

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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In the Matter of the Accusation of:

FLORENCE YUEN SHAN KONG,

Respondent.

) DRE No. H-12682 SF

) OAH No. 2023090287

FILED
APR 08 2024
DEPARTMENT OF REAL ESTATE
By J. Targant

DECISION

The Proposed Decision dated February 23, 2024, 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.

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 APR 29 2024.

IT IS SO ORDERED 4/2/2024

Chika Sunquist
REAL ESTATE COMMISSIONER


By: Marcus L. McCarther
Chief Deputy Real Estate Commissioner

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

FILED
MAR 22 2024
DEPARTMENT OF REAL ESTATE
By J. Taggart

In the Matter of the Accusation Against:

FLORENCE YUEN SHAN KONG, Respondent.

Case No. H-12682 SF

OAH No. 2023090287

PROPOSED DECISION

Administrative Law Judge Michelle Dylan, State of California, Office of Administrative Hearings, heard this matter on February 7, 2024, via videoconference.

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

Attorney Scott J. Harris represented respondent Florence Yuen Shan Kong, who was present at the hearing.

The record closed and the matter was submitted on February 7, 2024.

FACTUAL FINDINGS

Jurisdictional Matters

1. Florence Yuen Shan Kong was originally licensed and had licensing rights under the Real Estate Law (Business and Professions Code section 10000 et seq.) as a real estate salesperson beginning on September 14, 2016, and as a broker beginning on February 7, 2018. Respondent's broker's license was in full force and effect at all relevant times. Respondent's broker's license is scheduled to expire on February 6, 2026. Respondent also has licensing rights as a mortgage loan originator, according to Nationwide Mortgage License System & Registry (NMLS) records. Respondent's originator endorsement has been inactive since January 13, 2022.

2. On July 10, 2023, complainant Stephanie Yee filed the accusation¹ in her official capacity as a Supervising Special Investigator with the Department of Real Estate (Department), State of California. As cause to suspend or revoke respondent's license and endorsement, complainant alleges that respondent has two criminal convictions; she was disciplined by another licensing authority based on the convictions; and she failed to timely disclose the charges, convictions, and license discipline to the Department. Respondent timely filed a notice of defense and this proceeding followed.

¹ At hearing, complainant orally amended the accusation at page 1, lines 26 and 27, to read "one count" instead of "two counts."

Criminal Convictions

3. On February 11, 2021, in the United States District Court for the Northern District of California, respondent was convicted by pleas of guilty of violating United States Code, title 18, section 666, subdivision (a)(2)² (theft or bribery in a program receiving federal funds), and United States Code, title 18, section 1001, subdivision (a)(2)³ (false statements to a government agency), both felonies. Respondent was committed to the custody of the United States Bureau of Prisons for a term of one year and one day. Upon her release, respondent was placed on supervised release for three years as to each count, to run concurrently. The conditions of respondent's supervised release include paying a fine of \$95,000 and a special monetary assessment of \$200; not committing another crime; providing the probation officer with access to any financial information, including tax returns; submitting her person and property to search by a United States probation officer or any federal, state or local law enforcement officer at any time with or without suspicion; not associating with any person convicted of a felony, unless granted permission to do so by the probation

² The elements of this offense include giving, offering, or agreeing to give anything of value to a person who is an agent of an organization, state, local, or tribal government (that received federal assistance in excess of \$10,000 in a one-year period); with intent to influence or reward the agent in connection with any transaction or series of transactions of such organization, government, or agency that involved \$5,000 or more; and acting corruptly.

³ The elements of this offense include knowingly and willfully making a materially false statement in a matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States.

officer; not owning or possessing a firearm; and participating in a mental health program as directed by her probation officer. Respondent was incarcerated from March 2021 through August 2021, when she was released; and she remains on supervised release.

4. At the time of the offenses, respondent owned a construction company, Kwan Wo Ironworks (Kwan Wo), that did business with the City and County of San Francisco (City), directly at times, and at times as a subcontractor for other companies who held prime contracts with the City. Respondent also owned a construction debris recycling company, SFR Recovery Inc. (SFR Recovery), that did business directly with the City. Respondent still owns both companies but has not been involved in their operations since 2020.

5. The facts and circumstances leading to the bribery conviction, as stated in the plea agreement signed by respondent on September 17, 2020, are as follows:

On or about December 9, 2019, I purchased a Rolex model 228238 40 mm gold watch, worth approximately \$36,550, in Hong Kong that I gave to Mohammed Nuru, then the director of the San Francisco Public Works.

As the director of the San Francisco Public Works, also known as the Department of Public Works ("DPW") of the City and County of San Francisco ("the City"), Nuru had great influence over City business, public contracts and permits, and the directing the expenditures of DPW funds to contractors and others

I gave Nuru the Rolex watch in exchange for Nuru's past and future official actions benefitting my businesses, including as a reward for Nuru's influence at DPW directing business to SFR Recovery Inc., a recycling plant I owned that had a contract with the City to dispose of construction debris. I further provided the Rolex watch to Nuru corruptly, knowing and intending it to be an illegal gift to him in return for his official actions on my behalf.

6. The facts and circumstances leading to the conviction for false statements to a government agency, as stated in the plea agreement, are as follows.

On March 4, 2020, I was interviewed by agents of the Federal Bureau of Investigation. During this interview, I knowingly made multiple false statements to the FBI, including: (1) that Nuru and I were friends but that we did not discuss business; (2) that Nuru did not help me with contracts; (3) that Nuru did not extend any contract application deadlines for contracts I wanted; (4) that I did not talk to Nuru about the construction debris contract my company had with the City; and, (5) that I never gave Nuru money.

At the time I made these false statements, I acted deliberately and with knowledge both that the statements were untrue and that my conduct was unlawful.

7. Respondent confirmed in the plea agreement that she had read the entire plea agreement with the assistance of a Cantonese language interpreter and in the presence of her attorney.

Discipline by the Contractors State Licensing Board

8. On May 26, 2022, an accusation was filed against respondent (referenced in the accusation as Kin Wo Construction Inc.; Florence Yuen Shan Kong, RMO/CEO/PRES), by the Supervising Special Investigator I of the Contractors State Licensing Board (Board), alleging cause for discipline based on the criminal convictions set forth in Factual Finding 3. The circumstances underlying the convictions set forth in the accusation are that:

[O]n or about March 2, 2020, respondent Florence Yuen Shan Kong made false statements to Special Agents of the Federal Bureau of Investigation (FBI) related to her communications with Mohammed Nuru, then the Director of the San Francisco Department of Public Works, including bribing Mohammed Nuru to secure contracts with the San Francisco Department of Public Works.

9. Respondent did not timely file a notice of defense. The Board found that respondent had waived the right to a hearing, and that the charges and allegations in the accusation were true. The Board revoked respondent's license in a Default Decision and Order with an effective date of July 25, 2022.

Respondent's Failure to Report

10. Respondent failed to notify the Department of the felony charges, the criminal convictions, and the discipline of respondent's contractor's license by the Board within 30 days of each event, as required.

Respondent's Evidence

11. Respondent is 66 years old. She is currently married to her second husband and has four adult children. Her first husband passed away at an early age.

12. Respondent grew up in Hong Kong and learned to speak English there. She graduated from the Hong Kong Polytechnic University with a degree in accounting in 1982 and worked for a few years in Hong Kong doing accounting work.

13. Respondent immigrated to the United States in 1990. When she first arrived, she worked for two years providing accounting services to her cousin.

14. In 1992, she and her late husband started Kwan Wo, which fabricates and installs steel. Kwan Wo handles both government and private jobs. Respondent stopped working at Kwan Wo in 2020 due to her criminal case, and her sons currently operate the business. Respondent estimated the company's annual revenue over the last few years as approximately 20 million dollars.

15. Respondent also owns SFR Recovery, which is currently run by her husband; Kin Wo Construction, Inc., which offered general construction services prior to the revocation of its license by the Board based on respondent's criminal convictions; and Florentine Real Estate Group.

16. From 2017 through 2020, Kwan Wo was seeking contracts with the City. SFR Recovery also had a contract with the City. According to respondent, some of these contracts led to her convictions.

17. In the Conviction Detail Report signed by respondent on April 28, 2022, and provided to the Department, respondent wrote that in December 2019, she gave Nuru a luxury watch to benefit for past and future official actions benefitting her businesses, and that at the time she knew that such gifts were illegal; and that on March 4, 2020, she made false statements to federal agents with regard to her illegal interactions with Nuru.

18. However, at hearing, respondent reported that she did not know that giving the watch to Nuru was illegal and would benefit her businesses until she signed the plea agreement referenced in Factual Findings 5 and 6, on September 17, 2020. Respondent agreed that she gave Nuru a gold Rolex watch valued at approximately \$40,000, built and installed an iron gate for his residence, bought him dinners, and gave his children red envelopes containing money on several special occasions, including his daughter's graduation and the Chinese New Year. However, she reported that she considered Nuru a friend at the time, had known him for 13 years when she was convicted of the offenses, and had traveled to China with him before he became the Director of DPW. According to respondent, Nuru was kind to her and treated her like family. She gave Nuru the watch as a gift to show her gratitude; and at the time, she did not know that it was illegal to give him gifts.

19. In the Interview Information Statement signed by respondent on April 25, 2022, and provided to the Department, respondent indicated that she takes responsibility for her conduct, but that she did not intend to break the law. She wrote:

I do not wish to make any excuse[s] for my conduct. I must admit, I never intended to break the law. I am of Chinese descent, and I believe that cultural differences may have clouded my knowledge and understanding of the nature of my wrongdoing at the time. In the Chinese culture, it is not uncommon to give gifts and money as a gesture of good will, and to assist in facilitating positive outcomes. I now understand, in the United States, this is neither a cultural norm, nor legal in and of itself. I have learned a great deal from this matter, and I am prepared to address the consequences.

20. At hearing, respondent reported that she often gives gifts, such as meals and tickets, to business owners in the private sector to maintain good business relationships. At the time of the offenses, she did not understand the distinction between the permissibility of giving gifts in the private sector versus the public sector.

21. Respondent reported that she now knows that it was illegal to give Nuru the watch. She understands that it is improper to give gifts to officials in the public sector, because such gifts could affect the outcome of projects in a manner that is unfair to the public. Respondent reported that this standard is very different from the culture in Hong Kong, which includes pleasing officials.

22. Respondent reported that she now realizes that her friendship with Nuru and the gifts she gave to him "indirectly" led to assistance with her businesses and the allegations of bribery, and noted that she pled guilty to the offenses to take responsibility for her actions.

23. Respondent acknowledged that she made false statements to the FBI when they questioned her. However, she reported that when the agents contacted her at her home and questioned her about Nuru, she was very nervous and scared. Because English is not her first language, and due to cultural differences, she misunderstood some of their questions. For example, when they asked her if she ever discussed business with Nuru, she thought they were asking her if she discussed personal business with him or if they were partners in a business. She reported that she would have answered differently if they had asked whether she ever had discussed Kwan Wo with Nuru. Also, when the agents asked respondent whether she gave Nuru money, she did not consider the red packets of money that she had given to Nuru's children as money given to Nuru. Respondent regrets making assumptions about the agents' questions. At the same time, she admits that she was afraid to share her business dealings with Nuru with the agents.

24. Respondent's testimony regarding the details of the offenses was not credible to the extent that it conflicted with her admissions in the plea agreement.

25. Respondent reported that while she was incarcerated, she had a lot of time to think about her actions. She realizes that she made a mistake; she will not make the same mistake again; and going forward she must be 100 percent honest. Respondent expressed remorse for her conduct and a desire to serve the community now that she has been released.

26. Respondent built several very successful and large companies and reported that knowing that her actions may have jeopardized all that she has built is devastating.

27. Respondent credibly reported that she has complied with the terms of her supervised release. She believes that she is in the final year and that her probation officer is in the process of seeking to terminate her supervision period early.

28. Respondent reported that she has learned from this experience and has spoken forthrightly with friends, family, and business associates about her conduct, to prove her determination and commitment to walk a righteous path, and to ensure that others, particularly her family members, do not make similar mistakes.

29. Respondent reported in the Conviction Detail Report referenced in Factual Finding 17 that she has received therapy to address potential root causes that may have contributed to her misconduct.

30. Respondent would like to keep her real estate license so that she can continue to work and give back to the community. She reported that she has assisted a number of individuals (particularly members of minority groups who do not understand English) in the real estate market, and she would like to continue to do so. She would also like to serve as a role model to people who have made mistakes, to show them that they can change, improve, and still contribute to the community.

31. After respondent was released from custody, she took trainings on consumer protection, ethics, and trust fund handling. Documentation of these trainings was admitted into evidence. Respondent reported that she understands the value of honesty and that the client comes first.

32. As for failing to disclose the charges, the convictions, and the license discipline within 30 days of each event, respondent reported that she did not know that she was required to report the convictions within 30 days nor that she was required to report the license discipline at all, and that if she had known she would

have done so. Furthermore, respondent notified an auditor with the Department of the convictions on April 29, 2021, in response to an email from the auditor dated April 7, 2021, regarding the Department's intent to set up a Broker Office Survey. Respondent was incarcerated at the time and the notification was made on her behalf by a friend.

33. Respondent engages in extensive community service work and supports non-profit organizations. Sixteen years ago, respondent set up a nonprofit organization that helps the elderly, to which she is a major donor. Respondent volunteers with the Lion's Club and the San Francisco Chinese Club. She has donated money to build schools for underprivileged children and supports a nonprofit organization that provides housing and support for victims of domestic violence.

34. Respondent served as the president of the Asian American Contractors Association, a branch of ASIAN, Inc., a nonprofit organization.

35. Respondent submitted seven letters of reference in support of her retaining her real estate license.

36. Joseph Kin-Chun Kong, a real estate broker of 43 years who has known respondent for more than 25 years, wrote a letter dated February 5, 2024. Kong wrote that after respondent's release from custody, she expressed remorse for her wrongdoing and asked to work as a real estate broker under his guidance because she was still on probation. Kong wrote that respondent has assisted him in his brokerage with several real estate transactions in the last three years, and that she is the "most capable agent/broker [he has] ever used." He described her as tenacious, knowledgeable about the industry, with a great attention to detail, and always considering the client's best interests.

37. Catherine Chu, one of respondent's real estate clients, wrote a letter dated January 15, 2024. Chu is 71 years old and has known respondent for 15 years. She wrote that she was living on social security and working as a street vendor selling flowers to make ends meet but had some retirement savings. Respondent found a property for Chu and matched her with a partner to purchase a home in Fresno to rent out each month. Respondent handles the rental management without charge and Chu feels more secure and is happy with the monthly income. Chu feels that respondent has changed since her release from custody, has become more socially and morally responsible, and is working as a real estate broker "more for helping people in need than else."

38. Fiona Ma, C.P.A., and California State Treasurer, wrote a letter dated January 25, 2024. Ma wrote that she has known respondent for 30 years and is aware of respondent's conviction and time in custody. Ma wrote that respondent has expressed deep remorse for her actions and demonstrated commitment to becoming a person of integrity; and that she believes that respondent has changed. Ma noted in her letter that respondent reached a settlement with the City and County of San Francisco for violating the contracting process; and that she has continued to work as a real estate broker but "now does more for charitable purposes versus profit."

39. Lamar Heystek, the current president of ASIAN, Inc., a nonprofit organization dedicated to empowering economic equity through homeownership, business ownership and financial independence among Asian Americans and other socioeconomically disadvantaged communities, wrote a letter dated January 25, 2024, in support of respondent's retaining her license. Heystek wrote that respondent has been a selfless supporter of the organization's charitable activities and has helped

"make the case for a more equitable economy that gives minority business enterprises a fair chance."

40. Michael A. Chan, a former president of ASIAN, Inc., who has known respondent for 30 years, wrote a letter dated January 10, 2024. Chan wrote that respondent has provided support for expanding opportunities for minority businesses, particularly those engaged in servicing the homebuyer needs of Limited English Proficient (LEP) Chinese households. Chan wrote that respondent has publicly acknowledged her mistakes that led to her conviction and shown genuine remorse for lying to law enforcement; and that she deserves to retain her license so that she can continue to serve the realty needs of Chinese newcomers and immigrants.

41. Cao Jie Huang, head of the Adjudication Council Committee of Wong's Family Benevolent Association, a non-profit organization, wrote a letter (reportedly translated from Chinese to English by Huang's friend) dated February 3, 2024. Huang has known respondent for more than 10 years and wrote that he collects rents for some of the Association's properties. Huang wrote that respondent has helped him with rental issues and property management, handled complaints from his tenants promptly and professionally, and advised him on the best rental rates, tenant screening, maintenance, and legal matters free of charge. Huang wrote that he is aware of respondent's conviction and believes that she regrets her wrongdoing and wishes to redeem herself by using her professional qualifications to help the underserved.

42. Jaynry Mak, an attorney that knows respondent and is aware of her volunteer and charitable efforts in the Chinese American community, wrote a letter dated January 29, 2024. Mak wrote that she is confident in respondent's ability to serve as a real estate broker, and that respondent is a well-liked community leader

who demonstrates a strong work ethic and a general interest in serving the community.

43. Dr. Elaine Mo, respondent's sister-in-law, wrote a letter dated January 29, 2024. Mo wrote that she believes that respondent now better understands "the nuances of the law that led to her error so that she would not repeat it again," and that she uses her skills as real estate broker "more for charity than for financial gain."

Costs

44. Complainant requests \$2,128.75 for investigating and enforcing this matter. Complainant submitted declarations with documentation supporting prosecution costs of \$595.20 and investigation costs of \$1,533.55, which set forth the tasks undertaken, the amount of time spent per task, and the hourly rate charged. These declarations and supporting documentation comply with California Code of Regulations, title 1, section 1042, subdivision (b)(2). These costs are found to be reasonable pursuant to Business and Professions Code section 10106. The total amount of reasonable investigation and enforcement costs is \$2,128.75.

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.

First Cause for Discipline (Substantially Related Criminal Convictions)

2. Business and Professions Code section 490, subdivision (a), [all statutory references are to the Business and Professions Code, unless otherwise stated], authorizes the suspension or revocation of a license⁴ 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. Pursuant to subsection (c), a conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. 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 the employment of bribery, fraud, or deceit to achieve an end (subd. (a)(4)) or committing an unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator (subd. (a)(8)). Respondent's convictions for bribery and false statements to the FBI are substantially related to the qualifications, functions, and duties of a real estate license. By reason of the matters set forth in Factual Findings 3, 5 and 6, cause exists to discipline respondent's real estate licenses pursuant to sections 490, subdivision (a), and 10177, subdivision (b).

⁴ Under section 23.7, the word, "license" means license, certificate, registration, or other means to engage in a business or profession regulated" by the code.

Second Cause for Discipline (Discipline by Another Agency)

4. Section 10177, subd. (f), authorizes the suspension or revocation of a license if the licensee had a license issued by another agency of this state revoked for acts that would be grounds to suspend or revoke a California real estate license. Respondent's contractors license was revoked by the Board based upon the convictions set forth in Factual Findings 3. (Factual Findings 8 and 9.) Cause exists to revoke respondent's real estate licenses under section 10177, subdivisions (f).

Third Cause for Denial (Failure to Timely Report Criminal Charges, Convictions, and Discipline by Another Agency)

5. The Department may discipline the license of a real estate licensee who has willfully disregarded or violated the Real Estate Law. (§ 10177, subd. (d).) Section 10186.2, subdivisions (a)(1)(A), (a)(1)(B), (a)(1)(C), and (a)(2), requires a licensee to report to the Department in writing within 30 days the bringing of an indictment or information charging a felony, any misdemeanor or felony conviction, and any disciplinary action by a licensing agency. Cause exists to discipline respondent's real estate licenses under sections 10186.2 and 10177, subdivision (d), for failing to timely report the preceding events to the Department as set forth in Factual Finding 10.

Determination of Discipline

6. 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 (less than two years

since the most recent conviction is considered inadequate to demonstrate rehabilitation, however the two year period may be increased based on the nature and severity of the crime); 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; significant or conscientious involvement in the community; and change in attitude from that which existed at the time of the commission of the criminal offense.

7. Respondent's license has not been previously disciplined. Approximately three years have passed since respondent's convictions, which occurred in February 2021; and respondent has complied with the terms of her probation thus far, including paying the fine. Furthermore, she engages in significant community service work and has the support of family, friends, and influential members of the community. However, respondent's bribery and false statements to the FBI offenses are serious and they relate directly to the duties of a real estate license. Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualifications to be a real estate licensee. (See *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.) Respondent has submitted some evidence of rehabilitation; when a person is on criminal probation, however, rehabilitation efforts are accorded less weight, "[s]ince persons under the direct supervision of correctional authorities are required to behave in exemplary fashion." (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

8. Although respondent pled guilty to the offenses, she testified at hearing that it was not until she signed the plea agreement that she realized that her conduct was illegal and that her gifts to Nuru would benefit her businesses. Respondent also

heavily relied on cultural and language differences to explain her conduct, although she pled guilty to engaging in knowing and intentional conduct. Respondent cannot impeach her criminal convictions in this proceeding. (*Arneson v. Fox* (1980) 28 Cal. 3d. 440, 449.) The convictions are conclusive evidence of respondent's guilt of the offenses charged. (*Ibid.*) Fully acknowledging the wrongfulness of one's actions is an essential step toward rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940. Respondent's failure to take full responsibility for her conduct at the time that it occurred is concerning and raises questions about whether her attitude has truly changed since she engaged in the criminal conduct. Respondent also failed to timely notify the Department of the felony charges, convictions, and the revocation of her contractor's license.

9. Although respondent has expressed remorse for her actions, a truer indication of rehabilitation is presented by sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) Based on the nature of the offenses, the fact that respondent is still on supervised release, and the testimony presented at hearing, a longer period of sustained conduct is necessary to demonstrate true rehabilitation. The evidence is insufficient at this time to show that respondent is sufficiently rehabilitated to remain licensed, even on a restricted basis. Public protection requires revocation of respondent's real estate licenses.

Costs

10. 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 \$2,128.75. (Factual Finding 44.)

11. 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. None of these factors warrant a reduction of costs in this matter.

ORDER

1. All licenses and licensing rights of respondent Florence Yuen Shan Kong under the Real Estate Law are revoked.

2. Respondent shall pay to the Department of Real Estate costs associated with its investigation and enforcement in the amount of \$2,128.75, pursuant to Business and Professions Code section 10106.

DATE: 02/23/2024

Michelle Dylan

MICHELLE DYLAN

Administrative Law Judge

Office of Administrative Hearings