the costs is addressed in Legal Conclusions 6 and 7.

## LEGAL CONCLUSIONS

1. Complainant has the burden of proof with regard to the matters alleged in the Accusation, and the standard of proof for such is clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856.) Clear and convincing evidence requires a finding of high probability or evidence so clear as to leave no substantial doubt and sufficiently strong as to command the unhesitating assent of every reasonable mind. (*In re Michael G.* (1998) 63 Cal.App.4th 700, 709, fn. 6.)

2. In a disciplinary action such as this, however, the burden of proof of establishing an affirmative defense is on the respondent (*Whetstone v. Board of Dental Examiners* (1927) 87 Cal.App. 156, 164), which is consistent with the general rule placing the burden of proof on one who asserts a claim or defense (Evid. Code, § 500). The standard of proof for establishing an affirmative defense is proof by a preponderance of the evidence, because no other law or statute requires otherwise. (Evid. Code, § 115.)

3. Pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), a professional license may be suspended or revoked if the "licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued."

4. Pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(8), a conviction is deemed to be substantially related to the qualifications, functions, or duties of a real estate licensee if it involves:

> Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

As set forth in Factual Findings 4, 5, and 15, respondent's convictions for false imprisonment and vandalism are substantially related to the qualifications, functions and duties of a real estate licensee. In each instance, respondent engaged in unlawful conduct with the intent or threat of doing substantial injury to the person or property of another. Consequently, complainant established cause to discipline respondent's real estate salesperson license under Business and Professions Code sections 490 and 10177, subdivision (b).

5. As articulated in the Factual Findings as a whole, and in Factual Finding 19 in particular, respondent did not demonstrate by a preponderance of the evidence that he has undergone sufficient rehabilitation such that his continued engagement in the duties of a real estate salesperson would be consistent with the public health, safety, and welfare at this time. As a result, to protect the public health, safety, and welfare, respondent's license must be revoked.

*Costs of Prosecution*

6. The Department may request the administrative law judge to direct a licensee found to have committed violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. (Bus. & Prof. Code, § 10106.) In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth guidelines for determining whether the costs should be assessed in the particular circumstances of each case. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his 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.

7. As articulated in Factual Finding 20, complainant is seeking $1,152.85 in costs. The scope of the investigation was appropriate to the alleged misconduct. Though respondent had a good faith belief in the merits of his position, he was not successful at hearing in having charges dismissed or reduced. Considering the factors set forth in *Zuckerman*, the request for costs in the amount of $1,152.85 is reasonable in this matter. Respondent should be permitted to pay these costs according to a payment plan determined by the DRE or its designee if and when his license is reinstated.

## ORDER

1. The license and licensing rights of respondent Jose Juan Corona-Valencia, Jr. are REVOKED.

2. If and when respondent's license is reinstated, he shall pay to the DRE costs associated with its investigation and enforcement in the amount of $1,152.85. Respondent shall be permitted to pay these costs in a payment plan approved by the DRE. Nothing in

this provision shall be construed to prohibit the DRE from reducing the amount of cost recovery upon reinstatement of the license.

DATED: April 11, 2019

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Sean
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SEAN GAVIN
Administrative Law Judge
Office of Administrative Hearings