

FILED

AUG 18 2021

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE  
By B. Nicholas

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In the Matter of the Accusation of:  SARA ANN MEDINA,  Respondent.	) ) ) )	DRE No. H-7009 SAC  OAH No. 2020120259
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DECISION

The Proposed Decision dated July 1, 2021, 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.

This Decision shall become effective at 12 o'clock noon on SEP 08 2021.

IT IS SO ORDERED 8.17.21

DOUGLAS R. McCAULEY  
REAL ESTATE COMMISSIONER

Douglas R. McCauley

**FILED**

JUL 27 2021

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

DEPARTMENT OF REAL ESTATE  
By B. Nicholas

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

**SARA ANN MEDINA, Respondent**

**Case No. H-7009 SAC**

**OAH No. 2020120259**

**PROPOSED DECISION**

Jessica Wall, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, conducted a hearing in this matter via videoconference on June 14, 2021, in Sacramento, California.

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

Frank M. Buda, Attorney at Law, represented respondent Sara Ann Medina.

Evidence was received, the record closed, and the matter submitted for decision on June 14, 2021. On June 25, 2021, respondent requested to augment the record; complainant objected. The record was subsequently reopened. Respondent's additional document is marked for identification as Exhibit K; complainant's objection is marked for identification as Exhibit 7. Exhibit K is admitted over complainant's

objection. On June 29, 2021, the record closed and the matter was again submitted for decision.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. On or about October 30, 2017, the Department issued respondent real estate salesperson license No. 02047246 (license). Respondent's license will expire on October 29, 2021, unless renewed or revoked.

2. On November 18, 2020, complainant made and thereafter filed, in her official capacity, an Accusation against respondent. Complainant seeks to discipline respondent's license on the grounds that she was convicted of a felony that is 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 Conviction**

4. On December 5, 2019,<sup>1</sup> in the Napa County Superior Court, respondent was convicted on her plea of no contest to a single charge of identity theft, in violation of Penal Code section 530.5, subdivision (a), a felony. On January 14, 2020, the court sentenced respondent to three years of formal probation and 16 days in jail. She was also ordered to pay restitution to the victims and pay court costs and fees.

5. The circumstances underlying the conviction occurred on November 17, 2017. Napa Sheriff's Department officers arrived to conduct a probation search of respondent's former boyfriend, Toriano Collier. Respondent allowed officers into the apartment to conduct the search, where they found a notebook containing the personal identifying information of individuals from various cities. Officers also found two checks in respondent's closet addressed to a church, each signed on the back with respondent's signature. Following investigation, deputies determined that these two checks were illegally altered to be payable to respondent and that the information in respondent's notebook was used to commit fraud.

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<sup>1</sup> The Accusation incorrectly states the date of sentencing as the date of conviction.

## **Respondent's Evidence**

### **RESPONDENT'S TESTIMONY**

6. Respondent testified at the hearing. She explained the events and circumstances that gave rise to her conviction, her compliance with the resulting sentence, and her present activities and lifestyle.
7. Respondent has been working in residential real estate since October 30, 2017. She has been involved in 25 transactions, 16 of which she closed. Prior to working in real estate, respondent worked in cosmetology and barbering. She is the custodial parent of and sole provider for her five children.
8. The misconduct resulting in respondent's conviction arose after she began a relationship with her former instructor from barber school, Mr. Collier. Throughout their relationship, Mr. Collier acted abusively towards respondent. According to respondent, Mr. Collier had prior convictions for domestic violence and repeatedly threatened to "let the air out of [her,]" which made her fear for her life if she did not acquiesce to his demands.
9. In late 2016, respondent and Mr. Collier were expecting a child together. They learned at the five-month ultrasound in December 2016 that the pregnancy was high-risk due to a medical condition impacting the fetus's kidneys. After several months of medical oversight, respondent's son was born in March 2017 and passed away from kidney failure shortly after birth.
10. The checks underlying respondent's conviction were dated in December 2016 and illegally cashed by respondent in January 2017. Respondent testified that Mr. Collier brought her the checks and told her to deposit them. She knew the checks had

been fraudulently altered to bear her name, but she feared opposing Mr. Collier because "he does not take 'no' for an answer." Initially, there was a hold on the checks and respondent hoped that the mobile deposit would be rejected. Once they cleared, however, Mr. Collier demanded respondent give him the money. She met him in a dark parking lot and handed him the proceeds of the cashed checks through her car window, which he shattered in anger.

Additionally, respondent remembered Mr. Collier directing her to write down individuals' personal information from various documents in a notebook during this period. She stated that she never used this information.

At the time of the November 2017 search, Mr. Collier was living separately in Vallejo but using respondent's address on his probation forms. The last time respondent saw Mr. Collier was in July 2020, before he was sentenced for a term in federal prison. She stated that she does not wish to ever see him again. The two have a three-year-old child for which Mr. Collier has not sought custody or visitation.

11. Respondent acknowledged the wrongness of her conduct and stated that she "should not have done it" and "had no right to that money at all." If the same demands were made to her today, respondent said that she would notify the police.

12. Respondent has completed all elements of her sentence. Within two months of her sentence, respondent had served her 16-day jail sentence through eight days of the Alternative Work Program at the Napa Valley Humane Society. She paid the full amount of restitution to the victims, along with the court-imposed fines and fees. She petitioned for and received early termination of her probation on June 2, 2021, in an effort to save her real estate license. Her petition to dismiss the conviction was granted on June 24, 2021, which reduced respondent's conviction to a

misdemeanor under Penal Code section 17, subdivision (b), and expunged the conviction under Penal Code section 1203.4.

13. Since entering her plea, respondent has completed online courses relevant to her license, including Real Estate Investing and Short Sales and Foreclosures. She has also earned the Military Relocation Professional Certification, the National Association of Realtor's e-PRO Certification, and the Accredited Buyer's Representative Designation. In total, she has completed about 18 hours of the 45 required hours of continuing education. Respondent also hired coaches to further her real estate work.

14. Respondent stated that she is a totally different person since the time of the offenses. She expressed feeling embarrassed and ashamed of her poor choices and dedicated to maintaining a stronger mind so that she does not feel defenseless in the future. She has listened to self-help books and returned to the Church of Jesus Christ of Latter-day Saints, which she now attends at least twice a month. She sees her extended family twice a month and teaches her children to follow the law. Respondent does not receive child support for her four minor children and testified that she is better able to support them working in real estate than by cutting hair because she has not kept up on the current techniques used in cosmetology.

#### **CHARACTER WITNESS TESTIMONY**

15. Respondent's 16-year-old daughter, A.M., testified about her mother's character and their family life. She spoke about the sincerity of her mother's remorse and how she has always viewed her mother to be an honest and truthful person. Although A.M. struggled to identify specific examples of how her mother has changed since the conviction, she has noticed her mother studying real estate skills through



audiobooks and speaking more to her children about the importance of maintaining a positive mindset and being a better person.

16. Respondent also produced letters from her daughter, mother, sister, and friends to support her testimony that the misconduct was an isolated incident resulting from an exceedingly difficult period in her life in which she acted out of character. She further produced a letter from her broker and reviews from clients to support her testimony that she conducts her licensed activities with professionalism and without any consumer complaints.

### **Analysis**

17. Under California Code of Regulations, title 10, section 2912, the Department 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 she 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.

[11] ... [11]

(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.

[11] . . . [11]

(e) Successful completion or early discharge from probation or parole.

[11] . . . [11]

(g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.

[11] . . . [11]

(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 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.

[¶] . . . [¶]

(5) Absence of subsequent felony convictions, 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.

18. Here, respondent committed a serious offense, felony identity theft, in or around 2016 to January 2017, for which she pled no contest in December 2019. She completed her sentence, including full payment of restitution to the victims and all

applicable fines and court fees. She received early termination of probation and the court granted her petition for dismissal under Penal Code section 1203.4.

Respondent no longer associates with Mr. Collier, although this separation resulted more from his current incarceration than from affirmative steps taken by respondent. Given that they share a child, it is possible that Mr. Collier may be a part of respondent's life should he ever seek custody or visitation. Her other business and social relationships support her testimony that her misconduct will not reoccur.

Respondent has a stable family life. She is a single parent with sole custody of her children and sees her extended family every two weeks. She attends church services at least twice a month and volunteers periodically. She has taken several courses for continuing education in real estate since her conviction.

19. In sum, respondent offered compelling and persuasive evidence of rehabilitation and mitigating circumstances at the time of her misconduct. She accepted responsibility and demonstrated genuine remorse for her criminal acts in 2016 and 2017. Although respondent's conviction occurred less than two years ago, the underlying misconduct took place more than four years ago. Respondent has no prior or subsequent convictions and has not had any other negative interactions with law enforcement. Although her good behavior during the 18 months of probation is generally entitled to little weight as evidence of rehabilitation (*In re Gossage* (2000) 23 Cal.4th 1080, 1099), respondent's clean record prior to and following the criminal acts, along with the mitigating evidence of extenuating circumstances, weigh in her favor. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449). She fully complied with her criminal sentence, quickly served her time, paid all fines, and had her probation terminated 18 months early due to successful compliance. She has no problems with substance abuse.

20. 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. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.) Cause exists to discipline respondent's real estate salesperson license based on her felony conviction. Given the foregoing, however, outright revocation of respondent's salesperson license is unnecessary to protect the public interest. Instead, a three-year period of monitoring through a restricted license is sufficient to address any lingering concerns about the nature of respondent's conviction.

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

21. Pursuant to Business and Professions Code section 10106, the Department may recover reasonable costs of the investigation and enforcement of a case. The Department incurred \$454.50 in investigation costs and \$778.75 in enforcement costs, for a sum of \$1,233.25 in total costs of investigation and enforcement of this matter. The costs of investigation and enforcement are supported by a Certified Statement of Investigation Costs, signed November 19, 2020, and an undated Certified Statement of Costs, which describes the general tasks performed, the time spent on each task, and the method of calculating the costs. As set forth in Legal Conclusion 9, the costs of investigation and enforcement totaling \$1,233.25 are reasonable.

## **LEGAL CONCLUSIONS**

### **Burden of Proof**

1. Complainant has the burden of proving the grounds for discipline alleged in the Accusation by clear and convincing evidence to a reasonable certainty.

*(Realty Projects, Inc. v. Smith (1973) 32 Cal.App.3d 204, 212.)* 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.)*

### **Applicable Law and Cause for Discipline**

2. A professional license may be suspended or revoked when 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." (Bus. & Prof. Code, § 490.)

3. Under Business and Professions Code section 10177, subdivision (b), a real estate license may be disciplined when the licensee has "[e]ntered a plea of guilty or nolo contendere to, or 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."

4. As set forth in Factual Finding 5, respondent was convicted of identity theft, in violation of Penal Code section 530.5, subdivision (a), a felony, which is substantially related to the qualifications, functions, or duties of a licensee. (Cal. Code Regs., tit. 10, § 2910, subds. (a)(1), (2) ["(1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person. (2) Counterfeiting, forging or altering of an instrument or the uttering of a false statement."].) Consequently, respondent's conviction establishes cause to discipline her real estate salesperson license under Business and Professions Code sections 490 and 10177, subdivision (b).

5. The Department has adopted criteria to consider the rehabilitation of a licensee convicted of a crime. (Cal. Code Regs., tit. 10, § 2912.) Based on the Factual Findings as a whole, and specifically Factual Findings 16 through 19, monitoring respondent through a restricted license for a period of three years is sufficient to protect the public interest.

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

6. The Commissioner may also 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. (Bus. & Prof. Code, § 10106, subd. (a).) As set forth in Factual Finding 20, the Department established that it incurred reasonable investigation and enforcement costs in the amount of \$1,233.25 in connection with this case.

### **ORDER**

All licenses and licensing rights of respondent Sara Ann Medina 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 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. Pursuant to Business and Professions Code section 10106, respondent shall pay the Commissioner's reasonable investigation and enforcement costs in the sum of \$1,233.25. The Department may, in its sole discretion, order respondent to make payments pursuant to a Department-approved payment plan during her probation.

DATE: July 1, 2021

  
Jessica Wall (Jul 1, 2021 10:23 PM)

JESSICA WALL

Administrative Law Judge

Office of Administrative Hearings