

FILED

OCT 27 2020

DEPT. OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of:	)	DRE No. H-41501 LA
ANN ESTHER CASILLAS,	)	OAH No. 2020010988
Respondent.	)	

DECISION

The Proposed Decision dated August 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.

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

Respondent's Criminal Conviction, Page 2, Paragraph 3, reads as, "...case number FSB130581..." corrected as, "...case number FSB1303581..."

The Decision suspends or revokes one or more real estate licenses, but the right to a restricted salesperson license is granted to Respondent.

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 NOV 16 2020.

IT IS SO ORDERED 10.20.20

DOUGLAS R. McCAULEY  
REAL ESTATE COMMISSIONER

Douglas R. McCauley

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

**In the Matter of the Accusation against:**

**Ann Esther Casillas, Respondent**

**Agency Case No. H-41501 LA**

**OAH No. 2020010988**

**PROPOSED DECISION**

Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by video and teleconference on August 11, 2020.

Andrea Bentler, Real Estate Counsel, represented Maria Suarez, (Complainant), in her official capacity as Supervising Special Investigator of the Department of Real Estate (Department or DRE).

Respondent Ann Esther Casillas (Respondent) represented herself.

Oral and documentary evidence was received and the matter was submitted for decision on August 11, 2020.

## **SUMMARY**

Respondent's criminal conviction is substantially related to the qualifications, functions or duties of a real estate salesperson because it involves fraud. Respondent established rehabilitation sufficient to warrant continued licensure on a restricted basis.

## **FACTUAL FINDINGS**

1. An Accusation dated September 24, 2019, was signed by Complainant in her official capacity. DRE set a hearing after Respondent's timely request and this matter ensued. All jurisdictional requirements have been met.

### **Respondent's Criminal Conviction**

2. On January 28, 2006, DRE issued real estate salesperson license number 01522109 to Respondent. It will expire on January 27, 2022 unless renewed or revoked.

3. On July 16, 2018, in the Superior Court of California, County of San Bernardino, case number FSB130581, Respondent was convicted, on her plea of no contest, of violating Welfare and Institutions Code section 10980, subdivision (c)(2) (fraud to obtain aid), a misdemeanor. The court placed Respondent on summary probation for two years on terms and conditions including that Respondent serve one day in jail, with credit for one day served and complete 100 hours of work sentence/community service and payment of fines and fees. Respondent completed her probation in July of 2020. Her conviction has not been expunged.

4. The facts and circumstances underlying the conviction are that during the period of 2009 to 2013, Respondent received food stamps and cash aid for herself and her minor son and daughter. At the time, Respondent was a divorced, single mother supporting two of her five children alone. She was ill with an infection that left her bedridden for 10 months, required breast surgery that left her unable to work for an extended period of time. In 2013, Respondent's daughter turned 18 and obtained her first job. Respondent did not receive any funds from her daughter to pay household expenses and did not list her daughter's income on the required income verification forms. Additionally, Respondent's unemployed boyfriend, who was suffering from colon cancer and not providing support to the household, resided in her home. Respondent did not disclose that her boyfriend was living in her home or that he had income. Pursuant to the terms of her divorce, Respondent owned a rental property with her ex-husband. The rent payments from the rental property were used to pay for the mortgage on the rental property and Respondent did not have access to the rental income. Respondent failed to disclose the rental income. Respondent cooperated with the county investigators who questioned her in 2013 and was advised that they had concluded their investigation in 2013. She did not hear anything more until police officers arrived unexpectedly at her home one morning in 2018 and arrested her as she was preparing to go to work.

### **Mitigation and Rehabilitation**

5. Respondent's conviction is more than two years old and is based on conduct that occurred between 7 and 11 years ago. Respondent admitted her conduct and accepts full responsibility. She made full restitution in the amount of \$7,047 for all amounts of aid she received prior to her conviction and has paid all court ordered fines and fees. Respondent has no prior or subsequent convictions. Respondent

completed over 100 hours of community service at Isaiah's Rock Christian Fellowship and continues to volunteer there. Respondent attends weekly real estate industry meetings, attends Church services twice a week and volunteers with local exchange students. Respondent also cares for her six-year-old grandson who lives with her and is involved in Boy Scouts with him. Respondent completed her probation in July of 2020. Her conviction has not been expunged.

6. Respondent provided character reference letters from friends, family, employers and a client as follows:

A. In an August 5, 2020 letter, Respondent's sister-in-law, Lisa Rodriquez, who has known her for 25 years, wrote:

I had the opportunity to see her as a kind, loving and caring Mother, Daughter, Grandmother, Sister and friend.

I have always admired her commitment to her strong work ethic and dedication to her family. I value her for always being there for others in time of need. Also, for personally being there for my family and myself when I was going through a difficult time in my life.

I truly believe Ann is aware of her legal struggles and takes responsibility for it. She served community service and continues to give back to the community.

(Ex. A.)

B. Respondent's son, Lance Corporal Anthony Kirk Rodriguez, wrote a letter dated July 29, 2020, in support of his mother. Mr. Rodriguez wrote:

I understand my mother has made these mistakes in an effort to care for her kids as a single mother. As her son I know she is not proud of these mistakes and is ashamed of it still. She has accepted the consequences of her legal sentence for her actions without blaming anyone else for them. She has done the best job she can do raising five children who all have strived to reach success in their professional lives. I, her son, am serving our country in the Marine Corps. I could not have done that without the loving support I have received from my extremely strong mother to get where I am now. I believe my mother is ready to move forward from the mistakes she has made and continue her career as one of the finest real estate agents you can find. May the court see that my mother has served her dues, and grant Ann E. Casillas freedom from all charges.

(Ex. A.)

C. Respondent's daughter Valerie Ann De La Torre, wrote a letter dated July 23, 2020, in support of Respondent. In pertinent part, she wrote:

I am 38 years old, the eldest of five children. I am currently attending the University of Phoenix to obtain my bachelor's degree in criminal justice and in the process of becoming a correctional officer.

Growing up, my mom was extremely involved in our education and sports. She participated in school events such as drum corps parent group and team mom for my softball team. As a young mother, she made sure each of her kids graduated from high school with honors. My mother has always taught us to strive to be the best at whatever we do in life.

As a single mom, my mom was able to obtain her real-estate license and excel at her craft. She has always gone above and beyond for her clients, no matter what challenges she may face she gets the job done. Four years ago, my mom was able to help my husband and I buy our first home, and I can honestly say that I was lucky to have her guidance throughout the entire process. I will acknowledge that my mother has made mistakes and has suffered the consequences. She understands the severity of her actions and takes full responsibility for her mistakes.

(Ex. A.)

D. Respondent's daughter, Denise Rodriguez, also wrote a letter in support of Respondent. In relevant part, she wrote:

As a full time single mother, she found time to further develop her realtor career, learn, educate, teach us to be students in the classroom and out of it. Growing up we were held to certain standards, in school to prepare



ourselves, on the softball field to play hard and have fun, on the color guard team to be fierce and proud. Ann, my mother, was and has always been a woman of dedication, hard work, compassion, a real-life hero. She led by example, showing us that no matter what it is what we do, no matter what it is that we want, to earn it we would have to be compassionate of those around us, show love and be of help, learn to serve others and always be the hardest working person.

We, our family, understand the mistake that she made in the past. We also acknowledge that it does not take away from her character, she is and will still be the compassionate, dedicated, hardworking woman that raised five amazing children who learned and paid attention to the life teachings that she provided. She was convicted, she served the sentence that was given to her.

(Ex. A.)

E. Respondent's daughter, Natalie Rodriguez, also wrote a letter in her support. In pertinent part, she wrote:

I am writing today to inform you on the accountability taken by my mother, Ann Casillas. She has served her sentence and has worked diligently to clear her name. I am very proud of her for taking her sentence serious, though she was ashamed and embarrassed for what she was

convicted for, she never let the shame keep her from paying her dues. [Respondent] was humbled by her community service time and truly embraced the experience of helping the community. She shared many stories with me during the time she was completing her hours.

[Respondent] is a single mother of 5 kids. She is the sole income provider to maintain a roof over her head and manage her finances. She's always been a hard-working women (*sic*) and a great member of society. . . [Respondent] raised 5 strong, ambitious adults who serve our communities in positive ways. Our family has never been troublemakers and have always strived to do great, it has a lot to do with how our mother raised us. To be fighters in life and be good Samaritans. She has Daughters in leadership and a son who serves as a U.S. Marine. [Respondent] has a strong loving family by her side through these tough times. I can honestly say she learned her lesson.

[Respondent] has never once blamed anyone for her consequences and has taken full accountability.

(Ex. A.)

F. Respondent's friend, June Gonzales, wrote a letter dated July 8, 2020. In relevant part, she wrote:

I have known Ann for 30 years. She has always been a good friend to me. [She was] always there (*sic*) for me no matter what time of day or night. As friends we know a lot about each other's lives. She has always tr[ie]d to live the best that she can becoming a single parent was not easy. Money was tight and she made a decision that would change her life. I believe that her decision was based on all the change going on in her life at that time a mistake made but we all make mistakes. Is it forgivable. I believe so with everything she has been through. I am still thankful to call her my friend and have her in my life. She is a great mom, grandmom, daughter and most of all to me friend.

She is a hard worker and put her all into it but always makes time for her family.

(Ex. A.)

G. Respondent also provided a letter from a former client, Michelle A. Stephens, who was very satisfied with Respondent's representation during the sale of her home. In relevant part, she wrote:

My experience was the best I could ever ask for. She does everything perfect in real estate. All transactions, trustworthy too. Thank GOD she came into my life the way she did. I can depend on Ann for everything! She will always handle any real estate property I will ever own. That says A LOT these days.

(Ex. A.)

H. Jeffrey T. Bonafede, Sales Manager of Century 21 Peak, Respondent's employer, wrote a letter of support addressed to the criminal court on July 11, 2018. In pertinent part, he wrote:

Ms. Casillas has worked with us since February 13, 2017 and has been a licensed real estate sales agent in good standing with the Department of Real Estate since January 28, 2006.

Ms. Casillas has grown her business substantially over the last year and continues to be one of our top agents. It is our opinion that she is a very dedicated salesperson, very much devoted to her profession and her clients. From our observations we believe she is a valuable asset to our company and possesses a bright future in the real estate industry.

(Ex. A.)

7. The Department incurred costs of investigation and enforcement totaling \$1505.30, comprised of \$785.30 of investigation costs and \$720 of enforcement costs. These costs are reasonable pursuant to Business and Professions Code section 10106 and reflect the complexity and preparation of the matter. Respondent did not contest the costs or present any evidence of her inability to pay them.

## LEGAL CONCLUSIONS

1. Complainant bears the burden of proving by clear and convincing evidence to a reasonable certainty that respondent has engaged in conduct warranting suspension or revocation of Respondent's real estate licenses. (See *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855–856.) Clear and convincing evidence means the evidence is "so clear as to leave no substantial doubt" and is "sufficiently strong to command the unhesitating assent of every reasonable mind." (*Mathieu v. Norrell Corp.* (2004) 115 Cal.App.4th 1174, 1190 [citing *Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 332–333].)

2. The real estate commissioner "has full power to regulate and control the issuance and revocation, both temporary and permanent, of all licenses to be issued . . . ." (Bus. & Prof. Code, § 10071.) "Protection of the public shall be the highest priority for the Department of Real Estate in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." (Bus. & Prof. Code, § 10050.1.)

3. Business and Professions Code sections 490 and 10177, subdivision (b), authorize the suspension or revocation of a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of a real estate licensee.

4. California Code of Regulations, title 10 (CCR), section 2910, subdivision (a) provides that when considering whether a license should be suspended or revoked on the basis of the conviction of a crime, the crime shall be deemed to be substantially related to the qualifications, functions or duties of a real estate licensee. Pursuant to

CCR, section 2910, subdivision (a), a conviction is substantially related to the qualifications, functions or duties of a real estate licensee, if it involves:

- (1) [t]he fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person;
- (2) [c]ounterfeiting, forging or altering of an instrument or the uttering of a false statement;

¶...¶

- (4) [t]he employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end;

¶...¶

- (8)[d]oing any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

5. Complainant established by clear and convincing evidence that cause exists pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), and CCR section 2910, subdivisions (a)(1) and (a)(4), to suspend or revoke Respondent's real estate license and licensing rights for conviction of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee. As set forth in Factual Findings 2-4, Respondent's 2018 Conviction for fraud to obtain aid, is substantially related to the qualifications, functions and duties of a real estate licensee.

6. Cause for license discipline having been established, the issue that remains is the appropriate level of discipline. The weight accorded to the substantially-related conduct and Respondent's rehabilitation, must be evaluated to determine the nature of the discipline to be imposed.

7. The Department has set forth criteria to evaluate the rehabilitation of a licensee who is subject to administrative discipline because of committing a crime. (CCR, §2912.) The relevant criteria include the time that has elapsed since commission of the acts; the nature and severity of the crimes or acts committed by the licensee; the licensee's history of criminal convictions or license discipline that are "substantially related" to the qualifications, functions or duties of a real estate licensee; expungement of the convictions which culminated in the administrative proceeding to take disciplinary action; successful completion or early discharge from probation or parole; abstinence from the use of controlled substances and/or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance and/or alcohol; payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license; new and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question; completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement; significant and conscientious involvement in programs designed to provide social benefits or to ameliorate social problems; change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by testimony or other evidence of rehabilitation submitted by the licensee; evidence from family members, friends or other persons familiar with the licensee's previous conduct and with subsequent attitudes or behavioral patterns; evidence from probation or parole officers or law

enforcement officials competent to testify as to licensee's social adjustments; evidence from psychiatrists, clinical psychologists, or other persons competent to testify with regard to neuropsychiatric or emotional disturbances; absence of subsequent felony convictions, misdemeanor convictions, or other conduct that provides grounds to discipline a real estate licensee, which reflect an inability to conform to societal rules when considered in light of the conduct in question.

8. All evidence of rehabilitation has been considered. To her credit, Respondent has made full restitution and reimbursed all funds that were paid to her. Respondent has not suffered any subsequent convictions, or engaged in any other conduct that would be grounds for discipline of a real estate licensee or reflects an inability to conform to societal rules. Respondent also submitted character reference letters from family, friends and her employer supporting her rehabilitation and continued licensure.

9. Based upon the rehabilitation criteria set out in CCR section 2912, Respondent provided sufficient evidence to establish her rehabilitation and present fitness to practice as a real estate salesperson with restrictions, consistent with protection of public health, safety, and welfare based on application of the Department's criteria. (Factual Findings 3-6 and Legal Conclusions 1-9.)

10. Respondent expressed remorse about the 2018 Conviction and the underlying facts. Rehabilitation is a "state of mind" and the law looks favorably on rewarding one who has achieved "reformation and regeneration" with the opportunity to serve. (*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.) However, 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.) The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

11. Administrative proceedings to revoke, suspend, or impose discipline on a professional license are non-criminal and non-penal; they are not intended to punish the licensee, but rather to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785–786.)

12. Respondent engaged in illegal conduct which was not consistent with that expected of a real estate licensee. (See *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402 [“The Legislature intended to ensure that real estate brokers and salespersons will be honest, truthful and worthy of the fiduciary responsibilities which they will bear.”].) Rehabilitation depends upon a record of conduct that convinces the Department that the public would be safe if Respondent maintained her privilege of licensure. Respondent has established a record of reliable, responsible and consistently appropriate conduct. Respondent’s conviction is an aberration from an otherwise law abiding life and was a display of poor judgment under difficult circumstances which is not likely to occur again. Accordingly, the interests of public protection can be met by allowing Respondent to remain licensed on an appropriately restricted basis.

13. The Department requests reimbursement of \$1505.30 in investigation and enforcement costs. (Finding 7.) The Department’s investigation was proportional to the violation and there was no evidence that payment of the costs would be a hardship on Respondent. Accordingly, Respondent shall be ordered to pay \$1505.30 in costs.

## **ORDER**

1. All licenses and licensing rights of Respondent Ann Esther Casillas under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Business and Professions Code section 10156.5 if Respondent makes application therefor and pays 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 Business and Professions Code Section 10156.7 and to the following limitations, conditions, and restrictions.

2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of a conviction against Respondent or his plea of nolo contendere to a crime which is substantially related to the Respondent's fitness or capacity as a real estate licensee.

3. 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.

4. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license, until two years have elapsed from the effective date of this Decision.

5. 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 Department 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 performance by the restricted licensee relating to activities for which a real estate license is required.

6. Respondent shall, one year from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

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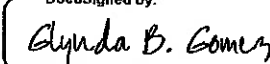
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7. Respondent shall pay the Department the sum of \$1505.30 due and payable within 180 days from the effective date of this decision.

DATE: August 31, 2020

DocuSigned by:  
  
GLYNDA B. GOMEZ

Administrative Law Judge

Office of Administrative Hearings