

File

FILED

APR 22 2020

DEPT. OF REAL ESTATE

By John Aguil

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

ERICA DALILA HERRERA,

Respondent.

No. H-41393 LA

ORDER DENYING RECONSIDERATION

On March 2, 2020, a Decision revoking Respondent's Real Estate Salesperson license was signed in the above-entitled matter. Said Decision was to become effective on March 25, 2020 and was stayed by separate Order to April 24, 2020.

On April 10, 2020, Respondent petitioned for reconsideration of the Decision of March 2, 2020.

I have given consideration to the petition of Respondent. I find no good cause to reconsider the Decision of March 2, 2020, and reconsideration is hereby denied.

IT IS SO ORDERED 4/17/20

ACTING REAL ESTATE COMMISSIONER

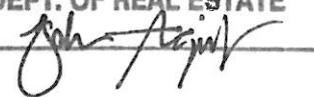
Sandra Knaus
SANDRA KNAU

FILED

MAR 25 2020

DEPT. OF REAL ESTATE

By



BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

ERICA DALILA HERRERA,

Respondent.

No. H-41393 LA

AMENDED ORDER STAYING EFFECTIVE DATE

On March 2, 2020, a Decision was rendered in the above-entitled matter to become effective on March 25, 2020. On March 20, 2020, Respondent requested additional time to file a petition for reconsideration of the Decision of March 2, 2020.

IT IS HEREBY ORDERED that the effective date of the Decision is stayed for a period of 30 days. The Decision of March 2, 2020, shall become effective at 12 o'clock noon on April 24, 2020.

DATED: 3/25/20

ACTING REAL ESTATE COMMISSIONER


SANDRA KNAU

FILED

MAR 05 2020

DEPT. OF REAL ESTATE

By



BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:)	DRE No. H-41393 LA
)	
ERICA DALILA HERRERA,)	OAH No. 2019090082
)	
Respondent.)	

DECISION

The Proposed Decision dated January 31, 2020, 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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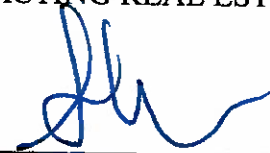
The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on MAR 25 2020.

IT IS SO ORDERED

3/2/20

SANDRA KNAU
ACTING REAL ESTATE COMMISSIONER



A handwritten signature in blue ink, appearing to read 'SK', is written over a horizontal line.

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

In the Matter of the Accusation of:

ERICA DALILA HERRERA, Respondent

Agency Case No. H-41393 LA

OAH No. 2019090082

PROPOSED DECISION

Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on January 6, 2020, in Los Angeles. The record was closed the matter submitted for decision at the conclusion of the hearing.

Kevin H. Sun, Counsel, represented Supervising Special Investigator Veronica Kilpatrick (complainant).

Erica Herrera (respondent) represented herself.

SUMMARY

Complainant established by clear and convincing evidence that revocation of respondent's salesperson license is warranted due to her 2018 felony conviction for assault with force likely to produce great bodily injury and her failure to report to the Department of Real Estate (Department) her conviction or the preceding criminal

complaint filed against her. Respondent is also ordered to pay the Department's costs of \$1,380.72, if and when her license is reinstated.

FACTUAL FINDINGS

Jurisdictional Matters

1. Complainant brought the Accusation in her official capacity. Respondent timely submitted a Notice of Defense, which contained a request for a hearing to contest the Accusation.

2. Respondent presently holds real estate salesperson license number 01387678, which is scheduled to expire on August 18, 2023, unless renewed.

Respondent's Conviction

3. A. On September 27, 2017, in the Superior Court of California, County of San Diego, respondent pled guilty to and was convicted of assault with force likely to produce great bodily injury in violation of Penal Code section 245, subdivision (a)(4), a felony.

B. On January 29, 2018, respondent was sentenced to three years of formal probation, under terms including that she serve 180 days in jail, pay fines and fees, and pay restitution totaling \$1,400 to the two victims of her crime. Respondent was allowed to serve the jail sentence by home detention. She completed the home detention and currently is in compliance with the other terms of her probation, which is scheduled to expire in 2021.

4. The events underlying respondent's conviction occurred after midnight on February 19, 2017, and were established by the elements of the crime for which she was convicted, the police report from the incident leading to her arrest, and parts of respondent's testimony, as follows. Late at night, respondent and her roommate, a man with whom she had a romantic relationship, got into an argument. The roommate left their abode and was picked up outside by another woman in a car. Respondent saw this, got into her car, and went looking for her roommate and the other woman. Respondent found them sitting in the other woman's car, which was parked on the side of a street not far from where respondent lived. Respondent tried to block the other car with her car, but the other woman was able to drive away. Respondent pursued and crashed her car into the other car several times, causing damage to the other car. Respondent drove away from the scene before police arrived.

5. Respondent gave a completely different version of events at the hearing. She testified that she waited 30 minutes until after her roommate left their abode to get into her car to look for him. Respondent found her roommate and the other woman still in the other woman's car, which was parked on the side of the street. Respondent testified that, for no reason, the woman in the other car crashed her car into respondent's car and then drove away. Respondent followed the other car, until the other car went into reverse and crashed into respondent's car again. Respondent testified that she fled the scene because she was afraid for her safety after her roommate got out of the other car and approached respondent's car.

6. Respondent's version of events is not supported by the record and is not believable. For example, there is nothing in the record explaining why the woman driving the other car would attack respondent without provocation. On the other hand, the early morning domestic dispute between respondent and her roommate would

offer a motive for respondent to so behave. The fact that respondent's roommate contacted the police after the incident undercuts respondent's version of events; so too that respondent never contacted the police to report the incident, which one would expect if she was in fact the victim. The police came to the scene, interviewed respondent's roommate and the other woman, and observed the damage done to the other woman's car. The decision of police to arrest respondent for crashing her car into the other woman's car also undercuts respondent's version of events. Finally, respondent's plea of guilty to a felony crime involving this incident also is inconsistent with her version of events.

7. Respondent's conviction is for a crime substantially related to the qualifications, functions, and duties of a real estate licensee under California Code of Regulations, title 10, section (Regulation) 2910. Specifically, respondent's crime involved an unlawful act with the intent or threat of doing substantial injury to the person or property of another. (Reg. 2910, subd. (a)(8).)

Failure to Report the Criminal Complaint and Conviction

8. Respondent did not report in writing to the Department the felony complaint filed against her in the criminal case described above within 30 days of the complaint being filed.

9. Respondent did not report in writing to the Department her felony conviction within 30 days of the conviction date.

10. Respondent did not report her felony conviction to the Department until she renewed her license in August 2019, which was well after the Department learned of it. Respondent testified that she did not report her criminal complaint or felony conviction to the Department earlier because she did not know she was required to

report such events at those times; instead, she testified her understanding was that she only needed to report a conviction when renewing her license, which she did every four years. At the time in question, respondent's license was not up for renewal until August 2019, which was more than one-and-a-half years after her conviction.

11. Respondent's testimony concerning reporting her criminal history was not convincing. As a licensed real estate salesperson for 16 years, respondent knew or should have known of the Department's criminal history reporting requirements. Moreover, it was unreasonable for respondent to believe she could wait so long until reporting a significant criminal conviction, at least without contacting the Department for confirmation that her understanding was correct.

Respondent's Evidence

12. Respondent is a 51-year-old single mother of six children; she has nine grandchildren. She is currently employed as a real estate salesperson and uses her license to support her family.

13. Respondent has no further contact with her (now former) roommate.

14. Respondent has no prior disciplinary history with the Department and no evidence suggests she has any other criminal history.

15. Respondent presented a number of favorable character witness letters from her children, a long-time friend, and two people in the real estate field with whom she has transacted business. (Ex. A.) Those letters corroborated respondent's testimony that she is a dedicated real estate professional, who works hard and does her best for clients; and that she is, and has been at all times, a loving and supportive parent.

Costs

16. The Department incurred reasonable costs in the investigation and enforcement of this matter in the amount of \$1,380.72.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant has the burden of proving cause for discipline against respondent by clear and convincing evidence to a reasonable certainty. (*The Grubb Co., Inc. v. Department of Real Estate* (2011) 194 Cal.App.4th 1494, 1505.) This means the burden rests on complainant to adduce proof that is clear, explicit, and unequivocal--so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487.)

Cause for Discipline

2. A. Pursuant to Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b),¹ the Department may discipline a real estate licensee who has been convicted of a crime which is substantially related to the qualifications, functions, or duties of a real estate licensee.

¹ Further undesignated statutory references are to the Business and Professions Code.

B. Clear and convincing evidence established cause to discipline respondent's real estate salesperson license pursuant to sections 490, subdivision (a), and 10177, subdivision (b), in that respondent was convicted of a crime, assault with force likely to produce great bodily injury, which is substantially related to the qualifications, functions, or duties of a real estate licensee. (Factual Findings 1-7.)

3. A. Pursuant to section 10186.2, a licensee shall report to the Department the bringing of an indictment or information charging a felony against the licensee, and the conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor. (*Id.*, subd. (a)(1).) The required report shall be made in writing within 30 days of the date of the bringing of the indictment or the charging of a felony, or the conviction. (*Id.*, subd. (a)(2).) Failure to make a report required by this section constitutes cause for discipline. (*Id.*, subd. (b).)

B. Clear and convincing evidence established cause to discipline respondent's real estate salesperson license pursuant to section 10186.2, in that respondent failed to report to the Department the felony complaint filed against her and her subsequent felony conviction within 30 days of the date of those events. (Factual Findings 1-11.)

Disposition

4. The statutes relating to the licensing of real estate professionals generally are designed to protect the public from dishonest, untruthful and/or disreputable licensees. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 451.) In determining the appropriate discipline of a licensee who has engaged in misconduct, the central question is what level of discipline is necessary to protect the public; disciplinary

proceedings such as this are not conducted for the primary purpose of punishing an individual. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.)

5. The rehabilitation criteria for Department licensees convicted of a substantially related crime are set forth in Regulation 2912, and those applicable to respondent in this case are summarized and analyzed (using the corresponding letters listed in the regulation) as follows:

(a) Just over two years have passed since respondent's conviction and sentencing.

(b) It was not established whether respondent has paid the entire restitution ordered by the court.

(c) Respondent intends to move to expunge her conviction once she completes probation.

(e) Respondent's probation will not end until 2021.

(g) It was not established that respondent has fully paid the fines and fees in her criminal probation yet.

(i) Since respondent no longer has contact with her former roommate, she has established new and different social relationships from those which existed at the time of her crime.

(j) Respondent has a stable family life and fulfills her responsibilities. She is very close to her children.

(k) Respondent did not establish that she has completed any educational or vocational training courses for economic self-improvement.

(l) It was not established that respondent has been involved in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) It was not established that respondent has had a change in attitude from that which existed at the time of her crime. Instead of accepting responsibility for her crime, respondent portrays herself as the victim. In that regard, her testimony was false. Respondent's failure to disclose her conviction to the Department when required is another indication that she does not accept responsibility for her crime and that her attitude has not changed.

6. A. Taking into account the considerations described above, complainant clearly and convincingly established that significant discipline of respondent's licensing rights is warranted in order to protect the public.

B. Respondent was convicted of a serious crime, which could have led to serious injuries to her victims. Without minimizing the seriousness of her crime, it is acknowledged that respondent's actions were committed in her personal life, during the throes of a romance gone bad. If that was the only basis for discipline established in this case, a restricted license may be warranted. However, respondent failed to report her criminal history to the Department when required, and during the hearing she provided false testimony about the underlying circumstances of her crime and her reason for not disclosing her conviction to the Department. It is in those areas of dishonesty that the most serious concern exists about respondent's fitness to remain licensed in a field where honesty and integrity are essential and required at all times.

C. While respondent has committed no further misconduct, such is to be expected of someone under the close scrutiny of criminal probation. (*In re Gossage*

(2000) 23 Cal.4th 1080, 1099.) Moreover, respondent has presented little evidence of rehabilitation, other than being an excellent parent and complying with her probation. While quantifying the level of someone's rehabilitation admittedly can be difficult, it has been held that an important factor in predicting future conduct is a "[c]hange in attitude from that which existed at the time of the conduct in question." (*Singh v. Davi* (2012) 211 Cal.App.4th 141, 149.) In this case, it was not established that respondent has experienced any change in attitude from that which existed at the time of her crime or failure to report her conviction to the Department.

D. Respondent had the burden of showing rehabilitation and fitness to maintain her license in the face of significant cause to discipline it. (*Martin v. Alcoholic Beverage Control Appeals Bd. of Cal.* (1959) 52 Cal.2d 259.) Based on the above, respondent has presented no substantial evidence demonstrating that retaining her license would be in the best interest of public protection. Regrettably, revocation of her license is warranted. (Factual Findings 1-15.) Should respondent successfully complete her criminal probation, including perhaps having her conviction expunged, and engage in prolonged, productive, and rehabilitative efforts, she may be a candidate for reinstatement of her license in the future. (Gov. Code, § 11522.)


7. Section 10106 provides, in part, that in any order issued in resolution of a disciplinary proceeding, the Real Estate Commissioner may request the administrative law judge to direct a licensee found to have violated the Real Estate Law to pay the reasonable costs of the investigation and enforcement of the action. In this case, respondent violated the Real Estate Law. She therefore is liable for the reasonable costs of the investigation and enforcement of this action in the amount of \$1,380.72. (Factual Finding 16.)

ORDER

All licenses and licensing rights of respondent Erica Dalila Herrera under the Real Estate Law are revoked.

Respondent shall pay costs of the investigation and enforcement of this matter in the amount of \$1,380.72 to the Department of Real Estate, if and when her licensing rights are reinstated.

DATE: January 31, 2020

DocuSigned by:

ERIC SAWYER

Administrative Law Judge
Office of Administrative Hearings