



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 08 2023.

IT IS SO ORDERED 4.18.23

DOUGLAS R. McCAULEY  
REAL ESTATE COMMISSIONER

DOUGLAS R. McCAULEY

**FILED**

APR 14 2023

DEPARTMENT OF REAL ESTATE

By J. Taggart

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

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

**ALEX JAVIER ABADIA-CHAVEZ, Respondent.**

**Agency Case No. H-12635-SF**

**OAH No. 2022120128**

**PROPOSED DECISION**

Administrative Law Judge Carl D. Corbin, State of California, Office of Administrative Hearings, heard this matter on March 13, 2023, by videoconference.

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

Attorney Iustina G. Mignea represented respondent Alex Javier Abadia-Chavez, who was present.

The record closed and the matter was submitted for decision on March 13, 2023.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. On January 23, 2017, the Department of Real Estate (Department), issued real estate salesperson license No. S/02023813 to respondent Alex Javier Abadia-Chavez. This license was active at all relevant times and will expire on January 22, 2025, unless renewed. There has been no prior discipline taken against respondent's license.

2. On October 26, 2020, acting in her official capacity as Supervising Special Investigator for the Department, complainant Stephanie Yee filed an accusation against respondent. The accusation alleges respondent is subject to discipline based on a substantially related criminal conviction for contracting without a license, for failing to notify the Department within 30 days of the conviction, and for attempting to procure a license renewal by fraud, misrepresentation, or deceit. Respondent timely filed a notice of defense and this proceeding followed.

### **Conviction**

3. On August 3, 2020, in the Superior Court of California, County of Santa Clara, respondent was convicted, on a plea of guilty/nolo contendere, of violating Business and Professions Code section 7028, subdivision (a) (contracting without a license), a misdemeanor. Imposition of sentence was suspended and respondent was placed on "court summary" probation for a period of two years on the condition that he obey all laws and pay fines and fees.

4. The facts and circumstances underlying the conviction were that on approximately January 9, 2019, respondent was completing a landscaping contracting project without a contractor's license.

5. Respondent failed to notify the Department within 30 days of his conviction.

6. On March 8, 2021, respondent submitted an application to the Department to renew his license, which was granted. Respondent certified under penalty of perjury that his answers on the application were true and correct. On question 13 of respondent's renewal application, which asked if within the six-year period prior to filing the application had he been convicted of any misdemeanor or felony, he answered "no."

7. On January 5, 2023, respondent's conviction was expunged in accordance with Penal Code section 1203.4, subdivision (a)(1).

### **Respondent's Evidence**

8. Respondent's testimony at hearing was sincere and credible.

9. Regarding his conviction, respondent testified he was unaware that he required a contractor's license to complete landscaping work. Upon being informed by a representative of the Contractors State License Board (CSLB) of the need for a license, respondent promptly completed the necessary requirements and obtained a corporation license from the CSLB. He continues to maintain an active CSLB corporation license.

10. Respondent testified he received the misdemeanor complaint and associated documents, but did not understand how to respond so he hired legal counsel who "handled" the matter. Respondent further testified he was not arrested and never appeared in court. He paid all fines and fees and completed his two-year probation with no violations. Respondent has accepted responsibility for the

conviction stating, "he deserved the conviction and should have known about the rules" and he learned "a hard lesson."

11. Respondent testified he did not report his misdemeanor conviction while completing his license renewal because he thought he did not need to as he was informed that his misdemeanor was only a "slap on the hand." Respondent acknowledged at hearing his mistake, he now understands the need to report any misdemeanor convictions to the Department, and has learned "the hard way" his duty to understand all the rules and laws to maintain his salesperson license.

12. Respondent's primary income has been from his contracting work, but he wants to now start focusing on real estate salesperson work. He currently has limited experience as a real estate salesperson assisting fewer than a total of 10 buyers and sellers. As an immigrant whose second language is English, he wants to help other Latinos buy homes to increase their financial security. Respondent testified he believes part of his responsibility as a real estate salesperson is to inform sellers it may not be a good time in the market to sell their home even though providing this advice could cost him a sale for which he would receive compensation.

13. Patrick Judge, a Senior Vice President and Managing Officer of Intero Real Estate Services, wrote a letter and testified at hearing in support of respondent. Judge is aware and has read the accusation against respondent. Judge hired respondent approximately three years ago based on the recommendations of other agents in the office. Judge testified respondent is "lightly experienced" as a real estate salesperson because respondent's primary job has been as a contractor. However, respondent has been able to use his expertise as a contractor in his role as a real estate salesperson. Respondent interacts in a positive manner with others and has

been honest and forthright. Judge has had other agents with restricted licenses work in his office and if respondent's license was restricted Judge would still employ him.

14. Daniel Rumer III, a licensed realtor at Intero Real Estate Services, wrote a letter and testified at hearing in support of respondent. Rumer is aware of the criminal conviction and has read the accusation against respondent. Rumer met respondent at Intero in 2020. Rumer has a professional and personal relationship with respondent. Rumer testified that respondent has expressed regret for his mistakes, but those mistakes have made respondent "a more honest and ethical person." Rumer testified to examples of respondent's honesty and good character.

15. Elvis Percy Rufner Schlaefli wrote a letter of support for respondent. Schlaefli was aware of respondent's conviction. Schlaefli positively recounted an experience when respondent assisted him in buying a new home. Schlaefli described respondent as very knowledgeable, extremely trustworthy, extremely helpful, very honest, and he plans on continuing his relationship with respondent.

16. Dennis Olarte wrote a letter of support for respondent. Olarte was aware of respondent's conviction. Olarte worked with respondent when he was considering selling his house and purchasing a new home. Olarte described respondent as very helpful, very honest, and very hard working. Respondent did not put pressure on Olarte to purchase a home and helped Olarte realize it was not a good time to buy a home. Olarte has maintained a line of communication with respondent in order to purchase a home at a later date.

17. On March 8, 2023, respondent completed a three-hour course on ethics.

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## **Costs**

18. Complainant seeks to recover \$1,518.45 in investigation costs and \$235.85 in enforcement costs, for a total amount of \$1,754.30. These costs are supported by declarations and billing records that describe the tasks performed and time spent by each identified professional with the Department and the method of calculating the cost in compliance with California Code of Regulations, title 1, section 1042. In the absence of any evidence to the contrary, the above costs are found to be reasonable.

## **LEGAL CONCLUSIONS**

### **Burdens and Standards of Proof**

1. The burden of proof is on the complainant to show cause for discipline by clear and convincing evidence to a reasonable certainty. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457; Evid. Code, § 500.) The burden is on respondent to show rehabilitation by a preponderance of the evidence. (Evid. Code, §§ 115, 500.)

### **Causes for Discipline**

2. The Real Estate Commissioner is authorized to suspend or revoke the license of a licensee who has attempted to procure a license renewal by fraud, misrepresentation, or deceit. (Bus. & Prof. Code, § 10177, subd. (a).) Respondent failed to report his conviction on the application for renewal of his salesperson license. (Factual Finding 6.) Cause exists to discipline respondent's license pursuant to Business and Professions Code section 10177, subdivision (a).

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3. The Real Estate Commissioner is authorized to suspend or revoke the license of a licensee who has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a licensee. (Bus. & Prof. Code, §§ 490, 10177, subd. (b).) California Code of Regulations, title 10, section 2910, sets forth the criteria to be used when determining whether a crime or act is substantially related. Respondent's conviction for contracting without a license (Factual Finding 3) is substantially related to the qualifications, functions, or duties of a real estate licensee because it involved willfully violating or failing to comply with a statutory requirement that a license, permit, or other entitlement be obtained from a duly constituted public authority before engaging in a business or course or conduct. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(7).) Cause exists to discipline respondent's license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b).

4. The Real Estate Commissioner is authorized to suspend or revoke the license of a licensee who has failed to report a conviction to the Department. (Bus. & Prof. Code, §§ 10177, subd. (d), 10186.2.) Respondent failed to notify the Department within 30 days of his conviction. (Factual Finding 5.) Cause exists to discipline respondent's license pursuant to Business and Professions Code sections 10177, subdivision (d), and 10186.2.

### **Determination of Discipline**

5. The purpose of administrative proceedings regarding professional licenses is not to punish the applicant or licensee, but to protect the public. (Bus. & Prof. Code, § 10050.1, *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-786; *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 768.) The legislature intends that real estate licensees will be honest, truthful, and worthy of the fiduciary obligations they will bear. (*Harrington v. Department of Real Estate* (1989)

214 Cal.App.3d 394, 402.) The question is whether respondent has demonstrated that he can be trusted to discharge his duties as a real estate licensee in a manner consistent with public safety.

6. The Department has established criteria for rehabilitation to be considered in determining appropriate discipline against a real estate licensee. (Cal. Code Regs., tit. 10, § 2912.)

Respondent should have reported his conviction to the Department within 30 days and he should have reported his conviction on the renewal application for his license. Respondent's credible testimony that he was not aware of his duty to report his conviction to the Department and to report his conviction in his renewal application is troubling. Especially because a real estate salesperson needs to be knowledgeable of the laws and needs to carefully and thoroughly read and appropriately respond to all documents related to the profession of real estate. That said, respondent has engaged in significant rehabilitation since his conviction on August 3, 2020. He has also accepted responsibility for the wrongfulness of his actions, which is an essential step toward rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.)

Respondent successfully completed the probation period and paid all fines and fees associated with his conviction for contracting without a license. He completed all necessary requirements to obtain a license from the CSLB. Respondent still maintains a corporation license with the CSLB. He also took action to have his conviction expunged.

Respondent has taken a three-hour course on ethics. He has developed a professional and personal friendship with Rumer, another real estate salesperson at his

firm. Respondent seeks to expand his real estate practice to provide for his family and to assist other Latinos in developing financial security through the purchase of a home.

Most importantly, respondent has demonstrated and articulated at hearing a change in attitude, which of the many rehabilitation criteria is "arguably the most important in predicting future conduct." (*Singh v. Davi* (2012) 211 Cal.App.4th 141, 149.)

Based on the totality of circumstances, the public will be adequately protected by revoking respondent's real estate salesperson license, but allowing him to apply for and hold a restricted real estate salesperson license for a period of two years, which includes the requirement for him to be closely supervised by an employing broker.

### **Costs**

7. The Real Estate Commissioner may require a licensee found to have committed violation of the licensing act to pay the Department the reasonable costs of the investigation and enforcement of the case. (Bus. & Prof. Code, § 10106.) As set forth in Factual Finding 18, it was established that the Department has reasonably incurred \$1,754.30 in costs to investigate and prosecute this matter.

8. 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 was successful at hearing in getting the charges dismissed or reduced; the licensee's good faith belief in the merits of their position; whether the licensee 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 support reducing the Department's cost recovery in this case.

## **ORDER**

Real estate salesperson license number S/02023813 and all other licenses and licensing rights issued to respondent Alex Javier Abadia-Chavez, under the Real Estate Law are revoked; provided, however, that a restricted real estate salesperson license shall be issued to respondent under Business and Professions Code section 10156.5 if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the issuance of such a restricted license and \$1,754.30 in investigation and enforcement costs within 90 days from the effective date of this Decision, unless otherwise ordered by the Department pursuant to a payment plan. The restricted license issued to respondent shall be subject to all the provisions of Business and Professions Code section 10156.7 and shall be subject to the following limitations, conditions and restrictions imposed under authority of Business and Professions Code section 10156.6:

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 that 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 two years have elapsed from the effective date of this decision and order.

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 bureau certifying that:

(a) the employing broker has read the decision and order in this matter; and

(b) 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 and order, 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 notify the Real Estate Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. 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.

DATE: **03/17/2023**

*Carl D. Corbin*

CARL D. CORBIN

Administrative Law Judge

Office of Administrative Hearings