

FILED

DEC 31 2020

DEPARTMENT OF REAL ESTATE
By X Liang

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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In the Matter of the Accusation of:)	DRE No. H-12427 SF
ROBERT MAHMOUD SABERI,)	OAH No. 2020010428
Respondent.)	

DECISION

The Proposed Decision dated August 17, 2020, 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, but the right to a restricted salesperson license is granted to Respondent.

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 21 2021.

IT IS SO ORDERED 10,2020.

DOUGLAS R. McCUALEY
REAL ESTATE COMMISSIONER

Douglas R. McCualey

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

In the Matter of the Accusation against:

ROBERT MAHMOUD SABERI, Respondent

Case No. H-12427 SF

OAH No. 2020010428

PROPOSED DECISION

Dena Coggins, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically on July 21, 2020.

Jason D. Lazark, Counsel for the Department of Real Estate (Department), represented Robin S. Tanner (complainant), a Supervising Special Investigator of the State of California.

Paul Chan, Attorney, represented respondent Robert Mahmoud Saberi, who was present.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on July 21, 2020.

FACTUAL FINDINGS

1. Respondent is presently licensed and has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code as a real estate salesperson. Respondent's real estate salesperson license was issued on February 3, 2005. The license will expire on February 2, 2021, unless renewed or revoked. On November 10, 2015, respondent obtained an individual mortgage loan originator endorsement, which is in good standing.

2. On December 12, 2019, complainant signed and subsequently filed the Accusation in her official capacity. Complainant seeks to discipline respondent's real estate salesperson license on the grounds that he was convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee.

3. Respondent timely filed a Notice of Defense, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

Respondent's Criminal Conviction

4. On December 3, 2018, respondent, in the San Mateo Superior Court, Case No. 17NM013281A, on a plea of nolo contendere, was convicted of violating Penal Code section 490.2, petty theft, a misdemeanor. The court ordered respondent to stay away from the store where he committed the crime and pay an \$800 fine.

5. The circumstances surrounding the crime occurred on August 31, 2017. On that day, respondent entered a Costco Wholesale warehouse store and stole, took,

carried, led, and/or drove away the personal property of Costco, a store in South San Francisco.

6. On January 3, 2019, the San Mateo Superior Court granted respondent's petition for dismissal regarding the conviction under Penal Code section 1203.4. The court ordered that respondent's nolo contendere plea be set aside and vacated and a plea of not guilty be entered. The court further ordered that the complaint or information be, and was, dismissed.

Respondent's Evidence

7. Respondent is 36 years old. He is married with three minor children, and he is the sole provider for his family. Respondent has worked as a real estate salesperson and wholesale mortgage loan officer since 2005. Respondent has been working at Anahuak Realty & Loans since 2017. Respondent has not been previously disciplined by the Department.

8. Respondent discussed his 2018 petty theft conviction. On the day of the crime, respondent purchased a vacuum and granola cereal. Respondent put the vacuum in his car and then went back into the store with the purchased granola. He told the employee at the front of the store that he wanted to return the granola, and the employee provided him with a return sticker. Respondent did not intend to return the granola, instead, he removed the return sticker and placed it on a new vacuum and walked out of the store without paying for the second vacuum. Respondent was contacted by law enforcement on the same day by phone and returned to the store with both vacuums. When he spoke to law enforcement, respondent lied. He said he believed the first vacuum was damaged, so he took the second vacuum with the intent of later returning the first vacuum, as the return line at the time he took the second

vacuum was too long. Law enforcement described respondent's statements about returning the first vacuum at a later time as "illogical."

9. At hearing, respondent denied that he stole from Costco on any other occasion. He felt shame, remorse, humiliation, and regret for committing the crime. Around the time of the crime, respondent was in a "dark place"; his grandmother was having health issues and he was faced with financial pressures after his marriage in 2017. Respondent called his crime "a big mistake." He admitted his true intention of keeping the first vacuum and later returning the second vacuum to get his money back for his purchase of the first vacuum. He takes full responsibility for his misconduct, and he has had no subsequent arrests. He testified that this was a "one-time thing" and will never occur again. He has learned coping skills to use when he is faced with stress, which includes working with his family to resolve the issue, exercise, and going to church.

10. Respondent volunteered over 80 hours in 2018 for the Bay Area Youth Baseball Foundation and made monetary donations to the organizations. The Bay Area Youth Baseball Foundation is a nonprofit organization that assists moderate to low income families in affording children's participation in youth baseball. Respondent worked on projects helping the community and raising money for the organization's programs, including beach cleanup days, summer camps, and fundraisers. He continues to volunteer 10 hours per month to the organization.

11. Respondent voluntarily completed an eight-hour theft awareness class in 2018. He discussed what he learned in the class at hearing, including becoming aware of the damage he caused by his actions and the consequences of his actions. Respondent also completed a Code of Ethics training in July 2020.

12. Respondent submitted support letters from former coworkers, his responsible broker, friends, and a former supervisor. The authors described respondent as "trustworthy," "ethical," and "hardworking." His responsible broker stated that during the three years he has been working at Anahuak Realty & Loans, respondent has never had any complainants from consumers.

Discussion

13. The Department has developed criteria to evaluate whether a licensee, against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated based on a crime he committed, is rehabilitated. (Cal. Code of Regs., tit. 10, § 2912.) The following criteria are relevant to respondent:

(a) The time that has elapsed since commission of the act(s) or offense(s):

(1) The passage of less than two years after the most recent criminal conviction or act of the licensee that is a cause of action in the [Department's] Accusation against the licensee is inadequate to demonstrate rehabilitation.

[¶] . . . [¶]

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee, or escheat to the State of these monies or other properties if the victim(s) cannot be located.

(c) Expungement of the conviction(s) which culminated in the administrative proceeding to take disciplinary action.

[1] . . . [1]

- (g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.
- (h) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.
- (i) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.
- (j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.
- (k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.
- (l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.
- (m) Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by any or all of the following:

- (1) Testimony and/or other evidence of rehabilitation submitted by the licensee.
- (2) Evidence from family members, friends and/or other persons familiar with the licensee's previous conduct and with subsequent attitudes and/or behavioral patterns.

[T] . . . [T]

- (5) Absence of subsequent felony convictions, or misdemeanor convictions, or other conduct that provides grounds to discipline a real estate licensee, which reflect an inability to conform to societal rules when considered in light of the conduct in question.

14. Respondent's criminal conviction occurred less than two years ago. Respondent's crime is concerning. He executed a carefully calculated plan to steal from Costco and collect money from the store once he returned the stolen item. Respondent's plan of theft was deceitful and dishonest. His misconduct shows a serious lapse in judgment and brings into question his fitness for licensure as a real estate licensee trusted with the public's most sensitive information.

15. However, respondent's conviction was expunged over a year ago. He paid the court-ordered fine and returned the stolen vacuum to Costco. Respondent has taken full responsibility for his actions and showed genuine remorse at hearing for his crime. (See, *Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Cal.3d 933, 940 ["Fully acknowledging the wrongfulness of his actions is an essential step towards rehabilitation"].) He appears to have a stable family life and fulfills his familial responsibilities subsequent to his conviction. Respondent volunteers

regularly in his community and has voluntarily completed theft awareness class. He submitted support letters from friends and coworkers and has shown a change in attitude since committing his crime.

16. The objective of an administrative proceeding relating to licensing is to protect the public. Such proceedings are not for the primary purpose of punishment. (See *Fahmy v. MBC* (1995) 38 Cal.App.4th 810, 817.) When all the evidence is considered, granting respondent a restricted real estate salesperson license on the terms and conditions set forth below would be appropriate to ensure that the public health, safety and welfare are adequately protected.

Costs of Investigation and Enforcement

17. Pursuant to Business and Professions Code section 10106, complainant has requested reimbursement of the costs incurred for the investigation and enforcement of this matter, in the amount of \$1,342.20. Specifically, the Department incurred \$763.70 in investigation costs and \$578.50, in enforcement costs. The costs of investigation and enforcement are detailed in the Certified Statement of Investigation Costs by complainant, dated February 19, 2020, and the Cost Recovery: Declaration Regarding Enforcement Costs by Mr. Lazark, dated July 16, 2020. Both statements are accompanied by documents describing the general tasks performed, the time spent on each task, the hourly pay rate, and the method of calculating the costs.

18. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Court identified the factors to be considered in determining the reasonableness of costs pursuant to statutory provisions. The 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. (*Id.* at p. 45.)

19. In this case, all of the charges were established and the scope of the investigation was appropriate to the alleged misconduct. Respondent did not contest the reasonableness of the costs, and did not represent that he cannot pay the requested costs. When all the factors in *Zuckerman* are considered, the investigation and enforcement costs are reasonable and assessment of the costs requested by the Department is appropriate.

LEGAL CONCLUSIONS

1. Complainant has the burden of proving each of the grounds for discipline alleged in the Accusation. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) And he must do so by producing clear and convincing evidence to a reasonable certainty in support of those allegations. (*Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212 [discussing the appropriate standard of proof in license discipline proceedings].) Clear and convincing evidence is evidence that 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.)

2. A real estate salesperson license may be suspended or revoked if the holder has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. (Bus. & Prof. Code, §§ 490, subd. (a); 10177, subd. (b).) In California Code of Regulations, title 10, section 2910, the Department has set forth criteria for

determining whether a conviction is substantially related to the qualifications, functions, or duties of a real estate licensee. Under California Code of Regulations, title 10, section 2910, subdivision(a), a conviction will be deemed to be substantially related if it evidences:

(1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person.

[¶] . . . [¶]

(4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end.

[¶] . . . [¶]

(8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

3. As set forth in Factual Findings 4 through 6, and 8, respondent's petty theft conviction involved the fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another. It also involved employing deceit, falsehood or misrepresentation to achieve an end and the doing of an unlawful act with the intent of conferring a financial or economic benefit upon respondent. Therefore, respondent's criminal conviction is substantially related to the qualifications, functions, and duties of a real estate salesperson under California Code of Regulations, title 10, section 2910, subdivision (a)(1), (4) and (8). Consequently, cause exists to revoke

respondent's license under Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b).

4. However, as set forth in Factual Findings 13 through 16, although respondent's license is subject to discipline, the evidence showed that the public health, safety, and welfare would be adequately protected if he is issued a restricted license.

Investigation and Enforcement Costs

5. Business and Professions Code section 10106 provides that in any order issued in resolution of a disciplinary proceeding before it, the commissioner may request the administrative law judge to direct a licensee found to have committed a violation of Real Estate Law to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

6. As set forth in Factual Findings 17 through 19, complainant reasonably incurred investigation and enforcement costs totaling \$1,342.20. Accordingly, assessment of costs in the amount of \$1,342.20 against respondent is reasonable and appropriate.

ORDER

All licenses and licensing rights of respondent Robert Mahmoud Saberi under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code 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 Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

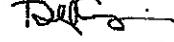
1. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
2. The 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 three 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 pay the Department of Real Estate the amount of \$1,342.20, as reimbursement for the costs of investigation and enforcement of this matter, within 30 days of the effective date of this Decision. Respondent may pay these costs according to a payment plan approved by the Department or its designee.

DATE: August 17, 2020

DocuSigned by:

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DENA COGGINS

Administrative Law Judge

Office of Administrative Hearings