

FILED

BEFORE THE DEPARTMENT OF REAL ESTATE

AUG 28 2024

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
By B. Nicholas

* * *

In the Matter of the Accusation of:	)	DRE No. H-12724 SF
	)	
MICHAEL D. SPINA,	)	OAH No. 2024030804
	)	
Respondent.	)	

DECISION

The Proposed Decision dated July 12, 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 broker 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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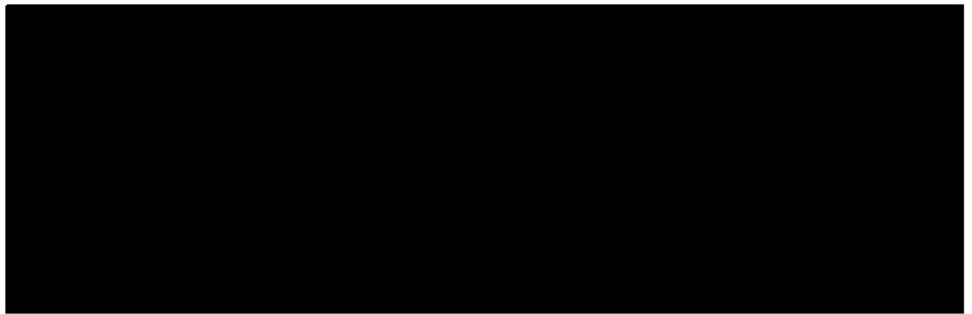
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The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of Respondent.

This Decision shall become effective at 12 o'clock noon on SEP 18 2024
IT IS SO ORDERED 8/22/2024

Chika Sunquist
REAL ESTATE COMMISSIONER



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DEPARTMENT OF REAL ESTATE
By B. Nicholas

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

In the Matter of the Accusation Against

MICHAEL D. SPINA, Respondent.

Agency Case No. H-12724 SF

OAH No. 2024030804

PROPOSED DECISION

Administrative Law Judge Mario M. Choi, State of California, Office of Administrative Hearings, heard this matter on June 18, 2024, by videoconference.

Counsel Truly A. Sughrue represented complainant Stephanie Yee, Supervising Special Investigator, Department of Real Estate, State of California.

Respondent Michael D. Spina represented himself.

The record closed and the matter was submitted for decision on June 18, 2024.

FACTUAL FINDINGS

1. Since July 23, 2008, respondent Michael D. Spina has held a real estate broker license, License ID 01847921. At the time of hearing, this license was active and,

unless renewed, set to expire February 14, 2025. Respondent has no prior history of discipline.

2. On February 21, 2024, complainant Stephanie Yee signed the accusation in her official capacity as Supervising Special Investigator, Department of Real Estate (Department). The accusation alleges that respondent is subject to discipline based on January 2023 convictions and for failure to timely notify the Department. Complainant also seeks to recover the costs of investigation and prosecution of this matter. Respondent filed a notice of defense and this hearing followed.

Criminal Convictions

3. On January 18, 2023, in the Superior Court of California, County of Sonoma, respondent was convicted on a no contest plea of violating Vehicle Code section 23153, subdivision (a) (driving under the influence causing bodily injury), Vehicle Code section 20001, subdivision (a) (hit and run resulting in injury), and Penal Code section 148, subdivision (a)(1) (obstructing or resisting a public officer), all misdemeanors.

4. The court sentenced respondent to serve 90 days in an adult detention facility. The court further placed respondent on probation until December 6, 2025, under various terms, including that respondent be subject to random chemical testing as directed, not use or possess any alcohol, stay out of places where alcohol is the primary item of sale, complete a nine-month first offender drinking driver program, be of good conduct and obey all laws and court orders, install an ignition interlock device on his vehicle, and pay restitution, fines, and fees.

5. The offense took place on August 27, 2021. A police officer was dispatched to the scene of a collision in which respondent rear-ended a vehicle. The

driver of the other vehicle sustained minor injuries. Respondent, who lived nearby, left the scene, and went home without providing information to the driver of the other vehicle. Witnesses informed the officer of respondent's location.

6. When questioned by the police officer at his home, respondent admitted that he was the driver and was involved in the crash. When asked why he left the scene, respondent stated that he left because "everyone was fine," and that the other party did not exchange information with him.

7. The police officer observed damage on respondent's vehicle, including the front tire sitting on its rim, as well as a trail of scratched pavement made by respondent's vehicle from the scene of the accident to respondent's driveway.

The officer also observed objective signs of intoxication. After administering a series of field sobriety tests and forming the opinion that respondent had been driving under the influence, the officer arrested respondent. Upon request, respondent initially submitted to a chemical breath test. But after twice failing to give a complete sample, respondent refused to try a third time. Respondent was transported to the hospital.

8. In the intervening time, the police obtained a search warrant for a forced blood draw. After being medically cleared, respondent was offered the opportunity to take another chemical breath test instead of a blood test. Respondent refused and became combative. Due to respondent's resistance, police officers had to hold respondent down until the nonconsensual blood draw was performed.

Respondent's blood alcohol content was 0.20 percent or more.

Failure to Notify Department

9. Respondent did not notify the Department within 30 days after the filing of felony charges against him on October 18, 2021, or within 30 days after his misdemeanor convictions on January 18, 2023.

Respondent's Evidence

10. Respondent has lived in Sonoma County since 1995. Respondent is married with two children.

11. Although respondent has held a real estate broker license since 2008, he does not actively practice in the real estate field. Respondent uses his license only to assist family and friends, and to answer questions about real estate loans. Respondent has not, however, closed a real estate or loan transaction since at least 2013. Instead, respondent is focused on his contractor's license.

12. Respondent serves as RMO (Responsible Managing Officer) at Cerrudo Services Inc. (Cerrudo), which holds Contractor License No. 934186, classification A (general engineering) and classification B (general building), with the Contractors State License Board (CSLB). Respondent owned Cerrudo, which was his family's business, until 2023, when he sold it to, and it became a subsidiary of, another company. Respondent remains Cerrudo's RMO.

The CSLB investigated respondent's criminal conviction. Giving respondent a warning, the Board did not impose license discipline.

13. Concerning the incident, respondent had been wine tasting that day. The collision occurred at an intersection approximately 400 feet away from his residence. Because there was no place to stop or pull over, respondent left the scene for home.

14. Respondent did not willfully or intend to conceal his indictment, pleas, or conviction from the Department. Based on research his assistant performed concerning his contractor's license, respondent thought that his obligations to the Department were like his obligations to the CSLB: that he did not have to make a disclosure.¹ And, since he had never been convicted of a crime before and did not believe that his convictions were relevant to his real estate license, respondent did not know that he needed to make a disclosure to the Department.

Nonetheless, when requested by the Department, respondent responded to and returned in June 2023 both the Department's Interview Information Statement and Conviction Detail Report forms. And, when contacted by the Department's investigator in November 2023, respondent answered the questions asked of him.

15. Although respondent checks the Department's website and bulletins for updates, respondent admitted that he does not keep abreast of Department rules and regulations. Respondent completes Department-required continuing education courses only when he needs to renew his real estate license.

16. Respondent completed serving his jail time on March 17, 2023. He also finished the nine-month first offender drinking driver program in November 2023.

¹ Respondent's belief was incorrect. Business and Professions Code section 7071.18 requires a licensee to report a conviction within 90 days after a licensee obtains knowledge of a conviction of any crime that is substantially related to the qualifications, functions, and duties of a licensed contractor.

And, although he has no formal sponsor, respondent voluntarily began attending Alcoholics Anonymous (AA) meetings, which he continues to attend monthly.

Respondent elected not to install the ignition interlock device for his vehicle and instead received a one-year suspension of his driver's license. Although he can seek reinstatement, respondent has chosen not to restore his driver's license because he does not have a car, works primarily from home, and no longer has the desire to drive. Respondent indicated that his spouse and children, all of whom have driver's licenses, can drive him when and if necessary.

Respondent admits that he has a drinking problem. Respondent has not consumed alcohol since the accident in August 2021.

17. Respondent knows that what he did was a mistake. Respondent is seeking to prove to his family that his criminal convictions do not define him as a person. Respondent believes that he can and would properly maintain his real estate license based on his history and prior clean criminal and disciplinary records.

Costs

18. Complainant requests \$1,828.05 in investigation and enforcement costs, consisting of \$739.05 in investigation costs and \$1,089 in enforcement costs to prosecute this action. The above costs are supported by certifications that describe the tasks performed, time spent on each task, and 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

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

Causes for Discipline

2. The Real Estate Commissioner (Commissioner) may suspend or revoke a real estate license if the licensee has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee. (Bus. & Prof. Code, §§ 490, subd. (a), 10177, subd. (b)(1).) Section 2910 of title 10 of the California Code of Regulations sets forth criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of a real estate licensee.

As discussed in Factual Finding 3, respondent's convictions are substantially related to the qualifications, functions, or duties of a real estate licensee because they involved unlawful acts with the "threat of doing substantial injury to the person or property of another." (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) Thus, cause for discipline exists under Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b)(1).

3. Real estate licensees are required to report to the Department within 30 days the bringing of a criminal complaint, information, or indictment charging a felony, or a conviction for any felony or misdemeanor. (Bus. & Prof. Code, § 10186.2, subds. (a)(1)(A) & (B), (a)(2).) Failure to make such a report constitutes cause for discipline. (Bus. & Prof. Code, § 10186.2, subd. (b).)

As found in Factual Finding 9, respondent failed to report to the Department the filing of felony charges against him, or his convictions. Accordingly, cause for discipline exists under Business and Professions Code section 10186.2, subdivision (b).

4. Complainant also alleged cause for discipline pursuant to Business and Professions Code section 10177, subdivision (d), which provides that the Commissioner may suspend or revoke the license of a real estate licensee where the licensee "willfully disregarded or violated" the law or "the rules and regulations of the commissioner for the administration and enforcement of this part."

As discussed in Factual Findings 3 through 8, cause for discipline exists under Business and Professions Code section 10177, subdivision (d), because respondent willfully disregarded and violated the law by driving while under the influence and for obstructing a public officer.

However, as discussed in Factual Findings 9, 14, and 15, cause for discipline for failure to inform the Department of respondent's criminal felony complaint or convictions does not exist under Business and Professions Code section 10177, subdivision (d). Complainant has not shown by clear and convincing evidence that respondent "willfully disregarded or violated" Business and Professions Code section 10186.2.

Determination of Discipline

5. The purpose of administrative proceedings regarding professional licenses is not to punish the licensee, but to protect the public. (*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 Commissioner has established criteria to be used in evaluating the rehabilitation of a licensee with a criminal record. (Cal. Code Regs., tit. 10, § 2912.) The relevant criteria to be considered include: the time elapsed since the commission of the offense and conviction; restitution; expungement; successful completion of probation; abstinence from the use of alcohol for not less than two years if the conduct which is the basis of the accusation is attributable in part to the use of alcohol; payment of fines and monetary penalties; correction of business practices; new and different social and business relationships from those at the time of the offense; stability of family life and fulfillment of parental responsibilities; significant and conscientious involvement in community or church programs designed to provide social benefits or ameliorate social problems; and a change in attitude from that which existed at the time of the offense.

7. Rehabilitation is a "state of mind;" the law looks with favor upon rewarding with the opportunity to serve, one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.)

8. The underlying acts leading to respondent's January 2023 convictions occurred on August 27, 2021. While respondent remains on probation until December 2025, his criminal acts were committed nearly three years ago. Respondent has had no further contact with law enforcement. However, since people have a strong incentive to obey the law while under the supervision of the criminal justice system, little weight

is generally placed on good behavior while on probation. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

9. Still, as discussed in Factual Findings 16 and 17, respondent has demonstrated that he has fully accepted responsibility for the wrongfulness of his actions. Respondent has served his time in jail, paid the court-ordered fines and fees, and completed the first offender drinking driver program. Moreover, respondent has voluntarily attended and continues to attend AA meetings. Respondent has also chosen to stop driving a vehicle altogether. And since the date of the incident, respondent has remained sober.

10. To the extent respondent failed to inform the Department of the felony complaint or the convictions, respondent has taken responsibility for his failure to keep apprised of Department rules and regulations. Although respondent has not utilized his real estate license since at least 2013, which is understandable given respondent's focus on his contracting work, respondent should remain vigilant and current as to Department requirements and guidelines.

11. Respondent has held a broker's license for over 15 years and has no history of discipline with the Department. Considering all the evidence presented, revoking respondent's broker license would be unduly punitive. Enforceable probationary restrictions for a period of three years, including requiring periodic reports to the Department concerning respondent's activities for which a real estate license is required, will adequately protect the public and allow the Department to monitor respondent.

Costs

12. 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.) As set forth in Factual Finding 18, complainant has reasonably incurred \$1,828.05 in actual costs in connection with the investigation and enforcement of this matter.

13. The California Supreme Court has 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. (*Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.) 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. (*Ibid.*) No cause for a reduction was established.

ORDER

All licenses and licensing rights of respondent Michael D. Spina under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to 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 from the effective date of this Decision.

The restricted license issued to respondent shall be subject to all provisions of Business and Professions Code section 10156.7 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, 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.

5. 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.

6. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning respondent's activities for which a real estate license is required as the Commissioner shall deem appropriate to protect the public interest. Such reports may include, but is not limited to, periodic summaries of relevant information concerning each real estate transaction in which respondent engaged during the period covered by the report.

7. Respondent shall pay the Department's costs for the investigation and enforcement of this action under Business and Professions Code section 10106, in the amount of \$1,828.05, within 90 days from the effective date of this Decision.

DATE: 07/12/2024


Mario Choi / Jul 12, 2024 09:17 PDT

MARIO M. CHOI

Administrative Law Judge

Office of Administrative Hearings