

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

OCT 01 2024

DEPT. OF REAL ESTATE

By-

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In the Matter of the Accusation of:

JAWAD ASGHAR KHAN,

Respondent.

) DRE No. H-07245 SAC

) OAH No. 2024030715

DECISION

The Proposed Decision dated August 13, 2024, 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.

Pursuant to Section 11517(c)(2) of the Government Code, the following corrections are made to the Proposed Decision.

Order, Page 12, Paragraph No. 3, Line 3, "or restrictions of a restricted license until two years..." is amended to read "or restrictions of a restricted license until three years..."

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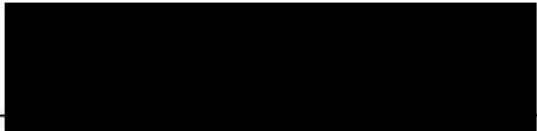
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The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached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

This Decision shall become effective at 12 o'clock noon on OCT 31 2024.

IT IS SO ORDERED 9/24/2024

Chika Sunkuist
REAL ESTATE COMMISSIONER


By: Marcus L. McCarther
Chief Deputy Real Estate Commissioner

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

In the Matter of the Accusation Against:

JAWAD ASGHAR KHAN, Respondent

Agency Case No. H-7245 SAC

OAH No. 2024030715

PROPOSED DECISION

Alan R. Alvord, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on July 22, 2024.

Kevin H. Sun, Real Estate Counsel, Department of Real Estate, represented complainant Tricia Parkhurst, Supervising Special Investigator, Department of Real Estate (department).

Jawad Asghar Khan, respondent, represented himself.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on July 22, 2024.

SUMMARY

In addition to holding the real estate license at issue in this case, respondent held licenses issued by the Department of Insurance. Respondent's Department of Insurance licenses were placed on restricted status after a disciplinary case against him that alleged he misappropriated client premium payments. The department alleged that Department of Insurance discipline, and the facts that supported it, as a basis for disciplining his real estate license. In addition, respondent failed to disclose the discipline of his insurance licenses to the department within the required time. Under the circumstances of this case, the evidence supported placing respondent's real estate license on restricted status for three years.

FACTUAL FINDINGS

Jurisdictional Matters

1. The department issued real estate salesperson license No. S/01883577 to respondent on June 30, 2010. The license is valid and will expire on November 11, 2026, unless renewed.

2. On January 31, 2024, complainant signed the accusation under her official capacity. The accusation and required jurisdictional documents were served on respondent, who filed a timely notice of defense requesting a hearing. This hearing followed.

Department of Insurance Investigation, Accusation, and Stipulated Discipline

3. Respondent held Property and Casualty, Accident and Health or Sickness, and Life insurance licenses and licensing rights issued by the California Department of Insurance (DOI) on December 21, 2016.

4. On October 27, 2022, DOI issued a first amended accusation against respondent's licenses alleging he misappropriated cash premium payments. The following facts are alleged in the DOI first amended accusation.

5. On February 14, 2020, an administration manager for Farmers Insurance Group (Farmers) filed a complaint with DOI that respondent misappropriated seven cash premium payments totaling \$1,824.76 between January 18, 2019, and August 18, 2019. DOI opened an investigation in April 2020. DOI interviewed a Farmers internal audit investigator who prepared a report detailing seven receipted cash premium payments totaling \$1,824.76 that respondent could not account for. The Farmers audit investigation found that respondent received the payments but did not deposit them in the designated trust accounts as required. As a result of the audit findings, Farmers terminated respondent.

6. Farmers ultimately recovered the loss by deducting the amounts from respondent's commissions. No criminal charges were filed against respondent for these financial misappropriations.

7. On January 17, 2023, respondent entered into a stipulation and waiver with DOI in which he acknowledged that DOI had prima facie evidence to support the allegations in the first amended accusation. Respondent agreed to revocation of his

insurance licenses, with revocation stayed and a restricted license issued for three years.

8. Respondent testified in this case that Farmers was changing over to a new premium depositing system, and he failed to submit premiums to the new system on a timely basis. He was supposed to open a new trust account to process the payments and he "was having trouble opening a new trust account with the bank." He characterized it as a "miscommunication" about the new trust account system.

Failure to Report DOI Discipline

9. Respondent did not report the stipulated discipline of his DOI license to the department within 30 days of entering into the stipulation with DOI, as required by applicable law.

10. Respondent did, however, identify the DOI administrative discipline case on his renewal application to the department dated October 17, 2022. Question 15, on page two of the renewal application asked, "Are there any license disciplinary actions pending against a business or professional license you hold at this time? If yes, complete Item 19." Respondent checked "yes" to Question 15, and at Item 19, identified his DOI license number, the expiration date, the fact that an accusation was filed, and the "date of action" February 24, 2022. Respondent's statement on the renewal application was accurate at the time it was made. There was an accusation pending against him by DOI that had not yet been resolved.

11. Respondent testified in this case that he was not aware he was required to make a further report to the department about the DOI discipline after he disclosed the DOI accusation on his renewal application. Respondent testified that he

understood the renewal application contained a "Salesperson Certification" above the signature that stated,

I understand that it is my obligation to notify the Department within 30 days in writing or by filing form RE238 of any conviction, criminal complaint, information or indictment charging a felony, or disciplinary action taken by another licensing entity or authority of this state or an agency of the federal government pursuant to Business and Professions Code Section 10186.2.

12. Respondent testified that the reporting requirement did not exist when he was first licensed by the department. He provided a copy of an undated "Alert to Licensees" from Wayne Bell, Chief Counsel, that informed licensees that, effective January 1, 2012, a new section was added to the Real Estate Law that required the disclosure of, among other things, disciplinary action taken by another licensing entity.

13. Respondent did not offer any other evidence in mitigation and offered no rehabilitation evidence.

Investigation and Enforcement Costs

14. The department submitted a declaration from Heather Nishimura, Supervising Special Investigator I, Department of Real Estate, signed a declaration of costs claiming investigation costs of \$634.75. Attached to the declaration were statements showing the hours worked, the tasks performed, and the rates charged for each department employee. The declaration claimed 1.25 hours at \$97 per hour for the time of two supervising special investigators, and 6.5 hours at \$79 per hour for a special investigator. The attached statements for the special investigator included 2.0

hours for report writing, 2.25 hours for deputy review, and 2.25 hours for "misc-other," and 0.25 hours of supervising special investigator time described as "case other." The investigator time described as "misc-other" and supervisor time described as "case other" do not "describe the general tasks performed" as required under California Code of Regulations, title 1, section 1042, subdivision (b)(1). Therefore, 2.25 hours of time at \$79 per hour and 0.25 hours at \$97 per hour, a total of \$202, will be deducted from the claimed investigation costs, for an approved total of \$432.75.

15. The department also submitted a declaration of Kevin H. Sun, Real Estate Counsel, claiming enforcement costs for attorney time of 4.2 hours at \$132 per hour, for a total of \$554.40. Attached to the declaration was a statement describing the general tasks performed, the time spent on each task, and the method of calculating the cost.

16. Investigation costs of \$432.75 and enforcement costs of \$554.40, for a total of \$987.15, are reasonable.

LEGAL CONCLUSIONS

1. Complainant has the burden of proving cause for discipline against respondent by clear and convincing evidence to a reasonable certainty. (*The Grubb Co., Inc. v. Department of Real Estate* (2011) 194 Cal.App.4th 1494, 1505.) This means the burden rests on complainant to adduce proof that is clear, explicit, and unequivocal – so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487.)

2. Business and Professions Code section 10177, subdivision (f), authorizes the Real Estate Commissioner to suspend or revoke a real estate license if the licensee:

Acted or conducted themselves in a manner that would have warranted the denial of their application for a real estate license, either had a license denied or had a license issued by another agency of this state, another state, or the federal government revoked, surrendered, or suspended, or received an order of debarment, for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, if the action of denial, revocation, surrender, suspension, or debarment by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and only upon an express finding of a violation of law by the agency or entity.

3. Business and Professions Code section 10145, subdivision (c), requires a real estate salesperson to deposit trust funds accepted from others into a trust fund account.

4. The Real Estate Commissioner may suspend or revoke a license if a licensee has engaged in conduct that constitutes fraud or dishonest dealings (Bus.

& Prof. Code §§ 10176, subd. (i); 10177, subd. (j)), if the licensee willfully disregards the Real Estate Law, (Bus. & Prof. Code § 10177, subd. (d)), or if the licensee demonstrated negligence or incompetence in performing an act for which the person is required to hold a license (Bus. & Prof. Code § 10177, subd. (g)).

5. A licensee is required to report to the department any disciplinary action taken by another licensing authority of this state or another state or an agency of the federal government within 30 days of the disciplinary action. Failure to make a report required by this section is a cause for discipline of the license. (Bus. & Prof. Code § 10186.2.)

6. In any order issued in resolution of a disciplinary proceeding before the department, the Commissioner may request the administrative law judge to direct a licensee found to have committed a violation of the Real Estate Law to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. (Bus. & Prof. Code § 10106.)

7. Cause to discipline respondent's license was established under Business and Professions Code section 10177, subdivision (f). The evidence established that in his handling of trust funds as an insurance licensee, respondent conducted himself in a manner that would have warranted the denial of his application for a real estate license. In addition, respondent had his insurance license disciplined by another agency of this state based on acts which, if done by a real estate licensee, would be grounds for discipline. The action by DOI was taken after giving respondent fair notice of the charges, an opportunity for hearing, and other due process protections. Respondent stipulated in the DOI case to an express finding that a prima facie case of violations existed. Respondent's misconduct in the DOI matter constituted dishonest

dealings, willful disregard of the Real Estate Law, and demonstrated negligence or incompetence.

8. Cause was established under Business and Professions Code section 10186.2 to discipline respondent's license for his failure to report the disciplinary action by DOI within 30 days. Although respondent disclosed the existence of the DOI administrative matter in his renewal application, that disclosure did not contain any information about the disciplinary action taken against respondent's insurance licenses and therefore did not satisfy his duty to report the DOI discipline.

9. Having found a basis for discipline of respondent's real estate license, the next question is what disciplinary remedy will adequately protect the public. Part of that analysis requires consideration of respondent's rehabilitation.

10. Rehabilitation is a "state of mind," and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940), but mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991; see also *In re Schwartz* (1982) 31 Cal.3d 395, 400-401, citing *In re Conflenti* (1981) 29 Cal.3d 120, 124-125 [insufficient evidence of rehabilitation where petitioner's criminal acts occurred just two years prior to his discipline hearing].)

11. The department has developed criteria of rehabilitation that are to be considered in evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of a license has

been initiated. (Cal. Code Regs., tit. 10, § 2912, subds. (a)-(m).) Criteria relevant to this case include the time that has elapsed since the acts or offenses, the nature and severity of the actions, restitution to any person who has suffered monetary losses, correction of business practices, completion, or sustained enrollment in training courses for self-improvement, significant and conscientious community involvement, and a change in attitude.

12. Respondent's misappropriations occurred in 2019 and the DOI discipline occurred in 2023. Respondent has had a restricted insurance license since 2023. There was no evidence of any further problems with respondent's insurance license or other discipline of his real estate license. There was no evidence that the insurance customers whose premium payments respondent misappropriated suffered any actual harm, such as cancellation of their policies. Farmers did not suffer any actual harm other than the cost of auditing respondent's accounts; Farmers reimbursed itself for the premiums by deducting them from respondent's commissions. There was also no evidence that respondent's conduct in misappropriating the premiums was malicious or was done out of greed or dishonesty. It appears to have been the result of mistakes in respondent's business practices due to inadvertence and/or negligence rather than intentional misconduct. Similarly, respondent's failure to report the DOI discipline was a sloppy business practice rather than an attempt to deceive the department, since he disclosed the existence of the DOI administrative action in his license renewal application.

13. The purpose of an administrative proceeding seeking the revocation or suspension of a professional license is not to punish the individual; it is to protect the public. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Under the circumstances of this case, revocation of respondent's license is overly

severe for the conduct. The correct administrative remedy to ensure public protection is a restricted license. A three-year term of restricted status with ethics and trust fund accounting courses will protect the public and provide an appropriate administrative remedy.

14. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the court held that cost recovery administrative statutes do not violate due process. The court identified factors to consider in evaluating cost recovery: (1) whether the licensee used the hearing process to obtain dismissal or a reduction in the severity of the discipline imposed; (2) whether the licensee had a "subjective good faith" belief in the merits of his/her position; (3) whether the licensee raised a colorable challenge to the proposed discipline; (4) whether the licensee had the financial ability to make payments; and (5) whether the scope of the investigation was appropriate to the alleged misconduct.

15. The scope of the department's investigation and the work of the department attorney was appropriate to the alleged misconduct in this case. Respondent's appearance at the hearing and his evidence did not raise any colorable challenge to the proposed discipline. Respondent did not present any evidence of his inability to pay costs of investigation and enforcement. The department's claimed costs, as reduced by the analysis above, in the total amount of \$987.15, are reasonable and are approved.

ORDER

All licenses and licensing rights of respondent Jawad Asghar Khan under the Real Estate Law are revoked; however, a restricted real estate salesperson license shall

be issued to respondent for three years under Business and Professions Code section 10156.5 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 Business and Professions Code section 10156.7, and to the following limitations, conditions, and restrictions under the authority of Business and Professions Code section 10156.6:

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 two 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, within six months from the effective date of this decision, take and pass the Professional Responsibility Examination administered by the department including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of respondent's license until respondent passes the examination.

7. Respondent shall, prior to and as a condition of the issuance of the restricted license, submit proof satisfactory to the Commissioner of having taken and successfully completed the continuing education course on trust fund accounting and handling specified in Business and Professions Code section 10170.5, subdivision (a). Proof of satisfaction of this requirement includes evidence that respondent has

successfully completed the trust fund account and handling continuing education course within 120 days prior to the effective date of the decision in this matter.

DATE: August 13, 2024


ALAN R. ALVORD

Administrative Law Judge

Office of Administrative Hearings