

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of:

RONG FU,

Respondent.

) DRE No. H-12712 SF

) OAH No. 2024010208

DECISION

The Proposed Decision dated June 3, 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, but the right to a restricted salesperson license is granted to Respondent.

Pursuant to Government Code Section 11521, the Department of Real Estate (the Department) 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**  
JUL 24 2024  
DEPARTMENT OF REAL ESTATE  
By J. Taggart

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 AUG 13 2024.

IT IS SO ORDERED

7/23/2024  
Chika Sunquist  
REAL ESTATE COMMISSIONER

  
By: Marcus L. McCarther  
Chief Deputy Real Estate Commissioner

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DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA**

**FILED**  
JUN 21 2024  
DEPARTMENT OF REAL ESTATE  
By J. Taggart

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

**RONG FU, Respondent.**

**Case No. H-12712 SF**

**OAH No. 2024010208**

**PROPOSED DECISION**

Administrative Law Judge Michael C. Starkey, State of California, Office of Administrative Hearings, heard this matter on May 8, 2024, via videoconference.

Counsel III Richard K. Uno represented complainant Stephanie Yee, Supervising Special Investigator, State of California, Department of Real Estate.

Attorney Lindsay M. Johnson represented respondent Rong Fu.

The record closed and the matter was submitted on May 8, 2024.

**FACTUAL FINDINGS**

1. On February 19, 2005, the Department of Real Estate (Department) issued a real estate salesperson license to respondent Rong Fu. This license was in effect at all relevant times and is scheduled to expire on June 8, 2025, unless renewed.

2. On December 8, 2023, complainant Stephanie Yee, acting in her official capacity as a Supervising Special Investigator of the Department, issued the accusation. Complainant alleges that respondent's Certified Public Accountant (CPA) license was disciplined in 2022; that respondent failed to timely notify the Department of this administrative discipline; and that these alleged facts constitute cause to discipline respondent's salesperson license. Complainant also seeks to recover the costs of investigation and prosecution of this matter. Respondent timely requested a hearing and this proceeding followed.

### **Discipline by the California Board of Accountancy**

3. On July 29, 2022, the California Board of Accountancy (Board) issued a decision and order (Board Decision), effective August 29, 2022, adopting a stipulated settlement agreement. Respondent agreed to revocation of respondent's CPA license and fictitious business permit, stayed, with a three-year period of probation on terms and conditions including that she reimburse the Board \$10,000 for its costs; be subject to an investigation of her professional practice; and complete a public accountancy course. Pursuant to the Board Decision, respondent is also permanently prohibited from engaging in and performing audits, reviews, compilations or other attestation services ("until such time, if ever, Respondent successfully petitions the [Board] for the reinstatement of the ability to perform audits, reviews, compilation or other attestation services").

4. Pursuant to the stipulation underlying the Board Decision, respondent also admitted the truth of each charge and allegation in an accusation against her, including the following:

- Respondent has been licensed as a CPA since 2004 and has held a fictitious business permit since 2017.
- On March 10, 2021, Respondent issued an audit report on the financial statements of a client for the years ending 2020 and 2019. Respondent's performance of the audit engagement departed from professional standards to the extent that the documentation does not support either the financial statements or the opinion rendered therein.
- Respondent's departures from professional standards included: a failure to properly perform and document planning for the audit; failed to address multiple audit risks caused by the COVID-19 pandemic (including the ability to collect reliable evidence, and the increased risk of fraud due to reduced workforce, disgruntled employees, and other changes related to the pandemic); respondent's "Internal Control Assessment was inadequate and failed to demonstrate either the required level of knowledge of the client's internal controls, or whether stated controls were actually in operation"; respondent "failed to accumulate sufficient appropriate documentation to support the reported balances of accounts receivable, which is another area where the need for professional skepticism is heightened by the pandemic"; failed to provide appropriate sufficient support for revenue; failed to provide sufficient support for payroll and payroll tax expense (respondent's documentation contradicted the financial statements by approximately \$81,000); the audit's Inventory and Cost of Sales lack the required support (including incorrectly reporting a discrepancy of approximately \$589,997 between inventory reported and the amount in the documentation as

"immaterial"); and omitting or failing to complete "multiple presumptively mandatory procedures."

- Respondent also failed to take the remedial or corrective actions prescribed by the Board-recognized peer review program in their last two most recent peer reviews. Many of the departures from standards in this engagement were repeats of those from respondent's two most recent "peer-reviews." Respondent's failure to demonstrate measurable improvement constituted a failure to cooperate with the Board's Peer Review Program.

### **Respondent's Notice to the Department of the Board's Imposition of Administrative Discipline**

5. On December 21, 2022, respondent mailed a form to the Department in which she reported the July 29, 2022, Board Decision (effective August 29, 2022) imposing discipline upon her CPA license. This form was the first time that respondent provided any notice to the Department of the discipline. Respondent reports that someone in the court's probation department told her to wait until the section 1203.4 dismissal was "resolved" before sending notice to the Department, and she was also travelling internationally during this period.

### **Respondent's Additional Evidence**

6. Respondent is 53 years old. She earned a bachelor's degree in economics in 1992 and a master's degree in accounting in 1999. She is self-employed, providing accounting, tax, and insurance services to her clients (approximately 100 businesses and 800 individuals), as well as financial advice and some real estate services. In addition to the real estate salesperson and CPA licenses, respondent also holds a

California insurance license and series 6 and 63 securities licenses issued by the Financial Industry Regulatory Authority (FINRA).

7. Respondent is originally from China and is bilingual in Mandarin and English. Most of her clients speak Mandarin. Real estate sales are a small part of respondent's business (approximately one or two transactions per year), but she wants to remain licensed so she can help Mandarin speakers "finish their American dream" by purchasing homes. Respondent's broker reviews all her real estate transaction paperwork to ensure its accuracy. Respondent is willing to comply with any probation terms imposed by the Department.

8. Regarding the events that led to the discipline of respondent's CPA license, she makes no excuses and reports that she has learned to be more careful and ensure that all her work is compliant with all applicable laws and regulations.

9. Respondent has fully complied with the probation terms imposed by the Board, and that probation is scheduled to end on August 29, 2025.

10. Respondent has no other record of license discipline, criminal history, or consumer complaints.

11. Respondent submitted several certificates showing completion of continuing education courses in various subjects primarily related to her CPA practice.

12. Respondent submitted three character reference letters, written by a former client and two of respondent's employees. The authors were aware of the discipline against respondent's CPA license. They hold respondent in high regard and report that she is conscientious and has a high level of integrity. One of respondent's

employees reports that respondent has learned and grown from the events that led to license discipline.

## **Costs**

13. Complainant requests a total of \$2,058.25 in investigation and enforcement costs, consisting of \$1,332.25 in investigation costs, and \$726 in prosecution costs reflecting time spent on this matter by counsel for the Department. That request is supported by sworn statements that comply with the requirements of California Code of Regulations, title 1, section 1042. Complainant is found to have reasonably incurred \$2,058.25 in the investigation and enforcement of this matter.

## **LEGAL CONCLUSIONS**

### **Standard of Proof**

1. The standard of proof applicable to prove cause for discipline of a license depends on whether the license is determined to be a professional license (clear and convincing proof to a reasonable certainty) or a non-professional license (preponderance of the evidence). That determination depends on the amount of education, training, or work entailed in obtaining the license at issue. (See *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889, 1892-95.) Here, the applicable standard of proof is not clear and neither party presented evidence or argument on the issue. However, this issue is not dispositive because the facts of this matter are undisputed and Factual Findings 3 through 5 were proven by clear and convincing proof to a reasonable certainty.



2. If a respondent contends mitigation or rehabilitation, it is the respondent's burden to prove that contention by a preponderance of the evidence. (*Whetstone v. Board of Dental Examiners of Cal.* (1927) 87 Cal.App. 156, 164; Evid. Code, § 115.)

### **First Cause for Discipline (Discipline of Another License)**

3. The Department may suspend or revoke the license of a real estate licensee who has:

had a license issued by another agency of this state, another state, or the federal government revoked, surrendered, or suspended . . . for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, if the action of denial, revocation, surrender, suspension, or debarment by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act.

(Bus. & Prof. Code, § 10177, subd. (f) [all subsequent statutory references are to the Business and Professions Code unless stated otherwise].) Cause exists to suspend or revoke respondent's real estate license under section 10177, subdivision (f), in light of the matters set forth in Factual Findings 3 and 4.

## **Second Cause for Discipline (Failure to Timely Report License Discipline)**

4. The Department may discipline the license of a real estate licensee who fails to report "[a]ny disciplinary action taken by another licensing entity or authority of this state" within 30 days. (§§ 10177, subd. (d), 10186.2.) Cause exists to suspend or revoke respondent's real estate license pursuant to sections 10177, subdivision (d), and 10186.2, in light of the matters set forth in Factual Finding 5.

## **Determination of Discipline**

5. Cause for discipline having been established, the remaining issue is what level of discipline is required to protect the public. Rehabilitation factors include the time elapsed and change in attitude. (Cal. Code Regs., tit. 10, § 2912.) Complainant argues for outright revocation. Respondent argues that she has been successful in her CPA license probation and is a good candidate for probation in this matter as well.

6. Real estate salespersons shepherd consumers through what are often the largest financial transactions of their lives. Diligence and accuracy in reviewing and completing the associated paperwork is critical. Respondent's departures from professional CPA standards during the audit that underlies the discipline of her CPA license raises questions about her abilities to effectively perform the technical duties of a real estate salesperson. However, performing audits is a specialized skill and the Board concluded that she was safe to continue practicing as a CPA (except for performing audits, reviews, compilations or other attestation services). She has successfully completed almost two years of the probation imposed on her CPA license. She accepts responsibility for her unprofessional conduct as a CPA and appears resolved to avoid such problems going forward. Additionally, respondent has been

licensed as a CPA and real estate salesperson for more than 19 years and has no other record of discipline of license discipline, criminal history, or consumer complaints. Respondent appears to be a good candidate for a restricted license. The public will be adequately protected by revocation of respondent's license and issuance of a restricted license for a period of three years.

## **Costs**

7. Pursuant to Business and Professions Code section 10106, complainant may request an administrative law judge to order a licensee found to have violated the licensing act to pay an amount that does not exceed the reasonable costs of investigation and enforcement. Complainant proved cause to order payment of reasonable costs of enforcement in the amount of \$2,058.25. (Factual Finding 13 and Legal Conclusions 3 and 4.)

8. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth guidelines for determining whether costs should be assessed in the particular circumstances of each case. The Department must consider whether to do so will unfairly penalize the licensee who has committed misconduct, but who has used the hearing process to obtain a dismissal or a reduction in the severity of the discipline imposed, as well as whether the licensee will be financially able to pay the full costs of investigation and prosecution when it has conducted a disproportionately large investigation to prove that a licensee engaged in relatively innocuous misconduct. (*Id.* at pp. 44–45.) Respondent successfully showed that a lesser level of discipline should be imposed; and pursuant to *Zuckerman*, the award of costs is reduced to \$1,000.

## **ORDER**

All licenses and licensing rights of respondent Rong Fu under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. 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 nor for the removal of any of the conditions, limitations or restrictions of a restricted license until three years have elapsed from the effective date of this Decision.

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 Department of Real Estate which shall certify:

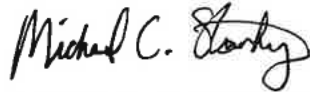
(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

(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 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 pay the Department of Real Estate \$1,000 for the reasonable costs of investigation and enforcement of this matter.

DATE: 06/03/2024

A handwritten signature in black ink, reading "Michael C. Starkey". The signature is written in a cursive, flowing style.

MICHAEL C. STARKEY

Administrative Law Judge

Office of Administrative Hearings