

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

**FILED**

SEP 30 2019

DEPARTMENT OF REAL ESTATE

By K. Knapp

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In the Matter of the Accusation of:

JULIE ANN CLEVINGER,

Respondent.

) DRE No. H-6821 SAC

) OAH No. 2019050118

DECISION

The Proposed Decision dated August 26, 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, but the right to a restricted salesperson license is granted to Respondent.

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.

OCT 21 2019

This Decision shall become effective at 12 o'clock noon on \_\_\_\_\_.

IT IS SO ORDERED September 27, 2019

DANIEL J. SANDRI  
ACTING REAL ESTATE COMMISSIONER

*Daniel J. Sandri*

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

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

**JULIE ANN CLEVENGER, Respondent**

**Case No. H-6821 SAC**

**OAH No. 2019050118**

**PROPOSED DECISION**

Dena Coggins, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on July 29, 2019, in Sacramento, California.

Jason Lazark, Counsel for the Department of Real Estate (Department), represented Tricia D. Parkhurst (complainant), a Supervising Special Investigator of the State of California.

Joshua Rosenthal, Attorney at Law, represented respondent Julie Ann Clevenger (respondent), who was present at the hearing.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on July 29, 2019.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. Respondent is presently licensed and has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code as a real estate salesperson. The Department issued respondent a real estate salesperson license on February 14, 2011 (license). Respondent's license will expire on April 21, 2023, unless renewed or revoked.

2. On April 12, 2019, complainant signed, and subsequently filed, the Accusation in her official capacity. Complainant seeks to discipline respondent's license on the grounds that: (1) she was convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee; and (2) she failed to disclose her criminal conviction to the Department in willful disregard or violation of the Real Estate Law.

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 Conviction**

4. On June 6, 2017,<sup>1</sup> in the Superior Court of California, County of El Dorado, Case No. P17CRF0006, on a plea of nolo contendere, respondent was convicted of violating Welfare and Institutions Code section 10980, subdivision (c)(1), obtaining or retaining aid for herself by means of false statement or representation, for an amount of \$950 or less, a misdemeanor. The court placed respondent on informal probation for three years, with terms and conditions including that she serve 60 days in custody with authorization for home monitoring, pay \$583 in restitution, and pay \$280 in fines and fees.

5. The circumstances underlying respondent's conviction are that between November 1, 2015, and January 30, 2016, respondent made misrepresentations to obtain and retain CalFresh<sup>2</sup> benefits of \$582 that she was not entitled to receive. Respondent did not notify the Department in writing, or by any other means, of the criminal complaint brought against her or her subsequent criminal conviction, until August 1, 2018, in a Conviction Detail Report.<sup>3</sup>

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<sup>1</sup> The Accusation alleges that the conviction date was May 11, 2018; however, the Accusation is incorrect based on the court records submitted in evidence.

<sup>2</sup> CalFresh benefits provide low income individuals with aid to pay for food items.

<sup>3</sup> The evidence is unclear as to the reason respondent submitted the Conviction Detail Report; although, the submission appears to be in response to the Department providing the form to respondent.

## **Respondent's Testimony and Evidence**

6. Respondent testified at the hearing. She is 56 years old and has an associate's degree in real estate. She began her first position in real estate in Carlsbad, California, in 2011, as a property manager, and remained in that position until 2013. She then worked as a leasing agent for three months before losing her job. She received unemployment benefits for six months, until approximately May 2014, when she was employed by another corporation. That same year, she was hired by a realty corporation where she remained until December 2014, when she was "laid off" from her job.

7. After losing her job, respondent moved in with a friend and received unemployment benefits while looking for a new job from January 2015 through July 2015. In August 2015, respondent applied for CalFresh benefits. On the application for benefits, respondent checked the box indicating that her household's gross income was less than \$150, and that her cash on hand, and in checking and savings accounts was \$100 or less. Respondent's application for benefits was granted and she began receiving benefits in November 2015.

8. Respondent received an offer to return to her former job at Property Advantage Management Company in Carlsbad, in August 2015, which she accepted. She remained employed at Property Advantage until approximately March 2016, when she became employed by Alliance Business Group.

9. In January 2016, respondent attempted to renew her CalFresh benefits by completing an Eligibility Status Report (Status Report), which she signed under penalty of perjury and submitted to the El Dorado County Department of Human Services. On the Status Report, respondent responded "No" to the questions asking if she received

income from employment in the Report Month and whether there will be any changes to her income from employment in the next six months. Respondent did not respond to the question asking if she got money from any other source in the Report Month. Her employment at Property Advantage caused her monthly income to be higher than permitted to be eligible for CalFresh benefits. Respondent did not disclose her employment to the El Dorado County Department of Human Services, and continued to receive benefits through January 2016.

10. After respondent submitted the Status Report, the El Dorado County Department of Human Services contacted respondent to inform her that she had not completed the form correctly, because she failed to answer the question regarding whether she received money from any source in the Report Month. Respondent did not resubmit a corrected form and did not receive renewed CalFresh benefits after January 2016.

11. The Eldorado County Department of Human Services discovered that respondent received income higher than the maximum income that would qualify her for CalFresh benefits, and informed her of this fact in July 2016. Respondent was permitted to repay the amount she was overpaid, in the amount of \$582.

12. At the hearing, respondent took responsibility for providing false information to obtain CalFresh benefits, which she described as a "huge mistake." She admitted not being truthful about her misconduct in the past and admitted to lying to a District Attorney investigator during an interview regarding the circumstances underlying the crime. During that same interview, respondent subsequently admitted to the crime. Respondent acknowledged during her testimony that she should not have received the benefits and she repaid the overpayment over a three-month period in 2016, which began before she was convicted. She described feeling shame and

horror relating to her conviction. Additionally, respondent admitted to failing to inform the Department of her conviction because she was unaware that she was required to do so.

13. Respondent complied with the terms of her probation and served 30 days of home confinement. She was released early from her sentence because of her good behavior. Respondent was not required to serve the full term of her probation; however, the evidence was not clear as to the reason for her shortened probation term. On May 29, 2019, respondent's petition for dismissal of her conviction pursuant to Penal Code section 1203.4 was granted by the Superior Court of California, County of El Dorado.

14. Since March 2016, respondent has volunteered in her community at Collabria Care by refinishing furniture for resale at its local hospice thrift shop. She also volunteers to raise money for Soroptimist International of St. Helena, a non-profit organization that raises money for women and children in her community that are in need of assistance.

15. Respondent submitted four character reference letters. Letters from the Treasurer of Soroptimist International of St. Helena and a shopkeeper at Collabria Care commended her on her volunteer work. Letters from a client and her current supervisor described respondent as professional, thorough, honest, diligent, and reliable. Her supervisor, Jock McNeill, a licensed real estate broker at Alliance Business Group, is aware of her criminal conviction and welcomes respondent to remain with the brokerage if respondent remains licensed. The other three letters did not specify whether the authors were aware of respondent's criminal conviction.



16. William Minick, respondent's friend, testified at the hearing. Mr. Minick first met respondent when they worked at the same company from 1996 to 2001. He described respondent as detailed, diligent, trustworthy, and reliable with an "unimpeachable reputation for honesty." He is aware of respondent's criminal conviction.

17. Jeanette Clevenger, respondent's daughter, testified at the hearing. She described her mother as hardworking, honest, passionate about her work, and dedicated to her job. She is aware of the circumstances underlying respondent's criminal conviction.

## **Discussion**

18. The Department has developed criteria to evaluate whether a licensee, against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated, has been rehabilitated. (Cal. Code of Regs., tit. 10, § 2912.) The criteria relevant to respondent are:

- (a) The time that has elapsed since commission of the acts(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 [Department'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.

[¶] . . . [¶]

(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 as evidenced by any or all of the following:

(1) Testimony and/or other evidence of rehabilitation submitted by the licensee.

(2) Evidence from family members, friends and/or other persons familiar with the licensee's previous conduct and with subsequent attitudes and/or behavioral patterns.

[1] . . . [1]

(5) Absence of subsequent felony convictions, or misdemeanor convictions, or other conduct that provides grounds to discipline a real estate licensee, which reflect an inability to conform to societal rules when considered in light of the conduct in question.

19. Respondent's conviction for making misrepresentations to obtain and retain government benefits is concerning. As a licensed real estate salesperson, her judgment must be sound and she must be trustworthy. However, her conviction raises doubt as to her ability to exercise sound judgment and whether she should be trusted

with the confidential information she receives in her duties as a licensee. Additionally, less than two years have passed since she received her criminal conviction.

20. However, respondent's petition for dismissal of her conviction was granted by the El Dorado County Superior Court in May 2019. She has paid all restitution, fines, and fees ordered against her in connection with her conviction. She has, and continues to, volunteer in her community. She appears to have a stable family life and fulfills her parental and familial responsibilities subsequent to the criminal conviction. She received several support letters, and her friend and daughter testified favorably on her behalf regarding her character. Also, there was no evidence that she has received any other criminal conviction prior to or after her criminal conviction at issue. Respondent is remorseful for her conduct that resulted in her conviction. She took full responsibility for her actions and testified candidly at hearing.

21. The objective of an administrative proceeding relating to licensing is to protect the public. Such proceedings are not for the primary purpose of punishment. (See *Fahmy v. MBC* (1995) 38 Cal.App.4th 810, 817.) Complainant established cause to discipline respondent's license. However, when all of the evidence is considered, respondent provided sufficient evidence of rehabilitation such that she can engage in the duties of a licensee in a manner that is consistent with the public health, safety, and welfare, if her license is restricted for a period of three years.

### **Costs of Investigation and Enforcement**

22. Pursuant to Business and Professions Code section 10106, complainant has requested costs of investigation and enforcement in the amount of \$1,413.30. Specifically, the Board incurred \$507.30, in costs for enforcement of the matter through July 25, 2019, and \$906 for investigation costs. The costs of investigation and

enforcement are supported by declarations from Mr. Lazark dated July 25, 2019, and complainant dated April 18, 2019, and are accompanied by documents describing the general tasks performed, the time spent on each task, and the method of calculating the costs.

23. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Court identified the factors to be considered in determining the reasonableness of costs pursuant to statutory provisions. The 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. Under all of the facts and circumstances, assessment of the costs requested by the Department is reasonable and the activities claimed were necessary to the investigation and enforcement of the case.

## **LEGAL CONCLUSIONS**

1. Complainant has the burden of proving each of the grounds for discipline alleged in the Accusation. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) And she must do so by producing clear and convincing evidence to a reasonable certainty in support of those allegations. (*Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212 [discussing the appropriate standard of proof in license discipline proceedings].) Clear and convincing evidence is evidence that leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

2. A real estate salesperson license may be suspended or revoked if the holder has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. (Bus. & Prof. Code, §§ 490, subd. (a); 10177, subd. (b).) In California Code of Regulations, title 10, section 2910, the Department has set forth criteria for determining whether a conviction is substantially related to the qualifications, functions, or duties of a licensee. Under Business and Professions Code section 2910, subsection (a), the crime is deemed to be substantially related to the qualifications, functions or duties of a licensee if it involves:

(1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person.

[¶] . . . [¶]

(4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end.

[¶] . . . [¶]

(8) 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. . . .

3. As set forth in Factual Findings 4 through 11, respondent's conviction involved the fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another and involved deceit, falsehood or misrepresentation to achieve an end. Also, respondent's conviction was the result of respondent doing an

unlawful act with the intent of conferring a financial or economic benefit upon herself. Therefore, respondent's criminal conviction is substantially related to the qualifications, functions, and duties of a real estate salesperson under California Code of Regulations, title 10, section 2910, subsections (a)(1), (4), and (8). Consequently, cause exists to revoke respondent's license under Business and Professions Code sections 490, subdivision (a), and 10177, subsections (b).

4. Business and Professions Code section 10186.2 provides, in relevant part:

(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.

[¶] . . . [¶]

(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. Business and Professions Code section 10177, subsection (d), states:

The commissioner may suspend or revoke the license of a real estate licensee, . . . who has done any of the following, . . . :

(d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.

6. As set forth in Factual Findings 4, 5, and 12, respondent failed to report the bringing of a criminal complaint against her and her conviction within the time period allotted by Business and Professions Code section 101862, subdivision (b). Accordingly, cause exists to revoke respondent's license under Business and Professions Code section 10177, subdivision (d).

7. However, as set forth in Factual Findings 19 through 21, respondent provided sufficient evidence of rehabilitation. When all of the evidence is considered, respondent can engage in the duties of a licensee in a manner that is consistent with the public health, safety, and welfare, if she is issued a restricted license for a period of three years, subject to certain terms and conditions.

8. As set forth in Factual Findings 22 through 23, complainant reasonably incurred investigation and enforcement costs totaling \$1,413.30. Accordingly, assessment of costs in the amount of \$1,413.30 against respondent is reasonable and appropriate.



## ORDER

All licenses and licensing rights of respondent JULIE ANN CLEVENGER under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate 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.
3. 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 three (3) years have elapsed from the effective date of this Decision.

4. 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 Department of Real Estate which shall certify:

(a) That the employing broker has read the Decision of the Commissioner which  
granted the right to a restricted license; and

(b) That 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.

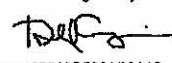
5. Respondent shall, within nine months from the effective date of this  
Decision, present evidence satisfactory to the Real Estate Commissioner that  
respondent has, since the most recent issuance of an original or renewal real estate  
license, taken and successfully completed the continuing education 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.

6. 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.

7. Pursuant to Section 10106 of the Business and Professions Code, respondent shall pay the Commissioner's investigation and enforcement costs totaling \$1,413.30. Respondent shall pay such cost within 90 days. Respondent may request that the Department allow her to make installment payments pursuant to a payment plan. The payment plan must be approved by the Department.

DATE: August 26, 2019

DocuSigned by:  
  
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DENA COGGINS

Administrative Law Judge

Office of Administrative Hearings