

FILED

JUL 16 2021

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By J. Taggart

* * *

In the Matter of the Accusation of:)	DRE No. H-7014 SAC
)	
RUBEN MARTINEZ,)	OAH No. 2020120554
)	
Respondent.)	

DECISION

The Proposed Decision dated June 14, 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.

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 AUG 05 2021.

IT IS SO ORDERED 7.15.21

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

Douglas R. McCauley

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

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JUL 15 2021

DEPARTMENT OF REAL ESTATE
By J. Taggart

In the Matter of the Accusation Against:

RUBEN MARTINEZ, Respondent

Agency Case No. H-7014 SAC

OAH No. 2020120554

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter by videoconference on May 26, 2021, from Sacramento, California.

Kyle T. Jones, Counsel, represented complainant Tricia D. Parkhurst, a Supervising Special Investigator of the State of California.

Jesse S. Ortiz of the Ortiz Law Group represented respondent Ruben Martinez, who was present throughout the hearing.

Evidence was received, the record closed, and the matter submitted for written decision on May 26, 2021.

SUMMARY

Complainant seeks to discipline respondent's real estate license because he was convicted of a crime substantially related to the qualifications, functions, or duties of a real estate licensee and engaged in fraudulent or dishonest conduct. Cause exists to discipline the license. When all the evidence is considered, respondent did not demonstrate sufficient rehabilitation to justify allowing him to keep his license. Therefore, his license should be revoked.

FACTUAL FINDINGS

Jurisdictional Matters

1. The Department of Real Estate (DRE) issued respondent Real Estate Salesperson License Number S/01849641 on September 21, 2017. The license expires September 20, 2021, unless renewed or revoked. There is no history of prior discipline of the license.

2. On November 30, 2020, complainant filed the Accusation solely in her official capacity. She alleged that cause exists to discipline respondent's license because he was convicted of crimes commonly referred to as "drunk driving" and "hit and run," and engaged in fraudulent or dishonest conduct.

Criminal Convictions

3. On November 18, 2019, in the Sacramento County Superior Court, Case Number 19FE007953, respondent pled no contest to, and was convicted of, felony violations of Vehicle Code sections 20001, subdivision (a), leaving the scene of an

accident, and 23153, subdivision (b), driving with a blood alcohol content of 0.08 percent or greater while committing an illegal act that caused physical injuries to another. Respondent was referred to the Department of Probation for review and evaluation.

On December 23, 2019, imposition of judgment and sentence was suspended, and respondent was placed on formal probation for five years. He was ordered to serve 270 days in the Sacramento County Jail, abstain from the consumption of alcohol, enroll in and complete a nine-month educational program about the consumption of alcohol and driving, pay restitution to the victims in an amount to be determined, and pay fines, fees, and assessments.

4. The factual basis for respondent's convictions arose out of his March 24, 2019 arrest by the Sacramento Police Department. That night, officers responded to a traffic collision with injuries. Upon arrival, they were told that one of the drivers involved fled the scene. Respondent was determined to be that driver, and he was located nearby. He admitted his involvement in the accident, and explained he fled because he was scared. His blood alcohol content was determined to be 0.188 percent at the time of the accident.

5. Respondent voluntarily disclosed his criminal convictions to DRE. He prepared an Interview Information Statement and a Conviction Detail Report disclosing his convictions and the underlying criminal conduct. He has had no other negative interactions with the criminal justice system or law enforcement.

Substantial Relationship

6. The crimes for which respondent was convicted are substantially related to the qualifications, functions, or duties of a real estate licensee. His underlying

conduct constituted the "doing of [an] unlawful act with the . . . threat of doing substantial injury to the person or property of another." (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).)

Factors in Mitigation, Aggravation, or Rehabilitation

7. Respondent discussed his March 24, 2019 conduct openly and candidly at hearing. That night, he was at Mountain Mike's Pizza for approximately one hour, during which he drank an entire pitcher of "Bud Light." He left Mountain Mike's Pizza and was involved in the accident after running a red light while driving to a friend's house. Respondent fled the scene because he was scared, but was quickly located by police officers and admitted his involvement in the accident. He later learned both passengers in the other car were injured, and one was transported to the hospital by ambulance.

8. Respondent is currently in compliance with the terms of his criminal probation. He served his jail commitment through house arrest, and paid all court-imposed fines, fees, and assessments. He paid full restitution to both victims, and the parties settled a related lawsuit out of court. He completed a nine-month educational program, which taught him the dangers of drinking alcohol and driving and how engaging in such behavior could affect his family and others. He has committed himself to remaining sober for the rest of his life, and he has not consumed alcohol since March 24, 2019. He is scheduled to complete probation on December 22, 2024.

9. Respondent is 43 years old and is married. He and his wife have three sons – an eight-year-old and 18-month-old twins. He has worked for the California Secretary of State as a Program Technician II for the last three years. He is licensed by the Department of Insurance to transact insurance as an Accident and Health agent

and a Life-Only agent. He helps care for his wife's grandmother through California's In-Home Supportive Services Program. He also serves as a volunteer with William Land Elementary School's Chinese Immersion Program so he can spend more time with his oldest son.

Analysis

10. DRE has adopted criteria to consider when evaluating a licensee's rehabilitation since engaging in criminal conduct. (Cal. Code Regs., tit. 10, § 2912.) One criterion relevant here is the amount of time that has passed since the criminal conduct. (*Id.*, subd. (a).) "The passage of less than two years after the most recent criminal conviction . . . is inadequate to demonstrate rehabilitation." (*Id.*, subd. (a)(1).) The two-year period may be extended based on "the nature and severity of the crime(s)" (*Id.*, subd. (a)(2)(A).)

11. On March 24, 2019, respondent drove with an excessive blood alcohol content, ran a red light, crashed into another car, and fled the scene without providing identification or rendering aid to anyone injured. Both occupants of the other car were injured, and one was transported to the hospital by ambulance. Vehicle Code section 20003 required respondent to provide "identifying information and, if necessary, assistance to the injured [people]" after the accident. (*People v. Harbert* (2009) 170 Cal.App.4th 42, 45.) Vehicle Code section 20001 required him to "'immediately stop [his] vehicle at the scene of the accident and . . . fulfill the requirements of Section [] 20003" (*People v. Harbert, supra*, 170 Cal.App.4th at p. 45, quoting Veh. Code, § 20001.) Respondent engaged in dishonest conduct by leaving the accident scene, thereby attempting to hide his identity from those who were injured.

12. At hearing, respondent argued he did not know any of the passengers in the other car were injured when he fled. Such argument was not persuasive because he admitted having that knowledge by pleading no contest to a felony violation of Vehicle Code section 20001, subdivision (a). (Pen. Code, § 1016, subd. (3) ["The legal effect of [a no contest] plea, to a crime punishable as a felony, shall be the same as that of a plea of guilty for all purposes"]; *People v. Thomas* (1986) 41 Cal.3d 837, 844, fn. 6 [a guilty plea admits every essential element of the offense].) Knowledge that another was injured is an essential element of a violation of Vehicle Code section 20001, subdivision (a). (*People v. Harbert, supra*, 170 Cal.App.4th at p. 45.)

13. Respondent's conduct resulted in convictions of two substantially related crimes on November 18, 2019 – driving with an excessive blood alcohol content while performing an illegal act that caused physical injury to another and leaving the scene of an accident. The nature and severity of his underlying conduct was serious, and he is on criminal probation for that conduct through December 23, 2024. His dishonest conduct is of particular concern to DRE because "honesty 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.)

Costs of Investigation and Enforcement

14. Complainant requested costs pursuant to Business and Professions Code section 10106 in the total amount of \$942.60. That amount consists of investigation costs in the amount of \$684.50 and enforcement costs in the amount of \$258.10. At hearing, complainant introduced a Certified Statement of Investigation Costs certifying under penalty of perjury DRE's incurred costs to investigate this matter. A spreadsheet itemizing the time spent by staff member, date, task, time, hourly rate, and total

amount is attached to the Certified Statement of Investment Costs. Complainant also introduced a Certified Statement of Costs certifying under penalty of perjury DRE's incurred costs for the time Mr. Jones spent on this matter prior to hearing. Mr. Jones's time was itemized by date, task, time, hourly rate, and total amount.

15. Respondent did not challenge complainant's request for costs or the amount of costs requested. The entire amount of costs requested is reasonable and complainant is awarded that amount as discussed further in Legal Conclusion 8.

LEGAL CONCLUSIONS

Applicable Burden/Standard of Proof

1. Complainant has the burden of proving each of the grounds for discipline alleged in the Accusation, and must do so by clear and convincing evidence to a reasonable certainty. (*Daniels v. Department of Motor Vehicles* (1983) 33 Cal.3d 532, 536 ["When an administrative agency initiates an action to suspend or revoke a license, the burden of proving the facts necessary to support the action rests with the agency making the allegation"]; *Realty Projects, Inc. v. Smith* (1973) Cal.App.3d 204, 212 [the standard of proof applicable to proceedings for the discipline of real estate licenses is clear and convincing evidence to a reasonable certainty].) "The courts have defined clear and convincing evidence as evidence which is so clear as to leave no substantial doubt and as sufficiently strong to command the unhesitating assent of every reasonable mind. [Citations.] It has been said that a preponderance calls for probability, while clear and convincing proof demands a high probability [citations]." (*In re Terry D.* (1978) 83 Cal.App.3d 890, 899; italics omitted.)

Applicable Law

2. A real estate license may be disciplined when the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of a real estate license. (Bus. & Prof. Code, §§ 490 & 10177, subd. (b).) Respondent was convicted of two substantially related crimes on November 18, 2019, each of which constitutes cause to discipline his real estate license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), individually and collectively.

3. A real estate license may also be disciplined when the licensee has engaged in fraudulent or dishonest conduct. (Bus. & Prof. Code, § 10177, subd. (j).) Respondent engaged in dishonest conduct on March 24, 2019, when he fled the scene of the accident without exchanging identifying information with the other parties or offering any assistance. Therefore, cause exists to discipline his real estate license pursuant to Business and Professions Code section 10177, subdivision (j).

Conclusion

4. Cause exists to discipline respondent's real estate license pursuant to Business and Professions Code sections 490 and 10177, subdivisions (d) and (j), individually and collectively. When all the evidence is considered, respondent did not produce evidence of sufficient rehabilitation. It has been only a little more than two years since he engaged in serious criminal conduct, and he has more than three years remaining on his criminal probation. Although he is complying with the terms of probation, including remaining sober, he is expected to do so. More time is needed to accurately evaluate his rehabilitation, including a period of evaluation after completion of criminal probation. (Cal. Code Regs., tit. 10, § 2912, subd. (a)(2)(A); *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [a full and accurate assessment of one's rehabilitation

since engaging in criminal conduct necessarily requires a period of evaluation after completing criminal probation].) Therefore, respondent's real estate license should be revoked.

Award of Costs

5. An order resolving a disciplinary proceeding in DRE's favor may require a real estate licensee to pay DRE's reasonable costs of investigating and enforcing the matter. (Bus. & Prof. Code, § 10106, subd. (a).)

A certified copy of the actual costs . . . signed by the commissioner or the commissioner's designated representative, shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing.

(*Id.*, subd. (c).)

6. DRE may prove its reasonable costs of investigation and enforcement by submitting "Declarations that contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs." (Cal. Code Regs., tit. 1, § 1042, subd. (b).) When costs are sought for services provided by a DRE employee, the declaration "may be executed by the [DRE] or its designee and shall describe the general tasks performed, the time spent on each task and the method of calculating the cost." (Cal. Code Regs., tit. 1, § 1042, subd. (b)(1).)

7. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the

reasonableness of costs sought pursuant to statutory provisions like Business and Professions Code section 10106. Those factors include: 1) the licensee's success in getting the charges dismissed or reduced; 2) the licensee's subjective good faith belief in the merits of his position; 3) whether the licensee raised a colorable challenge to the proposed discipline; 4) the licensee's financial ability to pay, and 5) whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Zuckerman v. Board of Chiropractic Examiners, supra*, 29 Cal.4th at p. 45.)

8. Complainant produced prima facie evidence of its reasonable costs of investigation and enforcement in this matter. (Bus. & Prof. Code, § 10106, subd. (c); Cal. Code Regs., tit. 10, § 1042, subd. (b)(1).) Respondent did not rebut that evidence. Considering all the *Zuckerman* factors, the entire amount of costs requested by complainant is reasonable and is awarded as set forth in the Order below.

ORDER

All licenses and licensing rights of respondent Ruben Martinez are REVOKED. Respondent shall reimburse the Department of Real Estate the sum of \$942.60 for costs incurred while investigating and prosecuting this matter. These costs may be paid pursuant to a payment plan approved by DRE or its designee.

DATE: June 14, 2021


Coren D. Wong (Jun 14 2021 14:07 PDT)

COREN D. WONG

Administrative Law Judge

Office of Administrative Hearings