

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of:

AKEL HILLANY,

Respondent.

) DRE No. H-12591 SF

) OAH No. 2022060646

DECISION

The Proposed Decision dated May 22, 2023, 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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**FILED**  
JUN 26 2023  
DEPARTMENT OF REAL ESTATE  
By J. Jaggard

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 17 2023.

IT IS SO ORDERED 6.23.23

DOUGLAS R. McCAULEY  
REAL ESTATE COMMISSIONER



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

**FILED**  
JUN 21 2023  
DEPARTMENT OF REAL ESTATE  
By J. Taggart

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

**AKEL HILLANY, Respondent.**

**Agency Case No. H-12591 SF**

**OAH No. 2022060646**

**PROPOSED DECISION**

Administrative Law Judge Michelle Dylan, State of California, Office of Administrative Hearings, heard this matter on March 4, 2023, via videoconference.

Real Estate Counsel Kyle T. Jones represented complainant Stephanie Yee, Supervising Special Investigator, Department of Real Estate, State of California.

Attorney Boris Bindman represented respondent Akel Hillany, who was present.

The record was left open until May 9, 2023, for respondent to submit character references which were timely submitted and admitted as Exhibit A. The record closed and the matter was submitted for decision on May 9, 2023.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. Complainant Stephanie Yee made the accusation in her official capacity as a Supervising Special Investigator with the Department of Real Estate (Department), State of California.

2. Respondent Akel Hillany was originally licensed and had licensing rights under the Real Estate Law (Business and Professions Code section 10000 et seq.)<sup>1</sup> as a real estate salesperson beginning on December 6, 2018. The license was in full force and effect at all relevant times. Respondent's license is set to expire on January 5, 2027.

### **Criminal Conviction**

3. On June 6, 2019, in the Court of Justice of the State of Kentucky, respondent was convicted of violating section 218A.1421, subdivision (4)(a) (attempted trafficking of marijuana) of the Kentucky Revised Statutes, a misdemeanor. Respondent was sentenced to 60 days in county jail, which was stayed and not imposed, and respondent was placed on informal probation for two years with terms that included paying a fine, submitting to drug testing, and obeying all laws. Respondent successfully completed the terms of his probation and his probation ended on June 6, 2021.

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<sup>1</sup> All further statutory references are to the Business and Professions Code unless otherwise stated.

4. The facts and circumstances underlying the conviction occurred on January 16, 2019. Respondent flew into Cincinnati-Northern Kentucky International Airport to visit a girlfriend that lived in Ohio. Respondent had agreed to pick up two bags containing marijuana at the baggage claim at the airport, and to deliver them to a location in Indianapolis. In exchange for doing so, respondent was supposed to be paid several hundred dollars. Respondent identified the first bag by comparing it to a photograph he had been given. Respondent picked up the bag and placed it next to him, when he noticed what appeared to be law enforcement officers in the area. Respondent got scared and placed the bag back on the baggage carousel and left the airport. Law enforcement confirmed that the two bags contained marijuana. Respondent was arrested several days later when he returned to the airport.

### **Respondent's Evidence**

5. Respondent was 28 years old at the time of the offense. He was struggling financially and lived with two roommates in Oakland. Respondent agreed that his conduct as described in Factual Finding 4 constituted criminal behavior and stated that he had a terrible lapse in judgement at the time. Respondent reported that the arrest was a turning point in his life, and that he has since learned to make better decisions. Respondent deeply regrets his misconduct and wishes that it had never occurred.

6. Respondent graduated from San Francisco State University in 2014 with a degree in communications. Respondent worked in the insurance industry prior to obtaining his real estate license.

7. Respondent passed his real estate exam in December of 2018, and worked as a real estate salesperson with Windemere Realty (Windemere) (also noted

as Sam's Doghouse, Inc. on respondent's license history) from January 30, 2019, through the end of 2020. Respondent was not working as a real estate salesperson at the time of the offense.

8. Respondent has been working as a real estate salesperson with Luxe Realty Group (Luxe) since January 2021.

9. Respondent has sold 66 homes in his capacity as a real estate salesperson. Respondent has not been informed of any issues or complaints against him in connection with his work.

10. Respondent has focused his time and energy into real estate and becoming a top producer at Windemere and Luxe. Respondent reported that he quickly became a top producer, and that he prides himself on being a highly respected, diligent, and skilled salesperson with a track record and reference list to prove it.

11. Respondent has assisted Luxe with onboarding, training, and mentoring more than eight new agents in the industry.

12. Respondent has taken classes to become a real estate broker, and his goal is to ultimately apply for a broker's license.

13. Respondent married his partner in June 2022, and they are expecting their first child to be born in June of this year. Respondent is hoping to buy a home for his family.

14. Respondent has no other convictions on his record and plans to seek an expungement of the 2019 conviction when he is eligible to do so.

15. Respondent has changed his lifestyle since the time of the incident. He no longer spends time with the people he used to. Respondent often spends time with his colleagues and family, and has been focusing on being a better real estate salesperson, person and partner to his now wife.

16. Respondent is not involved in the marijuana trade and does not engage in real estate transactions that involve marijuana.

17. Respondent is grateful for his real estate license and believes that having his license has enabled him to help his parents and his family.

18. Mahyar Nooraei, a broker and co-founder of Luxe, wrote a letter of reference on respondent's behalf. Nooraei met respondent in 2019. Respondent caught the group's attention when he started to stand out as one of the top up-and-coming realtors in the East Bay. Respondent joined Luxe in January 2021. Nooraei described respondent as dedicated with a strong work ethic, and a leader who goes "above and beyond with an eagerness to learn." Nooraei wrote that respondent has a willingness to help without limitation and that the brokerage "would not be the team [they] are today without [respondent]."

19. Mustafa Tinawi, a broker and Nooraei's partner at Luxe, wrote a letter of reference on respondent's behalf. Tinawi has known respondent for 10 years and wrote that he has watched him grow into the professional and person he is today. Tinawi described respondent as a leader, educator, and mentor. Tinawi wrote that his license would be at risk if any of the realtors at Luxe were to use their license in a dishonorable fashion, and that he does not "have to worry about [respondent] whatsoever and can only hope every agent in [their] office carries themselves in the same manner as him."

20. Mike Nelson, owner of a real estate investing company, Coveway Properties, LLC, wrote a letter of reference on respondent's behalf. Nelson has known respondent for several years and they have closed on a number of properties together. Nelson wrote that respondent's knowledge of real estate is impressive, that he is kind, honest, has integrity and a "heart of gold," and puts the needs of his clients first.

21. Mona Nia, a trusts and estates attorney who has known respondent for 15 years, wrote a letter on respondent's behalf dated October 10, 2022. Nia wrote that she has referred complex and challenging listings to respondent and that she has been impressed with his hands-on approach, dedication, professionalism, and bedside manner with the parties regardless of the size of the listing or how difficult the family dynamics are. Nia also wrote that respondent has a strong passion for real estate, and that she truly believes that he would never jeopardize his license again. Nia wrote that since the incident, respondent has gained experience and purpose, gotten married and matured significantly. Nia wholeheartedly supports respondent's efforts to maintain his license.

## **Costs**

22. Complainant requests \$1,274 for investigating and enforcing this matter. Complainant submitted declarations supporting prosecution costs of \$258.10 and investigation costs of \$1,015.90, which set forth the tasks undertaken, the amount of time spent per task, and the hourly rate charged, in itemized statements that comply with California Code of Regulations, title 1, section 1042, subdivision (b)(2). These costs are found to be reasonable.

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## LEGAL CONCLUSIONS

### **Burden of Proof**

1. The burden of proof is on the Department to show cause for discipline, by clear and convincing evidence. The burden is on respondent to show rehabilitation, by a preponderance of the evidence.

### **Cause for Discipline (Substantially Related Criminal Conviction)**

2. Section 490, subdivision (a), authorizes the suspension or revocation of a license if the licensee has been convicted of a crime that is substantially related to the qualifications, functions or duties of the licensed business or profession. Section 10177, subdivision (b), which is specific to real estate licenses, authorizes the suspension or revocation of a license if the licensee has been convicted of a substantially related crime.

3. California Code of Regulations, title 10, section 2910, sets forth criteria for determining whether a crime is substantially related to the qualifications, functions or duties of a real estate licensee. A crime is deemed to be substantially related if it involves doing an unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator. (*Id.*, subd. (a)(8).) Respondent's conviction for attempted trafficking of marijuana is substantially related under this regulation. By reason of the matters set forth in Factual Findings 3 and 4, cause exists to discipline respondent's real estate salesperson license pursuant to sections 490, subdivision (a), and 10177, subdivision (b).

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## **Determination of Discipline**

4. Cause for discipline having been established, the remaining issue is what level of discipline is required to protect the public. California Code of Regulations, title 10, section 2912, sets forth criteria for determining the rehabilitation of a licensee in a disciplinary proceeding. Factors to be considered in evaluating rehabilitation include the following: the time elapsed since commission of the offense; restitution to any person who has suffered monetary loss through the substantially related acts of the licensee; payment of any fine imposed in connection with the criminal convictions; successful completion of probation; the stability of family life and fulfillment of parental or familial responsibilities subsequent to the criminal conviction; completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement; new and different business relationships from those which existed at the time of the conduct; and change in attitude from that which existed at the time of the commission of the criminal offense.

5. Respondent's misdemeanor conviction took place almost four years ago, and the conduct occurred almost four and one-half years ago, before respondent was working as a real estate salesperson and when he was engaged in a different lifestyle. Respondent complied with all the terms of his probation, including paying the fine and submitting to drug testing, and he successfully completed his probation almost two years ago. Respondent has no other criminal convictions. Respondent took responsibility for his actions and has demonstrated a change in attitude since the time of the offense. Respondent has a stable home life and is now married and expecting a child. Respondent has been successfully working as a real estate salesperson for almost four and one-half years without prior discipline and has the support and trust of others in the industry, including the founders of Luxe, who highly praise his work

ethic and leadership abilities. Considering all the evidence presented, it is determined that the public interest would be protected by permitting respondent to retain his real estate salesperson license under the heightened supervision of a restricted license.

## **Costs**

6. Section 10106 provides that complainant may request that the licensee be ordered to pay a sum not exceeding reasonable costs of investigation and enforcement. Complainant proved reasonable costs of investigation and enforcement in the amount of \$1,274. (Factual Finding 22.)

7. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the California Supreme Court set forth standards for determining whether costs should be assessed in the particular circumstances of each case, to ensure that licensees with potentially meritorious claims are not deterred from exercising their right to an administrative hearing. 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 or her 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. These considerations do not warrant a reduction of costs in this matter. Pursuant to *Zuckerman*, the award of costs is \$1,274.

## **ORDER**

All licenses and licensing rights of respondent Akel Hillany under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code section 10156.5.

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 or for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.

4. Respondent shall submit with any application for a 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

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(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 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 notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate. The letter shall set forth the date of respondent's arrest, the crime for which respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

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7. Respondent shall pay to the Department of Real Estate costs associated with its investigation and enforcement pursuant to Business and Professions Code section 10106 in the amount of \$1,274. Respondent shall be permitted to pay these costs in a payment plan approved by the Department, with payments to be completed no later than three months prior to the end of the restriction on his license.

DATE: **05/22/2023**

*Michelle Dylan*

MICHELLE DYLAN

Administrative Law Judge

Office of Administrative Hearing