



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 APR 05 2021.

IT IS SO ORDERED 3.9.21

DOUGLAS R. McCAULEY  
REAL ESTATE COMMISSIONER

DOUGLAS R. McCAULEY

**FILED**

FEB 17 2021

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

DEPARTMENT OF REAL ESTATE  
By B. Nicholas

**In the Matter of the Accusation Against:**

**CHARLES CLAIBORNE KELLUM, Respondent**

**Agency Case No. H-12480**

**OAH No. 2020100497**

**PROPOSED DECISION**

Administrative Law Judge Karen Reichmann, Office of Administrative Hearings, State of California, heard this matter on December 9, 2020, by telephone and videoconference.

Counsel Kyle Jones represented complainant Robin S. Tanner, Supervising Special Investigator, Department of Real Estate, State of California.

Respondent Charles Claiborne Kellum appeared on his own behalf.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on December 9, 2020.

## FACTUAL FINDINGS

1. Complainant Robin S. Tanner filed the accusation in her official capacity as Supervising Special Investigator, Department of Real Estate (Department), State of California.

2. Respondent Charles Claiborne Kellum 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 broker. Respondent was initially issued a real estate salesperson license in 1988; he became licensed as a broker in 2000.

3. On August 24, 2018, respondent was convicted in the Superior Court of California, County of San Mateo, pursuant to a no contest plea, of violating Health and Safety Code section 11360, subdivision (a)(3) (unlawful interstate transportation of marijuana for sale), a felony. Respondent was placed on probation for a period of three years and sentenced to serve 60 days in county jail, with permission to serve his sentence through the Sheriff's Alternative Sentencing Bureau. Respondent was also ordered to pay fines and fees.

The offense occurred on November 9, 2017. Respondent was arrested at the San Francisco Airport, after TSA agents discovered 15 bags containing marijuana, weighing a total of 17.94 pounds, in his carry-on luggage. Respondent was travelling to Louisiana, with a stopover in Texas:

4. Respondent did not notify the Department of his conviction within 30 days, as required by Business and Professions Code section 10186.2, subdivision (a).

5. Respondent acknowledged the conviction, and called it "embarrassing," but denied that he was transporting marijuana for sale. He explained that he has a

medical marijuana card and that he was bringing marijuana with him for his personal use. Respondent frequently visits Louisiana, where he has a second home, and stated that his friends there expect him to share marijuana with them, because he is from California. Respondent denied any intention of selling the marijuana he was bringing to Louisiana. This testimony was not credible. Respondent also disputed the amount of marijuana found in his position, insisting that without the packaging materials, the weight was only 15 pounds. Respondent declined to explain how he came into possession of the marijuana.

6. Respondent is in compliance with the terms of his criminal probation, with the exception of full payment of fines and fees. He completed his 60-day jail sentence by working in the parks in Daly City. He plans on seeking early termination from probation and an expungement under Penal Code section 1203.4, but has not yet done so.

7. Respondent testified at length about a \$170,000 judgment against him for child support for his two children, who are now adults. He referred to the judgment as "bogus" and repeatedly stated that he will never pay it. He described this debt as stemming from his deceased ex-wife's commission of welfare fraud without his knowledge. Respondent further testified that he had custody of his two children when they were minors, and always supported them financially, and also that he supported his ex-wife after she was diagnosed with cancer in late 2019 up until her recent death. Respondent stated that he has spent millions of dollars challenging the child support judgment, and that he intended to renew his challenge now that his ex-wife has died.

8. Respondent has been licensed for 32 years, but has not been engaged in licensed activity in California lately. Respondent is also licensed as a real estate broker in Louisiana. He wants to keep his license to help his daughters invest in properties.

Respondent plans to file for bankruptcy in the near future, and plans to work primarily in Louisiana. He wants a fresh start so that he can live up to his potential.

9. Respondent has been smoking marijuana since his teen years. He continues to use marijuana. He requested and received permission to use medical marijuana while on probation. Respondent denies having used any other drugs. Respondent has never undergone any drug counseling.

10. Respondent apologized for failing to notify the Department about his felony conviction. He called it an "oversight" and denied intending to defraud the Department. He stated that caring for his dying ex-wife and supporting his grieving children distracted him from notifying the Department and from responding to the Department's letters. Respondent also noted that he took the real estate examination in 1988, and did not remember his obligation to report a conviction. He acknowledged, however, that his criminal defense attorney advised him that there could be consequences for his license as a result of his conviction.

11. Respondent is close to and supportive of his two children and his 10-year-old grandchild. He also provides support to his brother, who suffers from dementia. Respondent stated that he has helped a lot of people and is a good person. Respondent belongs to a church and plans to engage in volunteer activities.

12. In connection with the investigation and prosecution of this accusation, the Department has incurred expenses of \$812. These costs reflect \$545 in investigation costs and \$267 for legal services. The costs are supported by certifications by Supervising Special Investigator Stephanie Yee and Counsel Kyle Jones. These costs are found to be reasonable.

## LEGAL CONCLUSIONS

1. Business and Professions Code section 10177, subdivision (b), authorizes the Department to suspend or revoke the license of an individual who has been convicted of a felony or of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee. Respondent's conviction for transporting marijuana for sale is a felony and is substantially related to his duties, because the underlying conduct involved the commission of unlawful acts with the intent of conferring a financial benefit upon himself. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) Respondent's denial of an intent to profit from the sale of the marijuana was not credible. Cause exists to suspend or revoke respondent's license, in light of the matters set forth in Finding 3.

2. Business and Professions Code section 10177, subdivision (d), authorizes the Department to suspend or revoke the license of an individual who violates section 10186.2, by failing to report to the Department within 30 days of being convicted of a crime. Respondent failed to notify the Department that he had been convicted of a felony offense. Cause exists to suspend or revoke respondent's license, in light of the matters set forth in Findings 3 and 4.

3. In California Code of Regulations, title 10, section 2912, the Department has established criteria to be used in evaluating the rehabilitation of a licensee who has committed a criminal offense. These include the passage of no less than two years from the most recent offense, payment of restitution, expungement of convictions, successful completion of probation, abstinence from alcohol in cases involving alcohol use, payment of court fines, stability of family life, completion of educational programs, significant community involvement, and change in attitude.

4. Respondent was convicted of a felony offense, which arose from his attempt to transport a large quantity of marijuana on an airplane in November 2017. Respondent remains on criminal probation, and has not paid all fines and fees. Respondent steadfastly denied transporting marijuana for sale. This testimony was not credible and reflects a disregard for the law and a lack of rehabilitation. Weighing the rehabilitation criteria, it is determined that license revocation is the appropriate discipline. It would be against the public interest to allow respondent to retain his real estate license.

### **Costs**

5. Business and Professions Code section 10106 authorizes the Department to recover in disciplinary proceedings its reasonable costs of investigation and enforcement. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of costs sought pursuant to statutory provisions such as Business and Professions Code section 10106. These factors include: (a) whether the licensee has been successful at hearing in getting charges dismissed or reduced; (b) the licensee's subjective good faith belief in the merits of his or her position; (c) whether the licensee has raised a colorable challenge to the proposed discipline; (d) the financial ability of the licensee to pay; and (e) whether the scope of the investigation was appropriate in light of the alleged misconduct.

None of these factors support a reduction of the modest amount of costs sought in this matter. Respondent will be ordered to pay the full costs of the Bureau's investigation and enforcement.



## ORDER

1. All licenses and licensing rights of respondent Charles Claiborne Kellum under the Real Estate Law are revoked.
2. Respondent shall pay the Department's costs associated with the investigation and enforcement of this action pursuant to Business and Professions Code section 10106, in the amount of \$812.

DATE:01/07/2021

*Karen Reichmann*  
KAREN REICHMANN

Administrative Law Judge

Office of Administrative Hearings