

**FILED**

**NOV 10 2020**

**DEPT. OF REAL ESTATE**

By John Aguilera

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of:	)	DRE No. H-41479 LA
	)	
JAMES LAMAR TILLMAN,	)	OAH No. 2019120571
	)	
Respondent.	)	

DECISION

The Proposed Decision dated July 17, 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.

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

Page 4, paragraph 9, "The Notice of Perform stated..." shall be amended to read "The Notice to Perform stated..."

Page 6, paragraph 14, "...DEL financial stationary are prepared..." shall be amended to read "...DEL Financial stationery are prepared..."

Page 6, paragraph 14, "...Ms. Williams signs the preapproval and prequalification letters using her signature block." shall be amended to read "...Ms. Williams only signs the preapproval and prequalification letters that include her signature block, not Mr. Lindgren's signature block."

Page 13, paragraph 3, "...and 10177, subdivision (b)." shall be amended to read "...and 10177, subdivision (j)."

Page 16, paragraph 11, "...as set forth Factual Findings..." shall be amended to read "...as set forth in Factual Findings..."

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. 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 DEC 01 2020.

IT IS SO ORDERED 10.19.20.

DOUGLAS R. McCAULEY  
REAL ESTATE COMMISSIONER

Douglas R. McCauley

**FILED**

AUG 28 2020

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

DEPT. OF REAL ESTATE  
By John Aguirre

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

**JAMES LAMAR TILLMAN, Respondent**

**Case No. H-41479 LA**

**OAH No. 2019120571**

**PROPOSED DECISION**

Cindy F. Forman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on June 23, 2020.

Laurence Haveson, Staff Counsel, represented Investigator María Suárez, Supervising Special Investigator of the State of California (Complainant).

James Lamar Tillman (Respondent) represented himself.

Oral and documentary evidence was received. The record was closed and the matter deemed submitted at the close of the hearing.

**SUMMARY**

Complainant seeks to discipline Respondent's real estate salesperson license based on allegations of fraud, dishonest dealing, negligence, and incompetence in.

connection with his representation of a potential buyer in a residential real estate transaction. Although Complainant did not establish Respondent committed fraud, engaged in any dishonest dealing, or acted incompetently, Complainant demonstrated Respondent was negligent in failing to respond to repeated requests for information as well as in failing to document his communications and work appropriately. Considering the absence of any prior license discipline, the limited nature of Respondent's negligence, Respondent's expressed remorse, his commitment to change his work habits, and the strong endorsement of his work from his broker, revocation or restriction of Respondent's license would be unduly punitive. A 14-day suspension is appropriate to remind Respondent of his professional obligations and sufficient to protect the public interest.

### **FACTUAL FINDINGS**

1. On March 5, 2013, the Department of Real Estate (Department) issued Respondent real estate salesperson license number 01321491 (license). The Department suspended Respondent's license from September 15, 2018, through October 23, 2018, for non-compliance with Family Code section 17520.<sup>1</sup> On October 24, 2018, the Department reinstated Respondent's license. It is currently scheduled to expire on March 4, 2021.

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<sup>1</sup> Family Code section 17520 allows the Department to suspend the license of a licensee if the licensee is out of compliance with a judgment or order for child or family support.

2. Complainant in her official capacity signed an Accusation against Respondent on August 29, 2019. The Accusation seeks discipline of Respondent's license based on violations of Business and Professions Code (Code) sections 10176, subdivisions (a) and (i), and 10177, subdivisions (g) and (j). The Accusation alleges Respondent acted fraudulently, negligently, and incompetently in an offer to purchase a residential property.

3. On October 22, 2019, Respondent timely filed a Notice of Appeal. This hearing followed.

### **Factual Background**

4. This matter is the result of the Department's investigation of a complaint by Russell H.<sup>2</sup> On November 29, 2017, Russell H. signed a residential listing agreement with licensed real estate saleswoman Shelly J. Cotton to sell a residence located in Helendale, California (the Helendale property). The listing price for the property was \$295,000. (Exhibit 3, pp. TILL00053 - 57.)

5. On December 18, 2017, Loretta C., represented by Respondent, submitted an offer to Ms. Cotton as agent for Russell H. to purchase the Helendale property for \$300,000, with an initial deposit of \$1,000. The offer provided escrow was to close 45 days after acceptance. (Exhibit 3, pp. TILL00068 – TILL00077; TILL00091.) Respondent was a sales agent affiliated with Hometown Realty at the time of the offer.

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<sup>2</sup> Initials are used to protect the privacy of the seller in the transaction at issue as well as Respondent's client.

6. On December 19, 2017, Russell H. made a counteroffer to Loretta C. for \$300,000 with additional terms and conditions (Exhibit 3, p. TILL00079.) The amount of the initial deposit remained unchanged. On December 21, 2017, Loretta C. accepted the counteroffer. (*Ibid.*) That same day, Ms. Cotton emailed to Respondent a copy of the executed contracts as well as certain seller disclosures for Loretta C.'s signature. Ms. Cotton also provided Respondent with the contact information for the escrow agent and informed him that the escrow agent had been notified to open escrow.

7. Escrow for the Helendale property was opened on December 21, 2017. (Exhibit 11, p. TILL000158.) Escrow was scheduled to close January 25, 2018.

8. Neither Respondent nor Loretta C. provided any loan or inspection information or any escrow paperwork to Russell H. or Ms. Cotton after escrow was opened despite the terms of the offer agreement requiring them to do so and repeated requests from Ms. Cotton. No evidence was presented documenting any attempts by Respondent to communicate with Ms. Cotton before January 23, 2018, except for a January 19, 2018 email from Respondent stating he was out of town for a family funeral and promising he would call once he was back in the office on January 22, 2018. There is no documentation that Respondent called Ms. Cotton at that time.

9. In response to Respondent's failure to answer Ms. Cotton's emails and communications, Ms. Cotton sent Respondent by email on January 23, 2018, a "Notice to Perform," requesting that Loretta C. remove the contingency for her loan, return the disclosures, and provide completed escrow paperwork to the escrow officer. The Notice of Perform stated that if these actions were not completed by January 25, 2018, the real estate sales agreement for the Helendale property would be subject to cancellation. (Exhibit 3, p. TILL00087; Exhibit 11, p. TILL000160.)

10. Ms. Cotton also contacted Delbert Lindgren, the licensed real estate broker who owned Hometown Realty and with whom Respondent was affiliated at the time Loretta C. made her offer on the Helendale property. Mr. Lindgren was unaware of the offer by Loretta C., could not locate any file for Loretta C., and was unable to contact Respondent.

11. On January 26, 2018, Russell H. signed a "Cancellation of Contract, Release of Deposit, and Cancellation of Escrow" (Cancellation). The Cancellation informed Loretta C. and Respondent that Russell H. was canceling the sales contract because of the non-performance of buyer Loretta C., Respondent, and Hometown Realty. (Exhibit 3, TILL00089.) The Cancellation was sent to Respondent with an email informing him that the deadline on the Notice to Perform had expired, the escrow officer had not received the buyer's escrow paperwork, and no signed disclosure had been received from the buyer. The email also noted that Russell H. had decided to cancel the escrow, and requested that the earnest money deposit be released to him. (Exhibit 13, p. TILL000198.)

12. On January 27, 2018, Respondent sent an email to Ms. Cotton and the escrow agent stating "We are not signing nothing that's giving my client money to the seller. Thanks!!!!" (Exhibit 13, TILL000196.)

### **Evidence Regarding PreApproval Letter**

13. Complainant has alleged that Respondent made a substantial misrepresentation, committed fraud, and engaged in dishonest dealing in representing buyer Loretta C. in her offer to purchase the Helendale property because he forged or fabricated the PreApproval Letter submitted in connection with the offer. The PreApproval Letter for Loretta C. is dated October 23, 2017. (Ex. 17, p. TILL0020.) The

PreApproval Letter is on DEL Financial Inc. (DEL Financial) letterhead and states that DEL Financial is "currently processing a mortgage loan application for [Loretta C]" and lists the preapproval amount as "FHA Financing with a Purchase Price up to \$335,000." The signature block for the PreApproval Letter states "Delbert Lindgren Broker" with an illegible handwritten signature. Respondent submitted the PreApproval Letter with the Loretta C. offer for the Helendale property although the record is silent as to whom the letter was sent and when the letter was sent or received.

14. Complainant relied solely on the testimony and declaration of Mr. Lindgren, the owner of DEL Financial, to establish Respondent's purported fraud and dishonest dealing. At hearing, Mr. Lindgren made clear he had no direct knowledge of the workings of DEL Financial. In his words, he "owns the store" but is not involved in the day-to-day loan approvals and processing. According to Mr. Lindgren, all loans and preapproval and prequalification letters on DEL Financial stationary are prepared and signed by his manager Eileen Williams. Mr. Lindgren further testified Ms. Williams signs the preapproval and prequalification letters using her signature block.

15. Mr. Lindgren reviewed the PreApproval Letter and testified that neither he nor Ms. Williams had signed it. He stated that the handwritten signature looked like Ms. Williams's signature but it was not. He did not specify the basis for his conclusion. Mr. Lindgren also testified that his signature block is usually not appended to any preapproval or prequalification letters under the DEL Financial letterhead. He further testified that neither he nor Ms. Williams could locate any file for Loretta C. relating to a request for a preapproval or prequalification letter. According to Mr. Lindgren, it was DEL Financial's practice to set up a file for any work done, including a prequalification letter.



16. Ms. Williams neither testified at hearing nor submitted any declaration. No evidence of Ms. Williams's genuine signature was offered into evidence. The Department investigator assigned to this matter did not interview Ms. Williams or any other employee working in the DEL Financial office regarding whether Ms. Williams or someone else prepared or signed the PreApproval Letter on behalf of Mr. Lindgren, her signature practices, or her efforts to locate the existence of any loan file.

17. Respondent vehemently denied forging any signature on the PreApproval Letter. As of the date of the letter, Respondent had been affiliated with Realty One Group, Inc. However, Respondent historically used DEL Financial as his loan broker even when affiliated with other real estate brokers. He had a desk at DEL Financial offices based on his long-term relationship with Mr. Lindgren, which the Department's License History Certification shows dates back to at least March 5, 2013. According to Respondent, the signed PreApproval Letter had been left on his desk at DEL Financial. He testified he did not know who had signed the letter. He also testified Ms. Williams signs letters that contain Mr. Lindgren's signature block, contrary to Mr. Lindgren's testimony. In support of his testimony, Respondent offered two prequalification letters that he had received by email from DEL Financial on April 7, 2017, both of which contained a signature block for Delbert Lindgren with handwritten signatures similar to that found on the PreApproval Letter. (Exhibit D.) Complainant offered no evidence in rebuttal.

18. Complainant failed to establish any motivation for Respondent to forge or fabricate the PreApproval Letter. The PreApproval Letter is dated nearly two months before Respondent submitted Loretta C.'s offer for the Helendale property so there was no pressing time need for the letter. At hearing, Respondent contended it would make no sense for him to forge or fabricate a prequalification letter because he would be

wasting his time showing the property and would not receive a commission for his work if his client could not afford the property. Respondent asserted his interest in his client's financial wherewithal therefore was similar to that of the seller. Respondent also pointed to his financial diligence on Loretta C. He pointed to the credit report for Loretta C. he had obtained on behalf of DEL Financial that he had provided to the Department (Exhibit 17, p. TILL000220) as well as correspondence from two finance companies regarding possible mortgage options for Loretta C. (Exhibits A and B.) The materials, however, are dated October 25, 2017, two days after the date of the PreApproval Letter. Nothing in the record explains the reasoning for the date differential; accordingly, the documents' relevance to Complainant's fraud and dishonest dealing allegations was not established.

19. No evidence was offered demonstrating that the listing broker or Russell C. relied on the PreApproval Letter. Nor was any evidence presented that the substance of the PreApproval Letter, i.e., its representation that Loretta C. could obtain certain financing, was inaccurate.

20. No testimony was elicited from Respondent as to whether he had the means or opportunity to forge or fabricate the Preapproval Letter. Respondent testified he did not have access to any letter templates from DEL Financial.

21. Considering the lack of specificity of Mr. Lindgren's testimony and his lack of involvement in DEL Financial's daily affairs, the absence of testimony from Ms. Williams, Respondent's vehement denials, and evidence of preapproval letters from Mr. Lindgren containing signatures similar to the signature in the PreApproval Letter, the evidence does not clearly or convincingly establish that Respondent forged or fabricated the PreApproval Letter. Mr. Lindgren's inability to locate a financial loan file for Loretta C. is not sufficient to establish fraud or dishonest dealing by Respondent.

## **Evidence Regarding Respondent's Conduct vis-à-vis the Listing Agent and His Broker**

22. The basis of Complainant's allegations regarding negligence and incompetence is not clear from the Accusation. Based on the evidence submitted and arguments of counsel, the allegations appear to be predicated on Respondent's failure to respond to inquiries from the listing agent for the Helendale property as well as from his broker Mr. Lindgren. Complainant relied on the testimony of Mr. Lindgren, the sworn complaint of Russell H., and the declaration of Ms. Cotton to support these allegations. However, because Complainant failed to satisfy the notice requirements of Government Code section 11514, the sworn complaint of Russell H. and Ms. Cotton's declaration were admitted as administrative hearsay under Government Code section 11513, subdivision (d), and cannot by themselves support any factual finding.

23. Mr. Lindgren testified that after speaking with Ms. Cotton regarding the Helendale property, he placed several telephone calls to Respondent to find out the status of the purchase and to provide any necessary assistance. However, he never received a response from Respondent. Mr. Lindgren also testified he was unable to locate any sale transaction file for Loretta C. Because of Respondent's lack of response and Respondent's failure to sign and return his sales agent contract, Mr. Lindgren terminated Respondent's association with Hometown Realtors on January 25, 2018.

24. Respondent acknowledged at hearing that his communication with Ms. Cotton could have been better and that his recordkeeping was remiss. He testified he had not communicated with Ms. Cotton after escrow opened because Loretta C. had moved out of the state and his repeated attempts to contact Loretta C. were unsuccessful. Because of his inability to reach Loretta C., Respondent was unable to execute any disclosures, release any contingencies, withdraw his client's offer, or agree

to release the earnest money deposit on Loretta C.'s behalf. Thus, despite Ms. Cotton's request, he had no authority to sign anything to release his client's money to Russell H. He testified he had communicated Loretta C.'s absence to Ms. Cotton by telephone, but he conceded he had no documentation of those telephone calls. Copies of undated text messages from Ms. Cotton indicate Respondent promised to call Ms. Cotton but do not indicate whether he did. (Exhibit 3, p. TILL000108.) Respondent did not explain his failure to follow up on his January 19, 2018 email or to respond by email to Ms. Cotton's repeated inquiries (see Factual Finding 8).

25. Respondent also testified he created a real estate file for Loretta C. but did not know where it was. He further testified he might have shredded the file when he left Hometown Realty.

26. No evidence was adduced demonstrating that Loretta C. suffered any economic harm from Respondent's actions. Nor did Complainant demonstrate that Respondent profited in any way from his failure to respond to communications from Mr. Ms. Cotton or Mr. Lindgren.

27. The evidence clearly and convincingly established that Respondent acted unprofessionally and carelessly in his dealings with Ms. Cotton and Mr. Lindgren.

### **Other Evidence**

28. Respondent has no history of license discipline.

29. Respondent has five children and 11 grandchildren. He is close with his family and visits his grandchildren every day.

30. Respondent is active in his community. He worked for three years from 2014 to 2017 for San Bernardino Community College (SBCC) as part of its outreach and

recruitment department. Since that time, he has volunteered his services with SBCC and has spoken to school assemblies and homeless populations regarding the college. He has also worked with State Senator Connie Leyva to assist students in his community.

31. Paul LePage, the Managing Broker at Realty One Group-Rancho Cucamonga, with whom Respondent is currently affiliated, testified on Respondent's behalf. Mr. LePage has known Respondent for four years. Mr. LePage described Respondent as an icon in the office and a very good agent. Mr. LePage supervises 1,500 agents and he considers Respondent to be one of the top agents in the group. Mr. LePage has never had any ethical or job-related issues with Respondent. He also never had any problem with Respondent's paperwork. Although Mr. LePage was not aware of the specifics of the Accusation when he agreed to testify, when the allegations were revealed to him at hearing, Mr. LePage was shocked and stated he had no reason to believe Respondent would have forged any document. Mr. LePage also asserted that Realty One uses a compliance manager to make sure all of its paperwork is proper and compliant, and the compliance manager never mentioned any work issue relating to Respondent.

32. Respondent was candid and non-defensive in his testimony. He testified he had worked hard for his real estate license and would not do anything to jeopardize it. He further testified he had made changes in his practice to ensure he properly memorializes his communications through email.

### **Costs**

33. The Department incurred a total of \$4,285.60 in investigating and prosecuting this matter. These costs consisted of (a) 34.45 hours at \$62 per hour spent by the special investigator and .95 hours at \$80 per hour spent by the supervising special investigator working on the case investigating the matter for a total of \$2,211.90 (Exhibit 19) and

(b) 23.3 hours at a rate of \$89 per hour, or \$2,073.70, in preparation for the prosecution of this case. (Exhibit 20.)

34. Respondent testified he would be able to pay these costs if allowed to do so according to a reasonable payment plan.

## LEGAL CONCLUSIONS

### Applicable Law and Cause for Discipline

1. Complainant has the burden of proving each of the grounds for discipline alleged in the Accusation. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) And she must do so by producing clear and convincing evidence to a reasonable certainty in support of those allegations. (*Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212 [discussing the appropriate standard of proof in license discipline proceedings].) Clear and convincing evidence is evidence that leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

2. Code section 10176, subdivision (a), authorizes the Real Estate Commissioner to discipline a licensee who, in the course of performing his duties, makes a substantial misrepresentation. Complainant failed to establish by clear and convincing evidence that Respondent made any substantial misrepresentation to his client Loretta C. or the listing broker Ms. Cotton. (Factual Findings 4 through 21.) Cause therefore does not exist to discipline Respondent's real estate salesperson license under Code section 10176, subdivision (a).

3. Code sections 10176, subdivision (i) and 10177, subdivision (j), authorize the Real Estate Commissioner to discipline a licensee who engages in conduct that constitutes fraud or dishonest dealing. Complainant failed to establish by clear and convincing evidence that Respondent committed fraud or engaged in dishonest dealing in connection with Loretta C.'s offer to purchase the Helendale property, as set forth in Factual Findings 4 through 21. Cause therefore does not exist to discipline Respondent's real estate salesperson license under Code sections 10176, subdivision (i), and 10177, subdivision (b).

4. Code section 10177, subdivision (g), authorizes the Real Estate Commissioner to discipline a licensee who demonstrates negligence or incompetence in performing an act for which a person is required to hold a license.

A. Negligence involves a breach of duty to use due care. (*Holmes v. Summer* (2010) 188 Cal.App.4th 1510, 1528, citing *Easton v. Strassburger* (1984) 152 Cal.App.3d 90, 98.) Real estate licensees have fiduciary duties to their clients and statutory duties to both their clients and others. According to Civil Code section 2079.16, a buyer's agent has affirmative duties to both the buyer and the seller to diligently exercise "reasonable skill and care" and engage in "honest and fair dealing and good faith." There is an "affirmative duty to treat each party to the transaction honestly and fairly, as expressed in [Civil Code] section 2079.16." (*Holmes v. Summer, supra*, 188 Cal.App.4th at p. 1525; see also *Saffie v. Schmeling* (2014) 224 Cal.App.4th 563, 568 [real estate brokers owe third parties who are not their clients the duties of "honesty, fairness and full disclosure"].)

B. The term "incompetence" constitutes "an absence of qualification, ability or fitness to perform a prescribed duty or function." (*Pollack v. Kinder* (1978) 85

Cal.App.3d 833, 837.) A single act of nonfeasance falls short of a demonstrated inability to perform the general duties and functions of a licensed real estate salesperson. (See *id.* at p. 839.)

5. Complainant did not establish by clear and convincing evidence that Respondent acted incompetently. There was little evidence that Respondent lacks the qualification, ability, or fitness to perform his duties as a real estate salesperson. However, Complainant did establish by clear and convincing evidence that Respondent acted negligently in his dealings with the listing broker and Russell H. As set forth in Factual Findings 1 through 12 and 22 through 27, Respondent breached his statutory duty to act in good faith and exercise reasonable care by failing to communicate about his inability to reach his client and repeatedly refusing to respond to multiple inquiries from Ms. Cotton. Respondent also provided no information about the prospective purchaser to his broker Mr. Lindgren, thus interfering with Ms. Cotton's ability to either proceed or cancel the sale. Cause therefore exists to discipline Respondent's real estate salesperson license under Code section 10177, subdivision (g).

### **Disposition**

6. The purpose of this administrative proceeding is to protect the public from licensees lacking the integrity necessary to fulfill the fiduciary responsibilities of a real estate professional consistent with the Real Estate Law and regulations. (See *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402; see also *Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513, 518.)

7. In determining the appropriate discipline, the paramount concern is whether a licensee is rehabilitated to the extent that he can be trusted to discharge his duties as a real estate salesperson in a manner consistent with the public interest. The Department's



criteria of rehabilitation set forth in California Code of Regulations, title 10, section 2912, are not determinative here because the cause for discipline against respondent does not arise from any criminal arrest or conviction. However, some criteria are useful in evaluating the likelihood of respondent repeating his misconduct, including the passage of time since the misconduct, stability of family life, fulfillment of family responsibilities, vocational training, community involvement, and the change in attitude since engaging in the conduct for which discipline is sought.

8. The imposition of discipline in this case requires a balancing of public protection, the seriousness of the offense, and the evidence of mitigation and rehabilitation. Respondent engaged in unprofessional conduct more than two years ago in connection with a single transaction. Although his misconduct was recent, his actions did not cause financial or any other damage to his client, and the listing broker and seller could seek recourse for the failed sale through protections afforded by the purchase agreement. Respondent admitted he failed to communicate adequately with the listing broker, and he expressed his remorse at the hearing for his conduct. He testified the incident has made him more careful in memorializing his conversations and responding to communications. Respondent has never been disciplined in the 7 years he has held his real estate salesperson's license. Respondent is dedicated to his family and community. He is held in high esteem by his current broker and serves as a role model for younger salespeople. (Factual Findings 28 – 32.)

9. Based on the facts and circumstances of this case, revocation or restriction of Respondent's license is too harsh a penalty. However, to remind Respondent of his obligation to comply with the Real Estate Law, a 14-day suspension is warranted. The period of suspension would serve to emphasize to Respondent his obligation to act in

good faith in his dealings not only with his clients but also with other participants in the sale transaction.

## **Costs**

10. Code section 10106 permits the Department to seek recovery of investigation and enforcement costs, provided the Department prevails in the action. *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 (*Zuckerman*), sets forth factors to be considered in determining a reasonable cost assessment for disciplined licensees. Factors to be considered include whether the licensee had a "subjective good faith belief" in the merits of his or her position, whether the licensee raised a "colorable challenge" to the proposed discipline, and the extent of the licensee's financial ability to make later payments. Further, full costs may not be assessed when a "disproportionately large investigation" was conducted given the circumstances of the case. Finally, the Department should consider the public interest in regulating the targeted conduct.

11. Here, Respondent had a subjective good faith belief in the merits of his position and raised a colorable challenge to the proposed discipline. The Department also did not prevail on three of the four causes of action, and those three causes of action raised more serious concerns than the fourth. Thus, as set forth Factual Findings 33 and 34, in conjunction with the *Zuckerman* factors described above, an 80 percent reduction of the total costs sought (\$4,285.60) is reasonable. Respondent therefore shall reimburse the Department \$857.12 according to a reasonable payment plan.

## ORDER

All licenses and licensing rights of respondent James Lamar Tillman under the Real Estate Law are suspended for fourteen (14) days from the effective date of this Decision.

Respondent shall pay costs of \$857.12 to the Department of Real Estate in monthly installments in such manner that takes into account Respondent's financial resources and as the Department may direct, as reimbursement for the reasonable costs of investigation and enforcement of this matter.

DATE: July 17, 2020

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