

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of

DAOMING QIU,

Respondent.

) CalBRE No. H-11796 SF

) OAH No. 2015040104

**FILED**

APR 28 2016

BUREAU OF REAL ESTATE

By B. Nicholas

DECISION

The Proposed Decision dated March 18, 2016, 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 Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The Bureau'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. 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 MAY 19 2016

IT IS SO ORDERED

4/25/2016

REAL ESTATE COMMISSIONER

  
WAYNE S. BELL

BEFORE THE  
BUREAU OF REAL ESTATE  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DAOMING QIU,

Real Estate Broker License No. 01729387

Respondent.

Bureau No. H-11796-SF

OAH No. 2015040104 .

**PROPOSED DECISION**

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on March 14, 2016, in Oakland, California.

Truly A. Sughrue, Counsel for the Bureau of Real Estate, represented complainant Robin S. Tanner, in her official capacity as Deputy Real Estate Commissioner for the State of California.

Respondent Daoming Qiu did not appear. Upon proof of compliance with Government Code sections 11505 and 11509, the matter proceeded as a default against respondent in accordance with Government Code section 11520.

The matter was submitted on March 14, 2016.

**FACTUAL FINDINGS**

1. The Bureau issued real estate broker license no. 01729387 to respondent Daoming Qiu on January 19, 2006. The license expired on January 18, 2014.

2. On January 21, 2015, complainant served respondent with an accusation seeking discipline against respondent's license. As grounds for discipline, the accusation alleged that respondent had been convicted of a crime bearing a substantial relationship to the duties and functions of a real estate salesperson. Respondent requested a hearing.

### *Criminal Conviction*

3. On October 26, 2012, respondent was convicted in Santa Clara County of a felony violation of Penal Code section 273.5, subdivision (a) (traumatic corporal injury on a spouse or former spouse). Respondent also was convicted of sentence enhancements to this crime under Penal Code section 12022, subdivision (b)(1) (use of a deadly weapon) and Penal Code section 12022.7, subdivision (e) (domestic violence). The crime occurred in the evening on August 23, 2011, in the home respondent shared with his former wife and their children. Respondent stabbed his former wife several times with a three-inch kitchen knife.

4. The court sentenced respondent to a total of four years in prison and issued a domestic violence protection order permitting respondent to contact his former wife only in connection with safe child custody exchanges. Respondent was not incarcerated at the time of the hearing, because he was paroled in January 2016. The evidence did not establish the length or terms of respondent's parole.

### *Costs*

5. The Bureau of Real Estate has incurred \$578.50 in prosecution costs on this matter, and \$1,828.65 in investigation costs. The Bureau's claim for these costs is supported by declarations that comply with California Code of Regulations, title 1, section 1042. The total cost amount (\$2,407.15) is reasonable.

## LEGAL CONCLUSIONS

1. The Bureau has authority to suspend or revoke respondent's real estate broker's license upon conviction of a crime that is "substantially related to the qualifications, functions, or duties of" a real estate broker. (Bus. & Prof. Code, § 490, subd. (a); *id.*, § 10177, subd. (b).) Expiration of respondent's license does not prevent the Bureau from revoking it under appropriate circumstances.

2. Stabbing one's former spouse during a domestic dispute is a crime for which the Bureau may suspend or revoke a real estate salesperson's license. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) The conviction set forth in Finding 3 constitutes cause to suspend or revoke respondent's real estate broker's license.

3. By regulation, the Bureau has established criteria for evaluating rehabilitation from criminal conduct substantially related to licensed activity. (Cal. Code Regs., tit. 10, § 2912.) Such rehabilitation is not presumed, particularly where the licensee remains on parole. (*Id.*, subd. (e).) Respondent presented no evidence of present rehabilitation that might justify allowing him to reinstate his broker's license.

4. A licensee found to have committed a violation of the licensing act may be required to pay the Bureau the reasonable costs of the investigation and enforcement of the

case. (Bus. & Prof. Code, § 10106.) The Bureau's request for reimbursement for \$2,407.15 in prosecution costs in this case is justified, and as set forth in Finding 5 is reasonable.

5. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth standards governing exercise by a licensing board of its discretion to reduce or eliminate cost awards, to ensure that licensees with potentially meritorious claims are not deterred from exercising their administrative hearing rights. Those standards include whether the licensee has been successful at hearing in getting the charges dismissed or reduced, the licensee's 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. None of these considerations supports a reduction in the Bureau's cost recovery.

#### ORDER

1. All licenses and licensing rights of respondent Daoming Qiu under the Real Estate Law are revoked.

2. Respondent Qiu shall reimburse the Bureau \$2,407.15 for its reasonable investigation and prosecution costs within 30 days following the Bureau's final decision in this matter.

DATED: March 18, 2016

DocuSigned by:  
*Juliet E. Cox*  
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JULIET E. COX  
Administrative Law Judge  
Office of Administrative Hearings