

FILED

DEC 21 2022

DEPARTMENT OF REAL ESTATE
By J. Taggart

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:	)	DRE No. H-7091 SAC
	)	
ERIC CURTIS LUND,	)	OAH No. 2021120721
	)	
Respondent.	)	

DECISION

The Proposed Decision dated November 15, 2022, 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 JAN 10 2023.

IT IS SO ORDERED 12.20.22

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

A handwritten signature in black ink, appearing to read "Douglas R. McCauley", written over a horizontal line.

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

FILED
DEC 19 2022
DEPARTMENT OF REAL ESTATE
By J. Taggart

In the Matter of the Accusation Against:

ERIC CURTIS LUND, Respondent

Agency Case No. H-7091 SAC

OAH Case No. 2021120721

PROPOSED DECISION

Erin R. Koch-Goodman, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on September 8, 2022, by videoconference from Sacramento, California.

Kyle T. Jones, Attorney, represented complainant Tricia Parkhurst, Supervising Special Investigator, Department of Real Estate (Department or DRE).

Susannah M. Lund, Attorney at Law, Law Office of Susannah M. Lund, represented respondent Eric C. Lund, who was not present at hearing.

Evidence was received and the record held open for the filing of simultaneous closing and reply briefs. On October 7, 2022, complainant filed a Closing Brief, marked Exhibit 8, and respondent filed a Closing Brief, marked Exhibit R. On October 21, 2022, complainant filed a Reply Brief, marked Exhibit 9, and respondent filed a Reply Brief,

marked Exhibit S.¹ The record was closed and the matter was submitted for decision on October 21, 2022.

FACTUAL FINDINGS

Jurisdiction and Procedural History

1. On August 24, 2006, the Department issued respondent a real estate broker's license No. B/01523418. The license expires on January 31, 2025, unless renewed or revoked.
2. On November 10, 2019, the Department filed an Accusation against respondent, seeking to discipline his license based upon a May 2019 felony conviction for possession of child pornography.
3. On November 29, 2021, respondent filed a timely Notice of Defense and request for administrative hearing. The matter was set for an evidentiary hearing before an ALJ with OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq. This hearing followed.

¹ Based on the briefing, the rulings made at hearing on the admissibility of Exhibits 4 and 5 remains unchanged. Exhibit 4 is admitted pursuant to *Lake v. Reed* (1997) 16 Cal. 4th 448, and Exhibit 5 is admitted for official notice. Exhibit B is also admitted to support an alternate defense raised by respondent. The weight given to Exhibits 4, 5, and B is discussed within the Decision.

Criminal Conviction

4. On October 30, 2018, in the Superior Court, County of Solano, Case No. FCR310878, respondent was convicted, by a jury, of violating Penal Code section 311.11, subdivision (c)(1) (possession of images of child or youth pornography), a felony. On May 1, 2019, respondent was sentenced to five years in prison, ordered to pay fines and fees, and required to register per Penal Code section 290. Respondent appealed his conviction and the appellate court affirmed the conviction. (*People v. Lund* (2021) 64 Cal.App.5th 1119.)

5. The circumstances underlying the conviction occurred between June and October 2014, when respondent was found by the Vacaville Police Department to have downloaded child pornography from the internet, and at the time of his arrest, was in possession of more than 600 images of child pornography, at least 10 of which involved a prepubescent minor or a minor under 12 years old engaging in or simulating sexual conduct. Respondent was arrested at his place of work on October 16, 2014. At the time, respondent was a California Highway Patrol officer.

Aggravation, Mitigation, and Rehabilitation

6. Respondent was sentenced to five years in prison for his crime. He entered prison on May 6, 2019, with a scheduled release date of May 5, 2024. However, because respondent was given credit for time served (373 days), good conduct credit (723 days), milestone completion credit (84 days), education merit credit (180 days), and extraordinary conduct credit (84 days), he was released from prison on May 14, 2020. Respondent earned his education merit credit online by completing 12 units of college level coursework at Coastline College, Fountain Valley, California, in astronomy, business, and counseling; 6 units at Norco College, Riverside

Community College District, Riverside, California, in business and guidance; 8 units at Pitzer College, Claremont Colleges, Claremont, California in history and political science; and 19 units at Adams State University (ASU), Alamosa, Colorado, in chemistry, English, kinesiology, math, and sociology, and earned an Associate of Arts degree from ASU on May 9, 2020.

7. Respondent has completed all terms and conditions of his criminal sentencing. He was released from prison, into the Post-Release Community Supervision (PRCS) program in Mendocino County. Then, released from PRCS on October 10, 2021, having had no violations of PCRS conditions resulting in custodial sanctions continuously for one year. He has paid all fines, fees, and restitution. Since his release, respondent has completed 48 hours of continuing education in real estate.

Analysis

SUBSTANTIAL RELATIONSHIP

8. The Department adopted California Code of Regulations, Title 10, section 2910, to offer specific guidance on what crimes or conduct it deems to be substantially related to the qualifications, functions or duties of a licensee. Section 2910 lists 11 categories. Relevant here, subdivision (a)(5), provides:

the crime or act may be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of Sections 480 and 490 of the Code if it involves: . . . Sexually related conduct affecting a person who is an observer or non-consenting participant in the conduct *or convictions which require registration*

pursuant to the provisions of Section 290 of the Penal Code. (Italics added.)

Respondent's criminal sentence included the requirement to register pursuant to Penal Code section 290. As such, the Department need not evaluate the facts or circumstances surrounding respondent's arrest or the elements of the crime for which respondent was convicted to establish a substantial relationship to the duties of a licensee under subdivision (a)(5).

REHABILITATION

9. The Department has set forth rehabilitation criteria to be applied when reviewing whether a license should be suspended or revoked on the basis of the conviction of a crime. (Cal. Code Regs., tit. 10, § 2911.) The relevant rehabilitation criteria include:

(1) The time that has elapsed since commission of the acts(s) or offense(s); (2) the passage of not less than two years since the most recent criminal conviction; (3) restitution; (4) expungement of criminal convictions; (5) successful completion or early discharge from probation or parole; (6) payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment; (7) stability of family life and fulfillment of parental and familial responsibilities; (8) completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement; (9) discharge of adjudicated debts or monetary obligations to

others; (10) correction of business practices; (11) significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems; (12) new and different social and business relationships from those which existed at the time of the criminal conduct; and (13) change in attitude from that which existed at the time of the conduct in question.

10. In 2014, eight years ago, respondent was found in possession of 600 images of child pornography. In 2018, four years ago, respondent was convicted under Penal Code section 311.11, subdivision (c)(1) (possession of images of child or youth pornography). While respondent was sentenced to five years in prison, he earned early release, ending his prison term on May 14, 2020. While in prison, respondent also completed a significant number of college level courses, and earned an Associate of Arts degree. Upon release, respondent was assigned to the PRCS program, and not parole, and then he was released from the PRCS program early, after one year, on October 10, 2021. However, since persons under the direct supervision of correctional authorities are required to behave in an exemplary fashion, little weight is generally placed on the fact that a licensee did not act out in prison or commit additional crimes while on probation or parole. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) As such, the Department evaluates respondent's conduct since his release from the PRCS on October 10, 2021, or 13 months ago. In that time, respondent has had no contact with law enforcement and he has paid all fines, fees, and restitution ordered.

11. However, respondent has not expunged his criminal conviction. He offered no evidence regarding the stability of his family life and fulfillment of parental

and familial responsibilities; significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems; new and different social and business relationships from those which existed at the time of the criminal conduct; and/or a change in attitude from that which existed at the time of the conduct in question. Given the rehabilitation criteria set forth in California Code of Regulations, title 10, section 2911, respondent did not establish rehabilitation sufficient to assume the duties and responsibilities of a real estate broker at this time.

COSTS

12. Complainant requested that respondent be ordered to reimburse the Department for the reasonable costs of the investigation and enforcement of this matter. In support of its request, complainant submitted a Certified Statement of Investigation Costs, signed by complainant, with an attached computer printout summarizing the charges for time spent investigating this matter, totaling two hours and \$167. Complainant also submitted a Certified Statement of Costs, signed by Kyle Jones, with an attached computer printout summarizing the charges for time spent by Mr. Jones on the enforcement and prosecution of this matter, totaling 9.65 hours and \$858.85. Respondent made no objections to the costs. The scope of work and amounts submitted by complainant are reasonable in light of the allegations and legal issues in this matter. In total, the Department seeks \$1,025.85.

LEGAL CONCLUSIONS

1. Complainant bears the burden of proving, by clear and convincing evidence, that the charges in the accusation are true. (Evid. Code § 115; *Ettinger v.*

Board of Medical Quality Assurance (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; it requires sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

2. According to Business and Professions Code section 490, subdivision (a), the Department "may suspend or revoke a license on the ground that 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." Business and Professions Code section 10177, subdivision (b)(1), is similar, providing:

The commissioner may suspend or revoke the license of a real estate licensee . . . who has . . . 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, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal.

3. Cause exists to discipline respondent's license pursuant to Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b)(1). On October 30, 2018, respondent was convicted of violating Penal Code section 311.11, subdivision (c)(1), a felony. In addition, the conviction is substantially related to the qualifications, functions and duties of a real estate licensee pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(5), because respondent must register under Penal Code section 290.

4. Business and Professions Code section 10106 permits the Real Estate Commissioner to request an ALJ hearing a disciplinary matter to direct a licensee to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case, except as otherwise provided by law. Evidence is required to support an award. Complainant provided sufficient evidence to support an award of the costs of in the amount of \$1,025.85.

5. All other arguments raised, but not addressed herein, were considered and rejected.

ORDER

1. All licenses and licensing rights of respondent Eric Curtis Lund under the Real Estate Law are REVOKED.

2. Respondent shall reimburse the Department the sum of \$1,025.85 for costs incurred for the investigation and enforcement of this matter.

DATE: November 15, 2022



ERIN R. KOCH-GOODMAN

Administrative Law Judge

Office of Administrative Hearings