

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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In the Matter of the Accusation of:	)	DRE No. H-7293 SAC
MATTHEW CERECEDES,	)	OAH No. 2023100954
Respondent.	)	

DECISION

The Proposed Decision dated May 30, 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.

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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FILED
JUN 18 2024
DEPARTMENT OF REAL ESTATE
By J. Taggart

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 JUL 08 2024.

IT IS SO ORDERED 6/17/2024

Chika Sunquist
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:

MATTHEW CERECEDES, Respondent

Agency Case No. H-7293 SAC

OAH No. 2023100954

PROPOSED DECISION

Patrice De Guzman Huber, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on April 30, 2024, from Sacramento, California.

Richard K. Uno, Counsel III, represented complainant Tricia D. Parkhurst, Supervising Special Investigator of the Department of Real Estate (Department), State of California.

Jonathan A. Sanders, Esq., represented respondent Matthew Cerecedes, who appeared.

Evidence was received, the record closed, and the matter submitted for decision on April 30, 2024.

FACTUAL FINDINGS

Jurisdictional Matters

1. On March 17, 2008, the Department issued respondent real estate salesperson license no. 01841496 (license). The license will expire on March 15, 2026, unless renewed.

2. On October 2, 2022, complainant, in her official capacity, signed and thereafter filed an Accusation seeking to discipline respondent's license. Complainant alleged cause for discipline based on respondent's convictions for driving or taking a vehicle not his without the consent of the owner, driving with a blood alcohol content (BAC) of 0.08 percent or more, and possession of drug paraphernalia, as well as his failure to report those convictions to the Department. In aggravation, complainant alleged respondent was previously convicted of violating Vehicle Code section 23152, subdivision (b), driving with a BAC of 0.08 percent or more. Respondent timely filed a Notice of Defense. The matter was set for an evidentiary hearing before an ALJ with the OAH pursuant to Government Code section 11500 et seq.

Criminal Convictions and Failure to Disclose

3. On June 6, 2022, in San Joaquin County Superior Court, Case No. CR-2021-12243, respondent was convicted on a no contest plea of violating Vehicle Code section 10841, subdivision (a), driving or taking a vehicle not his without the consent of the owner, a felony. The court suspended imposition of sentence and placed respondent on two years of formal probation with conditions that required him to serve 120 days in jail and pay fines, fees, and restitution.

4. The circumstances underlying this conviction occurred on November 13, 2021. While under the influence of methamphetamine, respondent stole a vehicle from Tran Auto Sales in Galt, California. When police officers contacted respondent, he was 20 miles away, pumping gas at a station. He told police officers Tran Auto Sales permitted him to take the vehicle for a test drive and he was headed home to pick up money to purchase the vehicle.

5. On August 9, 2022, in San Joaquin County Superior Court, Case No. CR-2022-7317, respondent was convicted on a guilty plea of violating Vehicle Code section 23152, subdivision (b), driving with a BAC of 0.08 percent or more (DUI), a misdemeanor. Respondent admitted a sentencing enhancement for a prior DUI conviction in 2014. The court suspended imposition of sentence and placed respondent on three years of conditional probation with conditions that required him to serve 10 days in jail, complete an 18-month DUI program, and pay fines, fees, and restitution.

6. The circumstances underlying this conviction occurred on June 21, 2022, when a Lodi Police Department officer observed respondent driving on the wrong side of the road to pass another vehicle. When the officer contacted respondent, he displayed signs of intoxication. Respondent submitted to a breath test, which measured his BAC at 0.11 percent.

7. On September 16, 2022, in Placer County Superior Court, Case No. 62-183690, respondent was convicted on a no contest plea of violating Health and Safety Code section 11364, subdivision (a), possession of drug paraphernalia, a misdemeanor. The court sentenced respondent to serve 45 days in jail and to pay fines, fees, and restitution. The circumstances underlying this conviction occurred on

November 3, 2021, when law enforcement located, in respondent's possession, a methamphetamine pipe.

8. On September 12, 2023, Heather DeYoung, Staff Services Manager I with the Department, certified she searched the Department's records and found no written notices from respondent within 30 days of any of his convictions, as required by Business and Professions Code section 10186.2.

Matter in Aggravation – 2014 DUI Conviction

9. On September 18, 2014, in San Joaquin County Superior Court, Case No. ST062048A, respondent was convicted on a no contest plea of violating Vehicle Code section 23152, subdivision (b), driving with a BAC of 0.08 percent or more, a misdemeanor. Complainant did not provide information on the circumstances underlying this conviction.

Respondent's Evidence

10. At hearing, respondent admitted his convictions. Each conviction involved methamphetamine, alcohol, or both. Respondent has not paid any fines, fees, or restitution relating to his 2022 convictions. He recently arranged for a payment plan of \$10 per month toward fines, fees, and restitution owed in Placer County Superior Court, Case No. 62-183690. He has not yet made any payments.

11. Respondent did not disclose any of his convictions to the Department. He testified he did not know he was required to disclose them. In September 2023, the Department sent a letter to inquire about his convictions and failure to disclose. Respondent ignored the letter. A Department representative called respondent to follow-up on his failure to respond to the Department's letter. By phone, respondent

told the Department's representative he did not need to address his convictions because his record is "[his] business and personal life." At hearing, respondent did not state whether his attitude toward disclosure or the Department's requirements had changed since that phone call.

Also in September 2023, the Department sent a letter to respondent's employer, HL Commercial Enterprises, Inc. (HL) in San Rafael, California, advising respondent failed to report his convictions to the Department. HL's chief executive officer (CEO) and designated officer, Robert Knez, asked respondent about his record, which respondent ultimately admitted.

12. Respondent began using methamphetamine in 2018. He and his then-wife, who also had substance abuse issues, lived with their four children, ages 14, 12, 11, and 9. By the end of 2020, because of their addictions, respondent and his wife decided to separate and send their four children to his wife's parents. Respondent testified his ex-wife has been absent from their children's lives since.

13. From 2018 until 2022, respondent struggled with his substance abuse, which he believes contributed to his convictions. After he was arrested in June 2022 for DUI, respondent felt ready to quit a life of addiction. The next day, he asked a friend in recovery how to begin his own recovery. His friend suggested moving to Marin County, a "great place to recover." On June 24, 2022, respondent became sober from drugs and alcohol. He took his friend's advice and immediately relocated to Sausalito in Marin County. Since relocating, he no longer associates with the people he used to know.

14. In Sausalito, respondent first stayed at a Sober Living Environment (SLE), a group home for those in recovery seeking mutual support and accountability.

Respondent spent almost three months at Cornerstone Sober Living and later moved to Just Us Sober Living, where he stayed full time for six months and then part time for another 18 months. SLE requirements included biological fluid testing and attendance at 90 Narcotics Anonymous (NA) or Alcoholics Anonymous (AA) meetings within the first 90 days. Motivated, respondent attended 110 NA meetings within his first 90 days. He successfully complied with all SLE requirements.

15. Now, respondent attends five to 10 meetings per week and meets or talks with his NA sponsor, Stephen King, at least four times per week. Respondent "shares [his] story" at NA meetings, juvenile hall, and rehabilitation centers. He would like others to learn from his mistakes. In 2023, respondent became involved in his children's lives again and occasionally takes them to NA meetings. He hopes to teach them early the lessons he feels he learned too late in life.

16. Respondent is currently on the third step in NA, which he described as "turning over control to God." He does not plan to stop attending NA after he completes step 12. Respondent has taken leadership positions within his local NA group. As NA secretary for a one-year term, he was in charge of the Sunday evening meetings. Someday, respondent would like to become a Group Service Representative with greater responsibility over a larger region. He believes he will continue to be involved in NA for the rest of his life because of the accountability and friendships he has gained in this community.

17. Respondent has an 11-month-old baby with his current partner. Two of respondent's four older children began living with him in 2022 and 2023, while two remain with their grandparents. Respondent gives his four older children a monthly allowance of \$100 each. He is determined to support his children through school,

including college. Respondent's focus now is his family. With a stable family life and the tools he learned from NA, respondent believes he has been rehabilitated.

CHARACTER EVIDENCE

18. Respondent provided an April 18, 2024, letter by Marin County Probation Department Officer Nicholas Pimentel. Officer Pimentel is respondent's probation officer relating to his DUI conviction from San Joaquin County. According to Officer Pimentel, respondent has been compliant and not tested positive for any controlled substance. Officer Pimentel believes respondent is on track to complete probation successfully.

19. Dominique McDowell testified. He owned and operated Just Us Sober Living from 2014 until 2024 when it closed. Mr. McDowell has been sober for 24 years. He testified respondent never tested positive for narcotics or alcohol while at the SLE. Mr. McDowell and respondent saw each other regularly while respondent was an SLE resident, and now they occasionally see each other at NA meetings. Mr. McDowell believes respondent is doing well in his recovery.

20. Mr. King testified. He has been sober and a member of NA for 12 years. Mr. King became respondent's sponsor in July 2022. He and respondent speak by phone five to six times per week and meet in person three to four times per week. Mr. King praised respondent's "steadfastness to remain in recovery" and willingness to help new NA members.

21. Freeman Corkum and Emily Harrington, members in respondent's local NA group, testified. Mr. Corkum has been sober for 32 years, and Ms. Harrington for three years. They occasionally see respondent at NA meetings. Mr. Corkum and

Ms. Harrington each highlighted respondent's efforts to welcome and support new NA members.

22. Mr. Knez testified. He directly supervises five "associate licensees," including respondent. HL employs a total of 50 to 75 associates. For training, Mr. Knez paired respondent with other agents on particular listings. Respondent showed properties, handled marketing and applications, and made offers to lease properties. When Mr. Knez hired respondent in January 2023, he told Mr. Knez he was in recovery but did not disclose his convictions. Mr. Knez learned about them after he received the Department's letter and confronted respondent, who admitted the convictions. According to Mr. Knez, respondent performs well, and he would continue to employ respondent even with a restricted license or, if his license is revoked, rehire him upon license reinstatement.

23. Mark Cooper testified. He has been a Department licensee for 17 years and has been at HL for 14 years. He trained respondent to show properties and handle client financials. Mr. Cooper learned respondent was in recovery when he found respondent's one-year sobriety coin in respondent's car. Mr. Cooper testified he has never observed respondent intoxicated or hungover.

24. Cindy Ortegon, an HL client, testified. Respondent assisted Ms. Ortegon and her church in finding a property to purchase. Ms. Ortegon described respondent as professional and attentive.

Analysis

25. Crimes or acts are substantially related to a real estate licensee's qualifications, functions, or duties if they involve an unlawful act with the intent to confer a financial or economic benefit upon oneself or the threat of substantial injury

to the person or property of another, or if they demonstrate a pattern of repeated and willful disregard of law. (Cal. Code Regs., tit. 10, § 2910, subds. (a)(8), (10).)

26. First, respondent's conviction for driving or taking a vehicle not his without the consent of the owner is substantially related to his qualifications, functions, or duties because it involved an unlawful act with the intent to confer on himself the financial or economic benefit of a car without purchasing or otherwise legally obtaining one. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) Second, respondent's DUI conviction is also substantially related to his qualifications, functions, or duties because driving with a BAC of 0.08 percent or above involves the threat of substantial injury to the person or property of another. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) Collectively, respondent's three convictions within a three-month period are substantially related to his qualifications, functions, or duties as a licensee because they demonstrate his pattern of repeated and willful disregard of the law. (*Id.* at subd. (a)(10).)

27. The Department may consider the rehabilitation of a licensee who has been convicted of a crime substantially related to the qualifications, functions, or duties of a real estate licensee, such that he 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).)

Pursuant to California Code of Regulations, title 10, section 2912, the Department has adopted criteria in assessing a licensee's rehabilitation. The relevant rehabilitation criteria are: (1) the time elapsed since conviction or commission of the crimes or acts; (2) the nature and severity of the crimes or acts; (3) abstinence from drugs or alcohol for two years or more, if a conviction was attributable to the use of drugs or alcohol; (4) new and different social and business relationships; (5) stability of

family life and fulfillment of parental and familial responsibilities; (6) significant and conscientious involvement in community programs designed to provide social benefits or ameliorate social problems; and (7) a change in attitude from that which existed at the time of conviction or commission of the crime(s) or act(s). (Cal. Code Regs., tit. 10, § 2912, subds. (a), (f), (i), (j), (l), (m).)

28. Respondent's convictions are serious. His criminal conduct involved taking a vehicle that did not belong to him, without the owner's consent, driving after drinking alcohol, and possessing drug paraphernalia. His overall conduct shows a disregard of public safety and welfare. Moreover, respondent is still on criminal probation. Although he appears to be in compliance, a period during which his conduct is unsupervised remains necessary to assess his rehabilitation. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099 [a full and accurate analysis of one's rehabilitation requires a period during which he is not on probation]; *In re Giddens* (1981) 30 Cal.3d 110, 116 [requiring further proof of rehabilitation during an unsupervised period].)

Similarly, a longer period is necessary to demonstrate respondent's rehabilitation as to his convictions and sobriety. His last conviction was 20 months ago, and he became sober 23 months ago. The passage of less than two years after a licensee's most recent conviction is inadequate to establish rehabilitation. Likewise, less than two years of sobriety is also insufficient to show rehabilitation. (Cal. Code Regs., tit. 10, § 2912, subds. (a)(1), (f).) Although respondent has shown commendable strides toward a lawful, sober life, these strides are recent and have not yet been sustained for enough time to show he has been rehabilitated.

29. Respondent's failure to disclose his convictions to the Department is also serious. At hearing, when confronted with two subsequent refusals to discuss his convictions with the Department, respondent's only response was he was unaware he

was required to disclose in the first instance. His statement, "It's my business and personal life," reveals a serious misunderstanding or disregard of his duties as a licensee and was obstructive to the Department's efforts to regulate the real estate industry for the protection of the public. At hearing, respondent did not explain whether he understands the gravity of his refusal to comply with Department requirements or whether his dismissive attitude has changed. Without understanding the seriousness of his actions, he failed to demonstrate insight into his conduct and failed to provide any assurances he would not engage in the same conduct in the future. Without insight, respondent's conduct is likely to recur.

30. To his credit, respondent decided to change his life after years of addiction. To that end, he made positive changes, including his ongoing sobriety, involvement in NA, and securing steady employment. NA is a large part of respondent's life. He attends multiple meetings per week and keeps in close and frequent contact with his sponsor. Respondent is becoming increasingly involved in leadership and has ambitions of greater responsibility. Professionally, he enjoys a good reputation and the support of his employer. Further, he appears to enjoy a stable home life with his new partner and has a relationship with each of his children. Respondent's life seems focused on his sobriety and family.

31. The objective of license discipline is to protect the public, not to punish the licensee. (See *Fahmy v. Medical Bd. of Cal.* (1995) 38 Cal.App.4th 810, 817.) Commendably, after years of addiction, respondent has maintained his sobriety for 23 months and has a support system in his family, sponsor, and NA community. However, respondent is still on criminal probation, and insufficient time has passed since he became sober and since his last conviction. Further, respondent's lack of insight into his failure to disclose and his attitude toward compliance with the Department's

requirements suggests it is likely his conduct will recur. When all the evidence is considered, protection of the public requires revocation of respondent's license.

Costs

32. Complainant requests respondent pay the reasonable costs of investigation and enforcement in this case, pursuant to Business and Professions Code section 10106. Complainant seeks \$1,161.60 in enforcement costs and \$970.50 in investigative costs, totaling \$2,132.10. In support of complainant's request, she submitted her certified statement of investigation costs and Mr. Uno's certified statement of costs, each including a log of time spent and tasks performed. Respondent did not object to the costs requested.

LEGAL CONCLUSIONS

Burden and Standard 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 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.) If complainant meets this burden, rehabilitation is akin to an affirmative defense; consequently, the burden of proof of establishing an affirmative defense is on respondent. (*Whetstone v. Bd. of Dental Examiners* (1927) 87 Cal.App. 156, 164.)

Applicable Law

2. The Commissioner may discipline a licensee for a conviction of a felony or a crime substantially related to the qualifications, functions, or duties of a real estate licensee. (Bus. & Prof. Code, §§ 490, 10177, subd. (b)(1).)

3. The Commissioner may discipline a licensee for a willful disregard or violation of the rules and regulations governing real estate licenses, including a licensee's failure to disclose to the Department, within 30 days, a conviction. (Bus. & Prof. Code, §§ 10177, subd. (d), 10186.2.)

4. A conviction is substantially related to the qualifications, functions, or duties of a real estate licensee if it involves, in pertinent part: (1) an unlawful act with the intent to confer a financial or economic benefit upon oneself; (2) an unlawful act with the threat of substantial injury to the person or property of another; or (3) a pattern of repeated and willful disregard of law. (Cal. Code Regs., tit. 10, § 2910, subds. (a)(8), (10).)

Causes for Discipline

5. First, respondent's conviction for driving or taking a vehicle not his without the consent of the owner is a felony. (Bus. & Prof. Code, 10177, subd. (b)(1).) Further, it is substantially related to the qualifications, functions, or duties of a licensee as it involves respondent conferring on himself a financial or economic benefit. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) Second, respondent's conviction for driving with a BAC of 0.08 percent or more is also substantially related as it involved the threat of substantial injury to the person or property of another. (*Ibid.*) Finally, respondent's conviction for possession of drug paraphernalia, as one of three convictions within a three-month period, is substantially related as it is part of respondent's pattern of

repeated and willful disregard of the law. (*Id.* at subd. (a)(10).) Thus, cause exists to discipline respondent's license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b)(1).

6. Respondent willfully violated the rules and regulations governing real estate licenses by failing and refusing to disclose his convictions to the Department, as required by Business and Professions Code section 10186.2. Thus, cause exists to discipline respondent's license pursuant to Business and Professions Code section 10177, subdivision (d).

Costs of Enforcement and Investigation

7. The Commissioner may request the ALJ to direct a respondent found to have committed a violation of the rules and regulations governing real estate licenses to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. (Bus. & Prof. Code, § 10106.) In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 (*Zuckerman*), the California Supreme Court set forth guidelines for determining whether the costs should be assessed in the particular circumstances of each case. These factors are: (1) whether respondent was successful in getting charges dismissed or reducing the penalty; (2) whether respondent had a subjective good faith belief in the merits of his position; (3) whether respondent raised a colorable challenge to the proposed discipline; (4) whether respondent has the financial ability to make payments; and (5) whether the scope of the investigation was appropriate to the alleged misconduct.

8. Here, respondent was not successful in getting charges dismissed, reducing the penalty, or raising a colorable challenge to the discipline sought. Although respondent appeared to have a good faith belief in the merits of his

position, he did not provide evidence of an inability to pay, and the scope of investigation was appropriate to the alleged misconduct. Thus, upon consideration of the *Zuckerman* factors, payment of costs shall be ordered in the amount of \$2,132.10. Respondent must repay the costs if and when he successfully reinstates his real estate salesperson license or obtains a new license with the Department.

ORDER

Real estate salesperson license no. 01841496 issued to respondent Matthew Cerecedes is REVOKED.

Respondent shall pay the Department its investigation and enforcement costs in the amount of \$2,132.10. Respondent must pay these costs if and when he reinstates his real estate salesperson license or obtains a new license with the Department.

DATE: May 30, 2024



PATRICE DE GUZMAN HUBER

Administrative Law Judge

Office of Administrative Hearings