

FILED

MAY 14 2025

DEPARTMENT OF REAL ESTATE

By J. Taggart

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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|-------------------------------------|---|--------------------|
| In the Matter of the Accusation of: |) | DRE No. H-7387 SAC |
| |) | |
| GUADALUPE GONZALEZ RUIZ, |) | OAH No. 2024101117 |
| |) | |
| Respondent. |) | |

DECISION

The Proposed Decision dated April 10, 2025, 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 thirty (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 JUN 03 2025.

IT IS SO ORDERED 5/12/2025

Chika Sunquist
REAL ESTATE COMMISSIONER


By: Marcus L. McCarther
Chief Deputy Real Estate Commissioner

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MAY 12 2025

DEPARTMENT OF REAL ESTATE

By: *J. Taggord*

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

In the Matter of the Accusation Against:

GUADALUPE GONZALEZ RUIZ, Respondent

Agency Case No. H-7387 SAC

OAH No. 2024101117

PROPOSED DECISION

Jennevee H. de Guzman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on March 24, 2025, from Sacramento, California.

Taylor Herrlinger, Counsel, represented Heather Nishimura (complainant), Supervising Special Investigator, Department of Real Estate (Department).

Guadalupe Gonzalez Ruiz (respondent) appeared without the assistance of counsel.

Evidence was received, the record closed, and the parties submitted the matter for decision on March 24, 2025.

FACTUAL FINDINGS

Jurisdictional Matters

1. On June 14, 2022, the Department issued respondent salesperson license number S/02180658. The license will expire on June 13, 2026, unless renewed.

2. On October 2, 2024, complainant, acting solely in her official capacity, signed and filed an Accusation seeking to discipline respondent's license based upon his September 2023 misdemeanor conviction for petty theft and October 2021 misdemeanor conviction for driving under the influence with a blood alcohol content (BAC) above 0.08 percent (DUI) within 10 years of another DUI offense. In aggravation, complainant alleged respondent's February 2015 misdemeanor conviction for DUI. Respondent filed a Notice of Defense, and this hearing followed.

Criminal Convictions

3. On September 27, 2023, in the Superior Court of California, County of Placer, Case No. 72-011842, respondent was convicted, on his no contest plea, of petty theft, a misdemeanor. (Pen. Code, § 488.) The court suspended imposition of sentence and placed respondent on conditional probation for one year with conditions requiring him to complete 10 days of jail time and pay fines and fees.

4. The circumstances underlying the conviction occurred on April 10, 2023, when respondent stole a snowboard belonging to another guest at Palisades Resort. The resort's security video captured footage of respondent taking the snowboard and placing it in his car. A Placer County Sheriff's deputy responded to the location and contacted respondent, who initially denied stealing the snowboard. Respondent admitted to stealing the snowboard upon learning about the security video. He

explained that someone had stolen his snowboard last year and he was just “trying to make up for it.” The deputy cited and released respondent.

5. On October 6, 2021, in the Superior Court of California, County of Sonoma, Case No. SCR-749501-1, respondent was convicted, on his no contest plea, of DUI within 10 years of another DUI offense, a misdemeanor. (Veh. Code, §§ 23152, subd. (b), 23540.) He admitted to driving with a BAC greater than 0.15 percent. (Veh. Code, § 23578.) The court suspended imposition of sentence and placed respondent on probation for three years with conditions requiring him to complete 30 days of jail time, enroll and complete a DUI multiple offender program, abide by all laws, not commit a criminal offense, and pay fines and fees.

6. In a Conviction Detail Report dated February 17, 2024, respondent explained the circumstances of the conviction occurred on September 6, 2021. He wrote:

I had just experienced my first real heartbreak. I'm ashamed to admit it, yet it was the reality. It was a foolish lesson, yet life has a way [*sic*] teaching you in ways that you may not understand at the moment, but with time and reflection you seek the lesson to learn and grow.

Factor in Aggravation

7. On February 18, 2015, in the Superior Court of California, County of Sonoma, Case No. SCR-661900, respondent was convicted, on his no contest plea, of misdemeanor DUI. (Veh. Code, § 23152, subd. (b).)

Respondent's Additional Written Statements to the Department

8. In a Conviction Detail Report dated February 17, 2024, respondent explained the circumstances underlying the 2015 conviction occurred on January 27, 2015, when he drove home after a birthday dinner party. He was 21 years old, "inexperienced," and believed "the food at dinner was sufficient." He also wrote the following about his rehabilitation efforts:

I was grateful for the opportunity to better myself and dedicated more energy to health and fitness. I'm an avid runner and health enthusiast, love to take care of my body and choose to not feed it poison.

9. In the Conviction Detail Report regarding the 2021 DUI conviction, respondent wrote the following about his rehabilitation efforts:

I've learned the valuable lesson of a heartbreak, to not drown my sorrows and pain by myself instead seek friendship and family in times of need.

10. In an Interview Information Statement to the Department signed on February 20, 2024, respondent wrote:

Real Estate is my purpose, I've never known anything that could possibly make me feel so fulfilled as an employee. My actions were done before finding my purpose. I have since transformed my life for the better, for myself, my family, and my clients. And just as my real estate career is beginning to flourish, those past actions come to haunt me.

This only solidifies my decision to choose each and every day to be better than my previous actions. Although my actions have been part of my growing process to be a better human being, I will not let them define me. To keep my license, is to keep my livelihood.

Under the "Community Groups" section, respondent wrote, "Catholic Church, I help deliver food to homeless around the neighborhood, that is in excess from my Starbucks job. I do this individually."

Respondent's Evidence

11. Respondent testified on his own behalf. The petty theft "was a one-time thing," and respondent did not "know how to explain" it. He immediately regretted his actions, made a poor decision, and felt "horrible" when the deputy confronted him. The conviction was expunged on November 6, 2024.

12. The 2021 DUI occurred during a difficult time in respondent's life. His mother had passed away and his father was sick. He was their caretaker and used alcohol to "drown" his sorrows. The 2021 DUI was also a turning point in respondent's life. He wanted to "break the chain of alcoholism" and has done "a lot of recovery with friends and family" to find better ways to cope with life. He has one-on-one sessions with his brother's girlfriend, who received her master's degree in psychology in August 2024. He has grown much stronger since the 2021 DUI and believes his "hardships have resolved." For example, his father passed away after this conviction and respondent "didn't do the same thing."

13. Respondent currently lives with his brother and his brother's girlfriend in a property they all purchased together in 2023. He works approximately 50 to 60 hours

per week with a small real estate team. He is sober and only drinks on very special occasions, such as family birthdays and Christmas. He denied drinking alcohol during the two weeks prior to the hearing.

14. Respondent later admitted, however, to having been arrested for DUI, possession of cocaine, and resisting arrest on March 14, 2025. His arraignment is on April 11, 2025, and the matter is currently pending. He explained he was pulled over for failing to stop at a red light. He performed field sobriety tests and subsequently went to the hospital for a blood test. Respondent explained he was sick at the time of his arrest and had taken NyQuil, which contains alcohol. Although he was medicated, he believed he was able to drive. He also admitted to using cocaine earlier that day, but "barely uses" it. He further explained he did not resist arrest. Rather, he did not know the officer was arresting him and was "put on the ground" when he turned around to see "who was doing it."

Analysis

15. To determine the appropriate level of discipline, the Department evaluates respondent's rehabilitation. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058 [person who has reformed should be rewarded with the opportunity to serve].) In making this evaluation, the Department shall consider the following relevant rehabilitation criteria: the time that has elapsed since the commission of the acts or offenses; expungement of the conviction which culminated in the administrative proceeding to take disciplinary action; successful completion of criminal probation; abstinence from the use of controlled substances and/or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance and/or alcohol; respondent's payment of fines; stability of family life and fulfillment of familial responsibilities subsequent to the criminal conviction; significant

and conscientious involvement in community, church, or privately sponsored programs designed to provide social benefits or to ameliorate social problems; and a change in attitude from that which existed at the time of the conduct in question. (Cal. Code Regs., tit. 10, § 2912, subds. (a), (c), (e)-(g), (j), (l) & (m).)

16. Applying those criteria, respondent has failed to demonstrate rehabilitation from either of his convictions. With respect to his September 2023 petty theft, although it has been expunged, it is recent. Respondent minimized and failed to demonstrate insight into his criminal misconduct. At hearing, respondent repeatedly stated the petty theft was a "one-time thing." His feelings of regret came only after having been caught and, other than feeling selfish and foolish, he lacked any understanding for his actions. Specifically, respondent testified he did not "know how to explain it."

17. Respondent offered inconsistent evidence of rehabilitation from his 2021 DUI conviction. Respondent testified he does not drink, but will do so on special occasions. Respondent testified he did not drink in the weeks leading up to the hearing, but he was arrested for an alcohol-related driving offense approximately two weeks prior to the hearing. In a statement regarding rehabilitation, respondent wrote he no longer feeds his body "poison." Yet, he admitted to recently using cocaine and offered no explanation for his usage other than he "barely uses it." Accordingly, in the nearly four years that have passed since the 2021 DUI conviction, respondent has failed to demonstrate a genuine change in attitude.

18. Respondent's remaining evidence of rehabilitation is unpersuasive. Little weight is given to the evidence of respondent's one-on-one sessions with his brother's girlfriend. He testified she recently obtained her master's degree in psychology, but he provided no information regarding her area of specialization, whether she was a

licensed therapist, and the frequency of their sessions. He did not demonstrate that he sees her as a patient rather than as a family member. In a written statement, he briefly referenced doing some volunteer work through his church, but failed to provide any meaningful details to explain the extent of his involvement.

19. When all the evidence is considered, the appropriate discipline is to revoke respondent's license. The purpose of an administrative action is not to punish a licensee for his misconduct, but rather to ensure he does not exercise his license privileges contrary to the public interest. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.) Real estate salespersons and brokers are expected to act with honesty and integrity toward their clients, the public, and the Department at all times. When respondent's recent conviction for petty theft is considered with the other convictions and evidence presented at hearing, it would be contrary to the public interest, safety and welfare to permit respondent to retain his real estate salesperson license. Consequently, respondent's license must be revoked.

Costs

20. Under Business and Professions Code section 10106, subdivision (a), the Department may seek to recover reasonable costs of the investigation and enforcement of a case. Complainant submitted a Certified Statement of Investigation Costs of \$992 for 12.50 hours of investigation time. Attached to the certification is a printout detailing the investigative tasks performed and the time spent on those tasks. Complainant also submitted a Certified Statement of Enforcement Costs, which indicates Mr. Herrlinger incurred \$792 in costs for 6 hours of time enforcing this matter. Respondent did not object to the reasonableness of complainant's request, but stated the repayment of these costs would be a hardship because of tax season and because business has been slow. The reasonableness of the costs is addressed below.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant has the burden to prove the matters alleged in the Accusation by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt and sufficiently strong as to command the unhesitating assent of every reasonable mind. (*In re Michael G.* (1998) 63 Cal.App.4th 700, 709, fn. 6.)

2. In a disciplinary action such as this, respondent must prove rehabilitation. (*Whetstone v. Bd. of Dental Examiners* (1927) 87 Cal.App. 156, 164; Evid. Code, § 500.) The burden of proof is a preponderance of the evidence (Evid. Code, § 115), which means "more likely than not." (*Sandoval v. Bank of America* (2002) 94 Cal.App.4th 1378, 1388.)

Causes for Discipline

3. The Real Estate Commissioner may discipline a professional license if the licensee has been convicted of a crime that is substantially related to the qualifications, functions, or duties of his license. (Bus. & Prof. Code, §§ 490 & 10177, subd. (b).) A conviction is substantially related to the qualifications, functions, or duties of a real estate licensee if it involves "[t]he fraudulent taking . . . of . . . property belonging to another person." (Cal. Code Regs., tit. 10, § 2910, subd. (a)(1).)

4. Respondent was convicted of petty theft in violation of Penal Code section 488. Generally, theft "is the unlawful taking of another's property." (*People v.*

Shannon (1998) 66 Cal.App.4th 649, 653; Pen. Code, § 484.) "The distinctions between grand and petty theft according to the Penal Code are in the type of article stolen, whether the article was taken from the person of another and in the value thereof. [] The elements of the crime remain the same with the exceptions noted." (*Gomez v. Superior Ct. In & For Mendocino Cnty.*, (1958) 50 Cal. 2d 640, 645, internal citations omitted; Pen. Code, § 488.) Respondent's conviction is therefore substantially related to the qualifications, functions, or duties of a real estate license because the crime involved the fraudulent taking of property belonging to another person. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(1).) Cause therefore exists to discipline respondent's license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), jointly and severally.

5. A conviction is substantially related to the qualifications, functions, or duties of a real estate licensee if it involves "[t]wo or more convictions involving the consumption or use of alcohol or drugs when at least one of the convictions involve driving and the use or consumption of alcohol or drugs." (Cal. Code Regs., tit. 10, § 2910, subd. (a)(1).) Respondent was convicted of DUI, which was his second DUI conviction since 2015. Respondent's conviction is therefore substantially related to the qualifications, functions, or duties of a real estate license. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(11).) Cause therefore exists to discipline respondent's license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), jointly and severally.

6. A conviction is substantially related to the qualifications, functions, or duties of a real estate licensee if it involves "[c]onduct which demonstrates a pattern of repeated and willful disregard of law." Respondent's criminal history includes convictions in 2021 and 2023. Respondent's convictions are therefore substantially

related to the qualifications, functions, or duties of a real estate license because they demonstrate a pattern of repeated and willful disregard of the law. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(10).) Cause therefore exists to discipline respondent's license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), jointly and severally.

Level of Discipline

7. For the reasons discussed above, respondent failed to establish rehabilitation. Respondent's lack of insight and candor at hearing denies the Department of any assurances that the misconduct will not happen again. When all the evidence is considered, revoking respondent's license is necessary to protect the public.

Costs

8. The Department may request that a licensee found to have committed violations of the Real Estate Law be ordered to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. (Bus. & Prof. Code, § 10106, subd. (a).) In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth guidelines for determining whether the costs should be assessed in the circumstances of each case. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct.

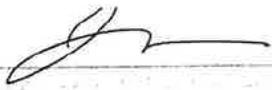
9. Complainant requested \$1,784 in investigation and enforcement costs. Respondent did not object. Considering the factors set forth in *Zuckerman*, complainant's request for costs is reasonable. Therefore, respondent is responsible to reimburse the Department its costs of \$1,784. Respondent credibly testified that payment of costs at this time would be a hardship. He should be permitted to repay the costs if and when he successfully reinstates his salesperson license.

ORDER

All licenses and licensing rights of respondent Guadalupe Gonzalez Ruiz under the Real Estate Law are revoked.

As a condition precedent to reinstatement of his revoked license, respondent shall reimburse the Department for its costs of prosecution in the amount of \$1,784. Said amount shall be paid in full prior to the reinstatement of his license unless otherwise ordered by the Department.

DATE: April 10, 2025



JENNEVEE H. DE GUZMAN

Administrative Law Judge

Office of Administrative Hearings