

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:

CLYDE WASHINGTON,

Respondent.

) DRE No. H-12644 SF
)
) OAH No. 2023010530
)

FILED

AUG 29 2023

DEPARTMENT OF REAL ESTATE
By J. Leggett

DECISION

The Proposed Decision dated June 27, 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.

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. 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 SEP 18 2023.

IT IS SO ORDERED 8.22.23

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER



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

In the Matter of the Accusation Against:

**CLYDE WASHINGTON,
Real Estate Salesperson License No. 01199424
Respondent.**

Agency Case No. H-12644 SF

OAH No. 2023010530

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on June 19, 2023, by videoconference.

Counsel Richard K. Uno represented complainant Stephanie Yee, Supervising Special Investigator for the Department of Real Estate.

Attorney Ismael D. Perez represented respondent Clyde Washington, who also was present for the hearing.

The matter was submitted for decision on June 19, 2023.

FACTUAL FINDINGS

1. Since 1995, respondent Clyde Washington has held Real Estate Salesperson License No. 01199424. At the time of the hearing, this license was active, and was scheduled to expire April 12, 2024.

2. On December 9, 2022, acting in her official capacity as Supervising Special Investigator for the Department of Real Estate, complainant Stephanie Yee filed an accusation against respondent. The accusation alleges that respondent was convicted in August 2020 of crimes having a substantial relationship to his potential fitness to transact real estate business, and that he failed to notify the Department about these convictions. On this basis, complainant seeks disciplinary action against respondent. Respondent requested a hearing.

Professional Experience

3. Respondent has acted as a real estate salesperson from time to time since he obtained the license identified in Finding 1. He intends to continue this occasional business if he retains the license.

4. Between 2008 and 2018, respondent's chief business activity was as the administrator of a residential care facility for the elderly (RCFE), licensed by the state Department of Social Services (DSS). He and his wife owned this business, but sold it in 2018. Respondent had held a certificate from DSS authorizing him to serve as an RCFE

administrator, but either allowed it to expire or surrendered it¹ after the events described below in Findings 5 and 6.

Criminal Convictions

5. In the afternoon on July 12, 2018, respondent and his wife engaged in a physical fight, on a public sidewalk in San Jose, with a woman who previously had worked at the RCFE described in Finding 4. Respondent's wife initiated this fight. The fight also involved at least one neighbor or passer-by who attempted to intervene on the woman's behalf.

6. By the time police officers arrived at the scene, respondent and his wife had left. After collecting information from the woman and witnesses, the officers went to respondent's home. They arrested both respondent and his wife.

7. On January 16, 2019, the People of the State of California charged respondent in the Superior Court of California, County of Santa Clara, with numerous crimes, including a felony violation of Penal Code section 245, subdivision (a)(1) (assault using a deadly weapon other than a firearm). The People alleged that the deadly weapon in question was a metal pipe, and that respondent and his wife had cooperated to wield it against the woman.

8. On August 14, 2020, respondent resolved the charges the People had filed in January 2019. The People dismissed the charge that respondent had violated Penal Code section 245, subdivision (a)(1), as well as several other charges.

¹ No documents regarding this certificate were in evidence. Respondent testified that he had "forfeited" the certificate.

Respondent pled "no contest" to charges that he had violated Penal Code sections 243, subdivision (a) (battery, a misdemeanor) and 245, subdivision (a)(4) (assault with "force likely to produce great bodily injury," a felony). The court convicted respondent on his plea.

9. The court sentenced respondent to 364 days in the county jail or in an electronic monitoring program, to begin in January 2021. The court also ordered respondent to undertake an anger management counseling program and to spend three years on probation.

10. In his "no contest" plea to the allegation that he had committed a violation of Penal Code section 245, subdivision (a)(4), and in his hearing testimony, respondent admitted that his behavior on July 12, 2018, had threatened great bodily harm to the other people in the fight. He testified, however, that the allegation in the criminal complaint against him that he had violated Penal Code section 245, subdivision (a)(1), by threatening the woman with a metal pipe was not true. Although no other evidence corroborated this testimony, it was consistent with the outcome of respondent's criminal matter, summarized in Finding 8.

Additional Evidence

11. The woman with whom respondent and his wife fought on July 12, 2018, had sued respondent and his wife over her working conditions at the RCFE, alleging wage and hour law violations and on-the-job sexual harassment by respondent. Respondent denies these allegations, and testified instead that he and the woman had engaged in a consensual sexual relationship for a few months. Respondent and his wife resolved this lawsuit without trial by paying a settlement to the woman.

12. One of respondent's reasons for accepting a negotiated resolution for his criminal charges was that he did not want to serve a jail or prison sentence, especially during the COVID-19 pandemic. He spent about six months in home detention, with electronic monitoring, in lieu of jail. Respondent also has completed all other terms of his criminal sentence. He testified credibly, but without corroboration, that his probation officer recently has informed him that his probation has terminated, even though three full years would expire in August 2023.

13. Respondent submitted an application in March 2020 to renew his real estate salesperson license. The application disclosed the criminal charges described above 7, and stated accurately that respondent's counsel was in negotiations with the People's counsel regarding their disposition.

14. Respondent knew in 2020 that if the criminal charges against him resulted in conviction, he would need to notify the Department. He testified credibly that he discussed the potential impact of conviction on his real estate license with his criminal defense counsel. He testified as well that he understood from his counsel after his conviction that his counsel had reported the conviction to the Department. This testimony also is credible, in light of the matters stated in Finding 13. Nevertheless, respondent's belief that his counsel had reported the conviction was incorrect; the Department received no timely report of respondent's conviction.

15. Two long-time friends and a business acquaintance provided reference letters attesting to respondent's good character. Friends Christopher Thompson and Samuel Gulley describe respondent as a dedicated community servant and a trustworthy friend. Barbara Hennessey knows respondent through their mutual work with a trauma-intervention organization, and describes him as respectful and

professional. According to respondent, none of these authors is aware of the criminal convictions described above in Finding 8, however.

16. The Department has incurred \$672.00 in attorneys' fees, and \$926.85 in investigation costs, in this matter. The Department's claim for these costs is supported by declarations that comply with California Code of Regulations, title 1, section 1042. The total cost amount (\$1,598.85) is reasonable.

LEGAL CONCLUSIONS

1. The Real Estate Commissioner (Bus. & Prof. Code, § 10050) may suspend or revoke a real estate salesperson's license only if clear and convincing evidence proves the facts supporting discipline. The factual findings above rest on clear and convincing evidence.

Cause for Discipline

2. Business and Professions Code sections 490 and 10177, subdivision (b), authorize the Commissioner 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. According to California Code of Regulations, title 10, section 2910, subdivision (a)(8), a crime that involves a threat of substantial injury to another person is substantially related to a real estate licensee's qualifications. The matters stated in Findings 5 through 8 and 10 establish that respondent was convicted in 2020 of crimes that relate substantially to a real estate salesperson's licensed activities, and that constitute cause for discipline.

3. Business and Professions Code sections 10177, subdivision (d), and 10186.2 authorize the Commissioner to suspend or revoke the license of a licensee who has failed to make a timely report to the Department about a criminal conviction. Although the matters stated in Findings 14 show that the Department received no such report, these matters along with the matters stated in Finding 13 do not warrant discipline against respondent for this omission.

Disciplinary Considerations

4. The only cause for discipline supported by clear and convincing evidence in this matter is the conviction described above in Finding 8. Although this conviction is for a serious crime, it is not (as complainant alleges) a conviction for use of a deadly weapon. Moreover, as summarized in Findings 5 and 11, respondent did not initiate the fight that resulted in his conviction, and it occurred under circumstances that are unlikely to recur. (See Cal. Code Regs., tit. 10, § 2912, subds. (e), (m).) Public safety calls for the Department to monitor respondent's compliance with all laws governing real estate licensees during a period of license restriction, but does not require outright revocation of respondent's real estate license.

Costs

5. The Commissioner may require a licensee found to have committed a violation of the licensing act to pay the Department the reasonable costs of the investigation and enforcement of the case. (Bus. & Prof. Code, § 10106.) The Department's request for reimbursement for \$1,598.85 in enforcement costs in this case is justified, and as set forth in Finding 16, is reasonable.

6. In *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the California Supreme Court set forth the standards by which a licensing agency

must exercise its discretion to reduce or eliminate cost awards to ensure that the agency does not deter licensees with potentially meritorious claims from exercising their administrative hearing rights. The court held that a licensing board requesting reimbursement for costs relating to a hearing must consider the licensee's "subjective good faith belief" in the merits of his position and whether the licensee has raised a "colorable challenge" to the proposed discipline. The board also must consider whether the licensee will be "financially able to make later payments." Last, the board may not assess full costs of investigation and enforcement when it has conducted a "disproportionately large investigation." These factors have been considered, and justify no cost reduction in this matter.

ORDER

All licenses and licensing rights of respondent Clyde Washington under the Real Estate Law are revoked; provided, however, that a restricted real estate salesperson license shall be issued to respondent in accordance with 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 restricted license within 90 days after the effective date of this decision.

The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7, and to the following limitations, conditions and restrictions imposed under authority of Business and Professions Code section 10156.6.

1. Before issuance of the restricted license, and as a condition of issuance of the restricted license, respondent must reimburse the Department for its enforcement costs in this matter, \$1,598.85.

2. 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.

3. 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.

4. 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 four years have elapsed from the effective date of this decision.

5. 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 that shall certify:

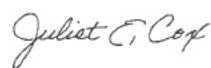
(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

(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.

6. Respondent shall, within nine months after 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 in accordance with the Administrative Procedure Act to present such evidence.

7. Respondent shall notify the Commissioner in writing within 72 hours after 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 on suspicion of 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: 06/27/2023



JULIET E. COX

Administrative Law Judge

Office of Administrative Hearings