

FILED

BEFORE THE DEPARTMENT OF REAL ESTATE

SEP 30 2020

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
By B. Nicholas

* * *

In the Matter of the Accusation of:)	DRE No. H-6943 SAC
)	
FRANK JOSEPH CECCHINI, IV,)	OAH No. 2020060106
)	
Respondent.)	

DECISION

The Proposed Decision dated August 18, 2020, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

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

Pursuant to Government Code Section 11521, the Department of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Department's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first.

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

This Decision shall become effective at 12 o'clock noon on OCT 21 2020.

IT IS SO ORDERED 9.25.20

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

Douglas R. McCauley

FILED

SEP 15 2020

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

DEPARTMENT OF REAL ESTATE
By B. Nicholas

In the Matter of the Accusation Against:

FRANK JOSEPH CECCHINI, IV, Respondent

Agency Case No. H-6943 SAC

OAH No. 2020060106

PROPOSED DECISION

Sean Gavin, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter telephonically on July 23, 2020, in Sacramento, CA.

Truly Sughrue, Counsel, represented Tricia D. Parkhurst (complainant), Supervising Special Investigator, Department of Real Estate (Department).

Respondent Frank Joseph Cecchini, IV (respondent) failed to appear, nor did anyone appear on his behalf. Respondent was properly served with the notice of hearing, and the matter proceeded as a default pursuant to Government Code section 11520.

Evidence was received, the record was closed, and the matter was submitted for decision on July 23, 2020.

FACTUAL FINDINGS

Jurisdictional Matters

1. On May 22, 2003, the Department issued salesperson license number S/01377060 to respondent. The license expired on January 13, 2013, and was renewed on January 14, 2013. The license expired again on January 13, 2017, and was renewed on April 10, 2018. The license is presently in full force and effect and will expire on April 9, 2022, unless renewed or revoked.

2. On April 29, 2020, complainant, acting solely in her official capacity, filed an Accusation wherein she alleged cause to discipline respondent's license on grounds that he was convicted of two crimes that are substantially related to the qualifications, functions, or duties of a real estate licensee, and that he failed to timely report his criminal convictions to the Department. Respondent filed a Notice of Defense, and this hearing followed.

Criminal Convictions

3. On April 18, 2019, in the Superior Court of California, County of San Joaquin, Case No. LOD-CR-MI-2018-0012678, respondent was convicted, on his plea of no contest, of violating Penal Code section 148.5, subdivision (a) (making a false report of crime to a peace officer), a misdemeanor. The court suspended imposition of sentence and placed respondent on informal probation for three years with conditions including that he serve 10 days in jail, and pay fines and fees.

4. The circumstances underlying the conviction were established via a San Joaquin County Sheriff's Incident Report.¹ According to the report, on October 9, 2018, respondent called the police and reported he had been robbed at gunpoint while he sat in his parked car. He provided a detailed description of the suspect, the weapon, and the suspect's vehicle. He reported the suspect took between \$4,500 and \$4,800 in cash, a gold money clip, and three checks. The responding officer subsequently learned that, approximately eight minutes prior to calling the police, respondent had tried unsuccessfully to cash one of those checks at a local bank. Based on this information, and other inconsistencies in respondent's statements, the officer arrested respondent on suspicion of making a false police report.

5. On May 17, 2018, in the Superior Court of California, County of San Joaquin, Case No. LOD-CR-MDUI-2018-0004070, respondent was convicted, on his plea of no contest, of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol content (BAC) of 0.08 percent or greater), a misdemeanor. His BAC was determined, via breath sample, to be 0.21 percent. The court suspended imposition of sentence and placed respondent on informal probation for three years

¹ The police report was admitted into evidence pursuant to *Lake v. Reed* (1997) 16 Cal.4th 448, which held, in relevant part: (1) under Evidence Code section 1280, police officers' observations chronicled in police reports are not inadmissible hearsay in administrative hearings; and (2) under Evidence Code section 1220, evidence of a person's previous statements are not inadmissible hearsay when offered against him in an action to which he is a party.

with conditions including that he serve 20 days in jail, complete a nine-month Driving Under the Influence of Alcohol (DUI) course, and pay fines and fees.

6. The circumstances underlying the conviction were established via a Lodi Police Department Incident/Investigation Report.² On March 17, 2018, Lodi police officers were called about a hit-and-run collision. Officers responded to the scene, and were subsequently notified both involved vehicles had travelled to a different address. Officers went to that address, which they later determined to be respondent's home, and observed respondent display objective signs of intoxication. They also observed keys in the ignition of respondent's vehicle, and the driver's side airbag deployed. Based on these facts, the officers suspected respondent of DUI, and arrested him.

Disclosure of Criminal Convictions

7. Business and Professions Code section 10186.2 requires Department licensees to report in writing all criminal convictions within 30 days. Complainant submitted a License Certification, signed by Kimberly Davis, Staff Services Manager of the Department, that stated the Department had performed a diligent search of its records, and that it had no record that respondent notified the Department of his criminal convictions in writing within 30 days.

Analysis

8. The determination whether to discipline a professional license should be made only after the licensee is "permitted to introduce evidence of extenuating

² The police report was admitted into evidence pursuant to *Lake v. Reed* (1997) 16 Cal.4th 448.

circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation." (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449; citing *Brandt v. Fox* (1979) 90 Cal.App.3d 737, 747.) In California Code of Regulations, title 10, section 2912, the Department has set forth criteria for evaluating the rehabilitation of a licensee when considering the suspension or revocation of a license on the grounds of criminal convictions. The criteria include, among other things: the time that has elapsed since commission of the crimes; payment of court-imposed fines, fees, or restitution to any injured parties; successful completion of probation; stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal convictions; and a change in attitude from that which existed at the time of the conduct in question.

9. At hearing, complainant established that on April 18, 2019, respondent was convicted of making a false report of crime to a peace officer. This raises serious concern about his fitness for licensure, because "[h]onesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee." (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.) The Department must have assurances that its licensees will be "honest, truthful and of good reputation." (*Ring v. Smith* (1970) 5 Cal.App.3d 197, 205.)

10. In addition, complainant established that on May 17, 2018, respondent was convicted of driving with a BAC of 0.08 percent or greater. This also raises concern, because the crime is serious and risks great harm to the public. Respondent failed to appear and introduce any evidence of mitigation or rehabilitation. Accordingly, because he did not prove he has been rehabilitated following his criminal convictions, his license must be revoked.

Recoverable Costs

11. Complainant requested that respondent be ordered to reimburse the Department for its reasonable costs of investigation and enforcement of this matter in the total amount of \$1,577.85. Complainant submitted a Certified Statement of Costs, signed by Ms. Sughrue, that states the Department incurred enforcement costs of \$578.85 for 6.5 hours of Ms. Sughrue's time. Complainant also submitted a Certified Statement of Investigation Costs that states Department staff incurred \$999 in costs for 15.75 hours of time investigating this matter. Respondent did not object to the reasonableness of these amounts.

LEGAL CONCLUSIONS

1. Complainant has the burden to prove the matters alleged in the Accusation, and the standard of proof is clear and convincing evidence to a reasonable certainty. (*Ettinger v. Bd. 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, rehabilitation is akin to an affirmative defense, and the burden of proof to establish rehabilitation is therefore on the respondent. (*Whetstone v. Bd. of Dental Examiners* (1927) 87 Cal.App. 156, 164.) This is consistent with the general rule placing the burden of proof on one who asserts a claim or defense. (Evid. Code, § 500.) The burden of proof is a preponderance of the

evidence (Evid. Code, § 115), which means "more likely than not." (*Sandoval v. Bank of Am.* (2002) 94 Cal.App.4th 1378, 1388.)

3. The Department may discipline a license if the licensee is convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee. (Bus. & Prof. Code, §§ 490, subd. (b), 10177, subd. (d).) Respondent's April 2019 conviction of making a false report of crime is substantially related to the qualifications, functions, or duties of a real estate licensee because it involved the uttering of a false statement. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(2).) His May 2018 conviction of driving with a BAC of 0.08 percent or greater is substantially related to the qualifications, functions, or duties of a real estate licensee because it involved doing an unlawful act with the intent or threat of doing substantial injury to the person or property of another. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(2).) Cause therefore exists to discipline respondent's license pursuant to Business and Professions Code sections 490, subdivision (b), and 10177, subdivision (b).

4. The Department may discipline a licensee if the licensee fails to report a conviction to the Department in writing within 30 days. (Bus. & Prof. Code, §§ 10177, subd. (d), 10186.2, subd. (b).) As discussed in Factual Finding 7, complainant established that respondent did not report his convictions to the Department in writing within 30 days. Cause therefore exists to discipline respondent's license pursuant to Business and Professions Code sections 10177, subdivision (d), and 10186.2, subdivision (b).

Costs

5. Under Business and Professions Code section 10106, subdivision (a), the Department may seek to recover reasonable costs of the investigation and

enforcement of a case. The California Supreme Court has articulated guidelines for assessing the reasonableness of costs, including 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. (*Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.)

6. As discussed in Factual Finding 11, complainant seeks \$578.85 for enforcement costs and \$999 for investigation costs, for a total of \$1,577.85. The Certified Statements of Enforcement and Investigation Costs signed by Ms. Sughrue and complainant contain specific and sufficient facts to support findings regarding actual costs incurred and are prima facie evidence of the reasonableness of those costs. (Bus. & Prof. Code, § 10106, subd. (c); Cal. Code Regs., tit. 1, § 1042, subd. (b).) Respondent did not submit any evidence to rebut the reasonableness of the costs sought. When all the *Zuckerman* factors are considered, the request is reasonable. As a result, complainant is awarded costs in the amount of \$1,577.85, as set forth in the Order below.

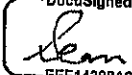
ORDER

1. All licenses and licensing rights of respondent Frank Joseph Cecchini, IV are REVOKED.

2. Respondent shall pay to the Department costs associated with its investigation and enforcement in the amount of \$1,577.85. Nothing in this provision

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

DATE: August 18, 2020

DocuSigned by:

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SEAN GAVIN

Administrative Law Judge

Office of Administrative Hearings