

FILED

OCT 26 2018

DEPT. OF REAL ESTATE

By 

BEFORE THE DEPARTMENT¹ OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation Against

RANDELL JERMAINE JACKSON,

Respondent.

DRE No. H-40923 LA

OAH No. 2018020602

DECISION

The Proposed Decision dated October 9, 2018, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

Pursuant to Section 11517(c)(2) of the Government Code, the following corrections are made:

Page 1, FACTUAL FINDINGS, paragraph 1, "license no. S/0196949", shall read: "license no. 01969469"

Page 2, FACTUAL FINDINGS, paragraph 2, "February 14, 2017", shall read: "January 25, 2018".

Page 3, LEGAL CONCLUSIONS, paragraph 4, "Penal Code section 268", shall read: "Penal Code section 368".

This Decision suspends one or more real estate licenses on the ground of the violation of the Real Estate Law, Part 1 commencing with Section 10000 of the Business and Professions Code ("Code") and/or the Regulations of the Real Estate Commissioner, Title 10, Chapter 6 of the California Code of Regulations ("Regulations").

¹ Between July 1, 2013, and July 1, 2018, the Department of Real Estate operated as the Bureau of Real Estate under the Department of Consumer Affairs.

This Decision shall become effective at 12 o'clock noon on NOV 15 2018

IT IS SO ORDERED October 22, 2018

DANIEL J. SANDRI
Acting Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

RANDELL JERMAINE JACKSON,

Respondent.

Case No. H-40923 LA

OAH No. 2018020602

PROPOSED DECISION

James Michael Davis, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on September 12, 2018, in Los Angeles, California.

Staff Attorney Amelia V. Vetrone, Department of Real Estate (Department), represented complainant Maria Suarez, Supervising Investigator for the Department.

Respondent Randell Jermaine Jackson was present at the hearing and represented himself.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision on September 12, 2018.

FACTUAL FINDINGS

Jurisdiction and Parties

1. In June 2015, the Department issued real estate salesperson license no. S/0196949 to respondent. His license is scheduled to expire in June 2019. Aside from this Accusation, respondent's license has not previously been disciplined.
 2. Complainant filed the Accusation in her official capacity on February 14, 2017, alleging respondent suffered a conviction which bears a substantial relationship to the qualifications, functions, or duties of a real estate licensee.
 3. Respondent timely filed a request for hearing and this matter ensued.
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Criminal Conviction

4A. On January 21, 2016, in the Superior Court of California, County of Los Angeles, respondent, on a plea of nolo contendere, was convicted of violating Penal Code section 368, subdivision (c) (elder abuse, great bodily harm not likely), a misdemeanor.

4B. The court suspended imposition of sentence and placed respondent on summary probation for three years, ordered him to complete a 26-week, court-approved anger management program, pay restitution, fines and fees totaling \$230 and perform four days of community labor.

4C. The circumstances underlying the January 2016 conviction are that respondent and his wife, who already had three children and were not planning to have any more, found out they were expecting their fourth child. Concerned about the prospects of having another child, respondent and his wife went to a family planning clinic in August 2015 to research available options. As they approached the clinic, they encountered protesters. Respondent said that one protester yelled at his wife, telling her she would not go to heaven. Respondent testified at hearing that he could see his wife was getting upset. Respondent told the protester to "shut the fuck up." The protester swore back, in kind. Respondent then said the protester spit at him, the spit hitting his shoe. In retaliation, respondent pushed the protester who stumbled backward and fell to the ground, hitting his head. Respondent was subsequently arrested.

5. At hearing, respondent admitted that he did not report his conviction to the Department within 30 days, as he was legally obligated to do. He testified convincingly that it was not his intention to hide the conviction; instead, he wanted to have it removed from his record, rendering it unnecessary to report it. Respondent now understands his reporting obligation, and he plans to have the conviction expunged as soon as possible.

Aggravation, Mitigation and Rehabilitation

6. Respondent is married with three children, ages 15, 12, and six. He served in the Navy and was honorably discharged in 2011. Respondent was diagnosed with PTSD in 2013. He currently works in sales for an equipment rental company. Respondent works in real estate on a part-time basis with his mother. He hopes to expand his real estate business.

7. Respondent accepted full responsibility for the actions that led to his conviction and for failing to timely notify the Department post-conviction. He also expressed sincere remorse for losing his temper. When asked what he learned from this experience, respondent stated that he would never again put himself in a position where he would later need to explain his actions.

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8. Respondent attended civil engineering classes at Cerritos College in Norwalk, from which he received an Industrial Engineering Technician certificate.

Costs of Investigation and Prosecution

9. Complainant established that the cost of investigation and prosecution of this matter was \$1,515.37. (Exhibits 6 and 7.) These costs are reasonable.

LEGAL CONCLUSIONS

1. These proceedings are brought under the provisions of Business and Professions Code section 10100 et seq. and Government Code sections 11500 through 11528.

Substantial Relationship

2. The Department may suspend or revoke the license of a real estate licensee who has been convicted of a crime following a plea of nolo contendere provided that the crime is substantially related to the qualifications, functions or duties of a real estate licensee. (Bus. & Prof. Code, §§ 490, subd. (a); 10177, subd. (b)(1).)

3. Among other matters, a crime is substantially related to the qualifications, functions, or duties of a licensee when the crime was committed with the intent or threat of doing *substantial injury* to the person or property of another. (Cal. Code Regs., tit. 10 (Regulation), § 2910, subd. (a)(8), italics added.)

4. As set forth in Factual Finding 4A, respondent was convicted of violating Penal Code section 268, subdivision (c), which provides, in pertinent part, that "[a]ny person who knows or reasonably should know that a person is an elder . . . and who, under circumstances or conditions *other than those likely to produce great bodily harm* or death, willfully causes any elder . . . to be injured . . . is guilty of a misdemeanor." (Italics added.) The terms "great bodily harm" and "substantial injury" are, in every practical sense, synonymous. Thus, the Department has not fully established that respondent was convicted of a crime that demonstrates an intent or threat to do substantial injury because his conviction was under circumstances unlikely to produce great bodily harm.

Cause for Denial

5. Cause does not exist, under Business and Professions Code sections 490 and 10177, subdivision (b), to suspend or revoke respondent's real estate salesperson license in that respondent has not been convicted of a misdemeanor substantially related to the

qualifications, functions, or duties of a real estate licensee. (Factual Finding 4A and Legal Conclusion 4.)

6. Cause exists, under Business and Professions Code section 10186.2, subdivision (b), to suspend or revoke respondent's real estate salesperson license in that respondent failed to report his conviction to the Department within 30 days, as set forth in Factual Finding 5.

Rehabilitation Criteria

7. When legal cause exists for complainant to discipline the license, as is the case here, the burden shifts to respondent to demonstrate mitigation or rehabilitation in order to show that a lesser penalty is warranted. (See *In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309, 315.)

8. Rehabilitation is a qualitative determination, not quantitative. One cannot just add up those criteria that have been met and those that have not in order to determine whether or not a person has been rehabilitated. These factors merely indicate that a person has changed and is, therefore, unlikely to reoffend. No one of them alone- or even all of them together – can guarantee that an individual is truly rehabilitated.

9. Under Regulation, section 2912, the Department has adopted criteria for evaluating a licensee's rehabilitation when disciplinary proceedings have been initiated. Having determined that respondent's act that gives rise to discipline is limited to his failure to timely report his criminal conviction, most criteria do not apply. However, it is worth noting that respondent's failure to report occurred in winter 2016, more than two years ago. (Regulation, § 2912, subd. (a)(1).) Also, as set forth in Factual Findings 6 and 8, respondent has maintained a stable family life and has earned an engineering certificate. (Regulation, § 2912, subds. (j) & (k).) Lastly, as set forth in Factual Finding 7, respondent accepted full responsibility for his transgressions. (See Regulation, § 2912, subd. (m).)

10. Remorse for one's conduct and the acceptance of responsibility are the cornerstones of rehabilitation. Rehabilitation is a "state of mind" and 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.) Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) Among the rehabilitation criteria, a licensee's change in attitude since the offense is a particularly important consideration. (*Singh v. Davi* (2012) 211 Cal.App.4th 141.)

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Disposition

11. All evidence has been considered. Respondent admitted that he made a mistake in failing to report his criminal conviction within 30 days. However, as set forth in Factual Finding 5, respondent did not fully understand this legal requirement until notified by the Department. Real estate professionals are tasked with myriad details and responsibilities in their handling of large financial transactions. Attention-to-detail must be second nature. Therefore, license discipline is appropriate in regard to this important point. On the other hand, as set forth in Factual Finding 6, respondent is a veteran with a PTSD diagnosis, who provides for his family and sincerely wishes to continue growing his career in real estate. He has expressed sincere remorse and candor for his missteps. (Factual Finding 7.) Weighing the minor misconduct against respondent's rehabilitation factors supports minor corrective discipline, as set forth in the Order below.

12. In accordance with Business and Professions Code section 10106, respondent is subject to an order directing him to pay costs of investigation and prosecution. The Department has incurred reasonable costs in the amount of \$1,515.37. (Factual Finding 9.) Under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Department must consider, among other matters, whether respondent has raised a colorable challenge. If so, the Department should not assess the full cost of investigation and prosecution when it has engaged in a disproportionately large investigation to prove relatively innocuous misconduct. (*Id.* at p. 45.) Here, the Department's costs were reasonable. But, respondent's defense raised a colorable challenge, as it was determined that his criminal conviction did not establish a basis for license discipline, and the ultimate cause for discipline was failing to report his criminal conviction within 30 days, a relatively minor transgression. Accordingly, the Department's recoverable costs are reduced to \$500.

ORDER

All licenses and licensing rights of respondent Randell Jermaine Jackson under the Real Estate law are suspended for a period of 90 days from the effective date of this Decision; provided, however, that 90 days of said suspension shall be stayed for one (1) year upon the following terms and conditions:

1. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and
2. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within one (1) year of the effective date of this Decision. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and re-impose all or a portion of the stayed

suspension. Should no such determination be made, the stay imposed herein shall become permanent.

3. Respondent shall pay \$500 for the reasonable costs associated with investigation and prosecution of this case.

DATED: October 9, 2018

DocuSigned by:

James Michael Davis

JAMES MICHAEL DAVIS
Administrative Law Judge
Office of Administrative Hearings