



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 MAR 06 2018

IT IS SO ORDERED 2/8/18

WAYNE S BELL  
REAL ESTATE COMMISSIONER



By: DANIEL J. SANDRI  
Chief Deputy Commissioner

BEFORE THE  
BUREAU OF REAL ESTATE  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

CHERYLE DIANE EDWARDS,

Respondent.

Case No. H-40729 LA

OAH No. 2017081159

**PROPOSED DECISION**

This matter came on regularly for hearing before Cindy F. Forman, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on December 14, 2017, at Los Angeles, California.

Michelle Nijm, Staff Counsel for the Bureau of Real Estate (Bureau), represented Veronica Kilpatrick, a Supervising Special Investigator of the State of California (complainant).

Cheryle Diane Edwards (respondent), also known as Cheryl Edwards, Cheryle Dianne Edwards, Cheryle Diane Brown, Cheryle Brown, and Cheryl Brown, appeared and represented herself.

Oral and documentary evidence was received. The record was held open until January 2, 2018, to allow respondent to file a character reference letter and to allow complainant to submit objections, if any. On December 20, 2018, respondent timely submitted a letter by Monica Anderson, and on January 2, 2018, complainant filed objections to introduction of the letter into evidence on grounds of hearsay and lack of foundation. After reviewing complainant's objections, the ALJ marked the letter as Exhibit D and admitted it into evidence as administrative hearsay. The ALJ then closed the record, and the matter was submitted for decision on January 2, 2018.

**FINDINGS OF FACT**

1. On December 17, 2007, the Bureau issued respondent real estate salesperson license number 01834668 (License), which initially expired on December 16, 2011. Respondent renewed her License on June 12, 2013. Respondent's License expired again on

June 11, 2017; respondent is awaiting the outcome of this proceeding before paying the licensing renewal fees. (Exhibit 2.)

2. On July 25, 2017, complainant, in her official capacity, filed the Accusation seeking discipline of respondent's License based on a single 2016 criminal conviction. Respondent timely filed a Notice of Defense, and this action ensued.

### *Respondent's Criminal Conviction*

3. On November 7, 2016, in the Superior Court of California, County of Los Angeles, case number MA068429, the court convicted respondent on her plea of nolo contendere of violating Penal Code section 245, subdivision (a)(4) (assault by any means of force likely to produce great bodily injury). Although alleged to be a felony in the original charging documents, the court reduced the charge to a misdemeanor in response to Los Angeles County District Attorney's request, made pursuant to Penal Code section 17, subdivisions (b)(1) through (5).

4. The court suspended the imposition of sentencing and placed respondent on three years of summary probation provided she serve three days in Los Angeles County Jail (less credit for three days), pay \$220 for court fees and costs, perform 240 hours of community service, and enroll in a six-week anger management course. The court also ordered respondent to stay away from the victim and to pay restitution in the amount of \$1693, jointly with another defendant (her daughter).

5. Respondent promptly paid her court fees; she also completed the court-ordered anger management course and community service hours within 11 months after her conviction. The court permitted respondent to pay her share of the restitution award in \$50 monthly installments; respondent has thus far timely made each of the required payments.

6. The facts and circumstances surrounding respondent's criminal conviction are as follows: On March 9, 2016, respondent's daughter drove respondent to a shopping center parking lot where they observed Victim 1 leaving a store and walking toward her car. Respondent had previously informed her daughter that Victim 1 had taken \$1500 from respondent's home without respondent's permission. Her daughter left the car and confronted Victim 1 about the missing money, and, at some time afterwards, others joined her. A physical fight ensued in which Victim 1 was injured. The police were called after respondent and her daughter had left the shopping center. Victim 1 accused respondent and her daughter of participating in the fight and of stealing her cell phone and her purse. Victim 1 declined medical treatment for her injuries. The police later arrested respondent and her daughter based on descriptions by Victim 1 and Victim 1's friend who had witnessed the March 9, 2016 incident.

7. Respondent was convicted of a crime, i.e., assault by any means of force likely to produce great bodily injury assault, which is substantially related to the qualifications, functions, and duties of a real estate salesperson. Placing someone at risk of harm, whether

because of anger or otherwise, reflects a lack of self-control that creates doubt as to respondent's ability to perform the duties of a real estate salesperson in a professional manner.

*Rehabilitation / Mitigation*

8. Respondent is 54 years old and is the mother of six adult children. She currently lives with one daughter and her mentally disabled brother. She has worked as a caregiver since 2001, providing care to a disabled adult who receives In Home Supportive Services.

9. In her testimony at hearing, respondent disputed Victim 1's account of what transpired on March 9, 2016. She stated that she did not go looking for Victim 1, had no knowledge that Victim 1 was at the shopping center, and did not take any property belonging to Victim 1. She stated that she had agreed to accompany her daughter to the shopping center, and she had not expected to see Victim 1 in the parking lot. According to respondent, she did not participate in the fight between her daughter and Victim 1; she intervened to stop the fighting and protect her daughter. She originally pleaded not guilty to the charges and changed her plea solely because she was concerned that crimes she had committed when she was a young woman would be used against her in sentencing. Respondent's claim of innocence did not waver even in the face of difficult questioning by counsel for complainant.

10. Respondent's testimony was consistent with the explanation she provided to the police after the incident as well as with the written statement she provided to the Bureau in explaining her assault conviction:

My daughter was involved in an altercation with someone and it got out of hand. I was present at the time of the incident, and out of natural instinct, I tried to protect my daughter from getting arrested. Unfortunately, I was implicated in the matter. I did not commit the crime, but I was there. Originally, I pleaded not guilty, but after a long and tedious and stressful process, and being told I could get 6+ years if I went to trial and was convicted, I elected to take a plea and plead nolo contendere.

(Exhibit 5 at p. 5.)

11. Neither Victim 1 nor any witness to the incident testified at the hearing. Their statements provided to the police regarding the March 9, 2016 incident are included in the Los Angeles County Sheriff's Department report (Exhibit 4) and are not sufficient by themselves to override respondent's account of the events. (See *Lake v. Reed* (1997) 16 Cal.4th 448 [witness statements to a police officer are admissible to explain or to supplement other direct evidence but cannot be used, by themselves, to establish any factual finding].)

12. Respondent accepted responsibility for her role in the March 9, 2016 incident, and she expressed regret about her involvement. Respondent remains embarrassed and ashamed of what happened. She realizes now that she should not have left the car and physically intervened in the altercation between her daughter and Victim 1. She also reported that she had learned from the court-ordered anger management class certain coping mechanisms to deal with her anger, including letting the situation pass, reporting misconduct to the authorities or writing a letter.

13. Respondent is a Jehovah's Witness. She attends church weekly on a regular basis. Respondent also initiated individual weekly Bible study sessions after her arrest to help her understand what had happened on March 9, 2016, and how to avoid similar situations in the future.

14. Respondent did not go into detail about her past other than to acknowledge that she had suffered some legal and personal issues more than 24 years ago, and she had not had any arrests or convictions since. For the past 24 years, respondent has dedicated her life to improving herself and others. She completed high school and obtained an Associate of Arts degree. Respondent also obtained her License and her notary public certificate (Certificate). She has not renewed her Certificate because she believes her criminal conviction will foreclose future certification; her Certificate had never been disciplined.

15. Respondent became a real estate salesperson because she liked helping people and wanted to emulate her father who also had been a real estate agent. Since she obtained her License, respondent has worked under the supervision of Lavona Sherrills, a real estate broker doing business as GHRE Services. During her period of licensure, respondent has been involved in two house sales. Respondent values her License greatly, and repeatedly stated that she would never do anything to jeopardize her licensure.

16. Respondent is active in her community. She volunteers for a nonprofit organization that provides free consultations to community residents about foreclosure. Respondent also regularly speaks to youth about dealing with peer pressure and other issues at Green Thumb, a nonprofit organization located in Palmdale.

17. Respondent submitted a declaration vouching for her good character from Monica Anderson, a family friend. Ms. Anderson currently works as a Senior Clerk for the Los Angeles County Probation Department. She wrote that respondent is "an asset to the community, dedicated, knowledgeable ... and making a difference." Her declaration states, in relevant part, as follows:

I have known [respondent] for over 35 years, having first met her as a teenager. During her teenage and early adult years, she struggled negatively with her environment which resulted in criminal charges. However, her last conviction changed her life so drastically that she vowed never to return to jail, be a positive example and role model to her children, family, friends and to

make her mother, a devout Jehovah[']s witness, proud. I witness[ed] her transform as she went back to school[,] earned her high school diploma, college degree and her real estate license which made her mother and family proud. Also, in addition to these accomplishments, she enforced the importance of education to her six children who all received their high school diplomas, college degrees and / or still earning a higher education.

When I first learned of the charges, I was appalled for two reasons. First, it conflicted with my daughters' version, who were present, that as [respondent's] daughter and an associate[] of her daughter[']s escalated to pushing, [respondent] attempted to de-escalate the situation and secondly, this wasn't her as she has been an example citizen abiding by all the rules since she changed her life around. Her family and I were in disbelief of the charges brought against her that my husband and I decided to support her by attending every court hearing which we did even when I was promoted to a different job location.

[Respondent] kept her vows and stayed out of jail for over twenty-five years, she is an excellent role model and the backbone of the family. When her mother became ill without hesitation, she moved her and her mentally retarded brother in with her to give them the best care and although her mother passed, she continues to care for her brother. Also, she tremendously made a difference in young people[']s lives who struggle[] with drugs or dropped/dropping out of high school by sharing her story to where the situation was reversed.

(Exhibit D.)

#### *Costs of Prosecution*

18. The Bureau incurred \$1528.50 in investigation costs and \$645.25 in enforcement costs, for a total of \$2,173.75 in prosecution costs from June 5, 2017, to December 13, 2017. The investigative costs are excessive for a case involving one criminal conviction, one witness (respondent) and six exhibits. The investigative costs also are duplicative. For instance, the cost breakdown reflects 10.25 hours of time spent by the special investigator preparing a report that was not introduced into evidence and 11.6 hours spent by both the special investigator and the supervising special investigator reviewing the report. Both the supervising special investigator and the special investigator also billed for interviewing respondent.

19. Respondent has a limited income. She lives in subsidized Section 8 housing and her living costs exceed \$1,000 per month.

## LEGAL CONCLUSIONS

1. Complainant has the burden of proving cause for discipline by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Med. Quality Assurance* (1982) 135 Cal.App.3d 853, 857.)
2. Pursuant to Business and Professions Code<sup>1</sup> section 10103, the lapsing of a license by operation of law or by order or decision of the Bureau, or the voluntary surrender of a license by a licensee, shall not deprive the Bureau of the opportunity to proceed with any investigation of or action or disciplinary proceeding against such licensee, or to render a decision disciplining the license. Accordingly, the Bureau is entitled to seek to discipline respondent's License despite her failure to renew it.
3. Sections 490 and 10177, subdivision (b), authorize the Bureau to take disciplinary action against a license if a licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of a real estate licensee. California Code of Regulations, title 10 (CCR), section 2910, subdivision (a)(8), provides that a crime is substantially related to the qualifications, functions, and duties of a real estate licensee, if it involves the "[d]oing of any unlawful act with the . . . intent or threat of doing substantial injury to the person or property of another."
4. Regardless of respondent's motives for entering her plea of nolo contendere to the assault charge, the plea is conclusive evidence of respondent's guilt of the crime charged for the purposes of this administrative proceeding. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.) Thus, a conviction for assault by any means of force likely to produce great bodily injury constitutes evidence that respondent assaulted another individual with the threat of doing substantial injury. To hold otherwise would impose upon administrative boards extensive, time-consuming hearings aimed at re-litigating criminal charges which had already culminated in final judgments of conviction.
5. Cause therefore exists to discipline respondent's license, pursuant to sections 490 and 10177, subdivision (b), in that respondent was convicted of a crime substantially related to the qualifications, functions, and duties of a real estate licensee, pursuant to CCR section 2910, subdivision (a) (8), as set forth in Factual Findings 3 through 7.
6. Cause for license discipline having been established, the issue that remains is the appropriate level of discipline. Both the weight accorded to the substantially-related conduct plus respondent's rehabilitation must be evaluated to determine the nature of the discipline imposed.
7. Pursuant to CCR, section 2910, subdivision (c), "[i]f the . . . act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in

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<sup>1</sup> All further statutory references are to the Business and Professions Code unless otherwise stated.

which the crime or acts . . . were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee.”

8. In light of the circumstances surrounding respondent’s arrest and conviction, respondent’s assault conviction is not accorded substantial weight in determining whether respondent’s license should be disciplined. Respondent became involved in a physical altercation between her daughter and Victim 1. Respondent credibly denied hitting or stealing anything from her. In addition, there was no indication that Victim 1 sustained significant injury, and no evidence linking any injury to respondent. The Los Angeles County District Attorney’s Office, which had access to all of the pertinent evidence, concluded that respondent’s conduct did not rise to the level of a felony, and the court agreed with the District Attorney’s conclusion, reducing the initial charge to a misdemeanor and imposing a relatively lenient sentence. (See Factual Finding 4.)

9. The Bureau has set forth criteria to evaluate the rehabilitation of a licensee who has been convicted of a crime, pursuant to CCR section 2912. The applicable criteria, as they pertain to respondent, include the following: (1) passage of not less than two years from the most recent criminal conviction; (2) restitution to any person who has suffered monetary losses through the licensee’s substantially related acts or omissions; (3) expungement of the conviction; (4) successful completion or early discharge from probation or parole; (4) payment of any fine imposed in connection with the criminal conviction; (5) stability of family life and fulfillment of parental and familial responsibilities; (6) completion or sustained enrollment in, formal educational or vocational training courses for economic self-improvement; (7) significant involvement in community, church, or privately-sponsored programs; and (8) a change in attitude from that which existed at the time of the commission of the criminal acts.

10. Applying these criteria to the circumstances presented here yields mixed results. Respondent’s assault conviction occurred in November 2016, less than the two-year period under the first criterion. In addition, respondent still owes restitution to Victim 1, and she remains on summary probation until November 2019. No evidence was presented of respondent’s involvement in any formal educational or vocational training courses for economic self-improvement.

11. However, as set forth in Factual Findings 8 through 17, respondent satisfies several other rehabilitation criteria. Respondent demonstrated significant involvement in her church and community, evidenced by her regular attendance at church and her volunteer work providing guidance to at-risk youth and homeowners facing foreclosure. She is a mother and grandmother as well as the principal caretaker for her disabled brother, demonstrating a stable family life and the fulfillment of familial responsibilities. Respondent also has established that she has had a change in attitude since the commission of her crime evidenced by her contrition and remorse, as well as by her completion of the court-ordered anger management program and community service hours. She also began one-on-one weekly Bible study sessions to learn the reasons for her conduct and how to avoid trouble in the future.

12. Respondent's steadfast claims of innocence regarding her assault are not viewed as respondent failing to accept responsibility or demonstrate remorse. The California Supreme Court has recognized that the continued assertion of innocence may in some cases be evidence of good character, rather than proof that the applicant for a professional license is lacking in remorse, and therefore unfit. Thus, in one notable case the Court "question[ed] the wisdom of denying an applicant admission to the bar if that denial rests on the applicant's choosing to assert his innocence regarding prior charges rather than to acquiesce in a pragmatic confession of guilt, . . ." (*Hall v. Committee of Bar Examiners* (1979) 25 Cal.3d 730, 744-745.) The Court held that an applicant should not be required to make "an artificial act of contrition" in order to obtain a requested license where other factors to be considered establish fitness for the profession in question. (*Id.* at p. 745.)

13. The statutes relating to licensing of professions generally are designed to protect the public from dishonest, untruthful and disreputable licensees. (*Arneson v. Fox, supra*, 28 Cal.3d at 451.) In real estate licensee disciplinary cases, some of these factors have included: (1) the likelihood of recurrence of the crime; (2) whether the person led an exemplary life before and after the incident which lead to the conviction; and (3) whether the person was contrite and remorseful. (*Brandt v. Fox* (1979) 90 Cal.App.3d 737, 745-747). Despite the recency of respondent's criminal conviction and her continuing probation and restitution obligations, the Bureau has not demonstrated by clear and convincing evidence that respondent is dishonest, untruthful or disreputable. For almost 25 years, respondent has led an exemplary life. Her criminal conviction was a singular incident resulting from a unique set of circumstances involving respondent's daughter. She has taken responsibility for her own conduct and engaged in meaningful self-reflection. The likelihood of recurrence is therefore minimal.

14. Based on the totality of the evidence, revocation of respondent's license is not necessary to protect the public. Respondent's recent criminal conviction and temporary lapse of judgment, however, cannot be ignored. Accordingly, the properly conditioned restrictive real estate salesperson license set forth below is necessary to adequately protect the public safety, welfare, and interest. The four year period is warranted because of respondent's current probationary status.

#### *Costs*

15. The Bureau requests reimbursement of the costs of investigation and enforcement under section 10106. Section 10106 provides that in any order issued in resolution of a disciplinary proceeding, the commissioner may ask the administrative law judge to direct a licensee found to have committed a violation to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

16. Complainant requests \$2,173.75 for 22.1 hours spent working on this matter, but the duplication of billing and the straightforward nature of the allegations and evidence support reducing this amount. (See Factual Finding 18.) Furthermore, a cost award must not unfairly penalize a licensee who has committed some misconduct, but who has used the

hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty. (*Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.) The agency must also consider respondent's subjective good faith belief in the merits of her position and whether the respondent has raised a colorable challenge to the discipline or is unable to pay. (*Ibid.*)

17. Respondent avoided the most severe form of discipline, i.e., revocation of her license, and, as set forth in Factual Finding 19, has limited financial resources available to pay the requested costs. Considering these facts and the nature of the case, an award of \$500 – approximately 25 percent of the requested award – is reasonable. Respondent will be required to pay that amount in accordance with a reasonable payment plan during the term of her restricted license if she decides to renew her License.

### ORDER

All licenses and licensing rights of respondent Cheryle Diane Edwards 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 Bureau 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 or 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.

4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Bureau 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 restricted licensee relating to activities for which a real estate license is required.

5. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate, Post Office Box 137000, Sacramento, CA 95813-7000. 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. If respondent renews her real estate salesperson license, respondent shall pay the Bureau \$500 as and for the reasonable costs of the investigation and prosecution of Case No. H-40729 LA. Payments can be made over the period of restricted licensure on a reasonable schedule acceptable to both respondent and the Bureau. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate salesperson license until full payment has been made.

Date: January 22, 2018

DocuSigned by:  
Cindy F. Forman  
CINDY F. FORMAN  
Administrative Law Judge  
Office of Administrative Hearings