

FILED

APR 14 2020

DEPT. OF REAL ESTATE

By @Selous

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of:)	DRE No. H-41513 LA
JULIAN MORE OJEDA,)	OAH No. 2019110214
Respondent.)	

DECISION

The Proposed Decision dated February 19, 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 8, paragraph 7, line 2, "...acrimonious martial dissolution." shall be corrected to read "...acrimonious marital dissolution."

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 APR 27 2020.

IT IS SO ORDERED 3/27/20

SANDRA KNAU
ACTING REAL ESTATE COMMISSIONER



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

In the Matter of the Accusation against:

JULIAN MORE OJEDA, Respondent.

Agency No. H-41513 LA

OAH No. 2019110214

PROPOSED DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on in Los Angeles, California on February 4, 2020.

Andrea Bentler, Real Estate Counsel, Department of Real Estate (Department), represented complainant Maria Suarez, a Supervising Special Investigator of the State of California. Respondent Julian More Ojeda represented himself. The matter was submitted for decision on the same day at the conclusion of the hearing.

Complainant seeks to discipline respondent's real estate salesperson license based on allegations he has criminal convictions that are substantially related to the qualifications, functions, or duties of a real estate licensee, which he did not report to the Department. Respondent argued for his continued licensure. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order revoking respondent's real estate salesperson license and accompanying rights.

FACTUAL FINDINGS

Jurisdictional Matters

1. On October 3, 2019, complainant made the Accusation in an official capacity.
2. On October 15, 2019, respondent filed a Notice of Defense on Accusation acknowledging receipt of, among other documents, a copy of the Accusation and requesting a hearing to present a defense or matters in mitigation or extenuation to the allegations in the Accusation.
3. All jurisdictional requirements are satisfied.

Cause to Discipline Respondent's Real Estate Salesperson License

4. On January 1, 2014, the Department issued Real Estate Salesperson License S/01916699 to respondent. The license, which was in full force and effect at all relevant times, expires on April 1, 2021, unless renewed.
5. During the course of his sworn testimony at the administrative hearing, respondent admitted he falsely reported a vehicle he owned was stolen, when in actuality he paid another person to take the vehicle to Tijuana, Mexico.
6. On March 6, 2018, in the Superior Court of California, San Bernardino County, in case number FV118000230, respondent was convicted, on his nolo contendere plea, for violating Penal Code 550, subdivision (b)(1) (insurance fraud), a felony and Vehicle Code 10501 (false report of vehicle theft with intent to deceive), a misdemeanor. The court withheld pronouncement of judgment and granted respondent three years' supervised probation with terms and conditions including

serving 60 days in a San Bernardino County Jail Facility (to be completed through Weekend/Work Release Program commencing May 18, 2018, and ending May 15, 2019), paying restitution in an amount totaling \$549.33 to Geico Insurance Company (Geico), and complying with the prohibition against working as an undercover agent in anti-fraud enforcement operations conducted by the Bureau of Automotive Repair (BAR) while on probation.

7. On June 11, 2019, pursuant to Penal Code section 17, subdivision (b), in case FVI18000230, the court granted respondent's motion to amend the charge alleging a felony violation of Penal Code section 550, subdivision (b), and to reduce the felony conviction pursuant to Penal Code section 550, subdivision (b), to a misdemeanor conviction. The court additionally modified the supervised probation term and placed respondent on summary probation, which expires March 5, 2021.

8. Respondent's criminal convictions are substantially related to his qualifications, functions or duties as a Department licensee for the reasons set forth in Legal Conclusion 5.

9. Respondent did not report his criminal convictions to the Department within 30 days of the initial March 6, 2018 date of conviction.

10. Respondent testified he did not know he was required to report his criminal convictions to the Department. He explained he reported the convictions "as soon as I got the letter, and I filled it out and sent it to them." The letter to which respondent referred is an October 4, 2018 letter from the Department informing respondent it had been advised of his March 6, 2018 felony and misdemeanor convictions and requesting respondent to provide the Department with additional information about the convictions. Respondent submitted a Conviction Detail Report

in which he answered "No" to the query "Do you wish to offer an explanation as to why you committed this crime(s)?" (Exhibit 6.)

11. As a licensed real estate professional since at least January 1, 2014, respondent is charged with having both actual and constructive notice of the notification obligations set forth in the Real Estate Law. (See Legal Conclusion 9.) Respondent's claimed ignorance of the law is rejected.

Factors in Aggravation, Mitigation, and Rehabilitation

12. Respondent remains on probation until March 5, 2021.

13. Respondent expressed remorse for his misconduct and resulting criminal convictions. "I did make a mistake. I did something wrong, and I recognize that. I feel bad about it. I won't ever do it again" He explained, "It occurred in the middle of a bad divorce. It is not my character." According to respondent, he was "upset and mad" with his spouse, from whom he was separating, because she "wanted the house and cars," which included an old car he purchased with the intention of repairing it for resale. To circumvent his spouse's claim to the vehicle, respondent paid a friend \$300 to take the vehicle to Tijuana, Mexico. Respondent then reported the vehicle stolen and filed a property loss claim with Geico, his insurance carrier. After filing the property loss claim with Geico, respondent had second thoughts. He called Geico, and he cancelled the property loss claim.

14. Several months after his criminal convictions, on November 19, 2018, respondent was awarded the Certified Probate Real Estate Specialist (CPRES) certification, a credentialing designation that respondent completed training by the United States Probate Services to handle complex probate property sale transactions. (See Exhibit D.)

15. Respondent's hiring manager, who has known respondent for six years, vouched respondent "is always ethical in the business." The hiring manager detailed an accountability structure at respondent's current place of employment, which includes management's regular communication with salespersons transacting real estate and immediate review of all transactions and underlying documentation. The hiring manager testified he would not hesitate to take internal disciplinary measures against respondent if necessary or to bring a disciplinary matter involving respondent to the Department's attention. The hiring manager testified, "We don't take chances like that."

16. Respondent's mentor who trained and recommended him to the BAR to serve as an undercover agent in the BAR's anti-fraud enforcement operations, testified consistently with the character reference letter he wrote on respondent's behalf. Among other things, the letter states, "There is no doubt in my mind that Mr. Julian Ojeda is an honest person." (Exhibit B at p. 4.).

17. Several individuals, including respondent's girlfriend, adult daughter, sister-in-law, client, and colleagues, wrote character reference letters on respondent's behalf. (See Exhibit B.) The letters extol respondent as "a dedicated ethical agent" (Exhibit B at p.1), as "very honest and trustworthy" (Exhibit B at p. 2), and as "a person with high ethical, moral and professional standards" (Exhibit B at p. 3). Respondent did not disclose his fraudulent misconduct or resulting criminal convictions to the individuals writing character reference letters on his behalf. Diminished weight is therefore accorded these character reference letters.

Costs of Investigation and Prosecution

18. The Department incurred costs of investigation and prosecution totaling \$1,351.60. These costs are reasonable pursuant to Business and Professions Code section 10106.

19. Neither party presented evidence of respondent's financial ability to pay a cost award.

LEGAL CONCLUSIONS

1. The purpose of this administrative proceeding is not to impose additional punishment on respondent. (See *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.) The Superior Court has already imposed appropriate and significant criminal punishment on respondent. (See Factual Finding 6.) The purpose of this administrative proceeding is to protect the public from, among other things, 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.)

2. 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 license. (See *The Grubb Co., Inc. v. Department of Real Estate* (2011) 194 Cal.App.4th 1494, 1505.) 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].)

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

4. California Code of Regulations, title 10, section 2910, subdivision (a), provides that "[w]hen 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 licensee of the Department within the meaning of Section[] . . . 490 . . . if it involves: (1) the fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person. (2) Counterfeiting, forging or altering of an instrument or the uttering of a false statement. [¶] . . . [¶] (4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end. [¶] . . . [¶] (8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator[.]

5. Respondent's March 6, 2018 criminal convictions, as amended on June 11, 2019, are substantially related to his qualifications, functions or duties as a Department licensee because they involve respondent's deceit to appropriate funds for his benefit from an insurance company by making false and misleading statements about the loss of property. Such misconduct evinces dishonesty and a lack of integrity. Respondent's work as a Department licensee affords him access to the private and confidential financial and other information of members of the public, and he is required to perform licensed activity with the utmost honesty and integrity. His fraud

and false claim convictions are therefore related to his qualifications to perform the licensed activity.

6. In the case where a crime or act is substantially related to the qualifications, functions or duties of a real estate licensee, the context in which the crime or act was committed goes only to the question of the weight to be accorded to the crime or act when considering the action to be taken with respect to the licensee. (Cal. Code Regs., tit.10, § 2910, subd. (c).)

7. Respondent's misconduct and resulting criminal convictions arose in the context of an acrimonious martial dissolution. The dissolution of a marriage, which is not an atypical occurrence, is no justification or excuse for engaging in fraudulent misconduct. Even when experiencing personal discord, the rules of professional conduct govern, and the standards of the real estate profession demand integrity, honesty, and truthfulness from members of its ranks at all times. Significant weight is accorded respondent's misconduct and resulting convictions.

8. Complainant has established by clear and convincing evidence that cause exists pursuant to Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b), and California Code of Regulations, title 10, section 2910, subdivision (a)(1), (a)(2), (a)(4), and (a)(8), to discipline respondent's real estate salesperson license on the basis of the March 6, 2018 convictions, as amended on June 11, 2019. (See Factual Findings 6 and 7.)

9. Business and Professions Code section 10186.2 requires real estate licensees to report "[t]he conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor in writing within 30 days of the conviction."

10. Complainant has established by clear and convincing evidence that cause exists pursuant to Business and Professions Code section 1086.2 to discipline respondent's real estate salesperson license for failure to report to the Department he was criminally convicted on March 6, 2018. (See Factual Finding 9.)

11. Although cause exists to discipline respondent's real estate salesperson license and accompanying licensing rights, the Department has, pursuant to Business and Professions Code section 482, developed criteria for evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of license has been initiated on account of crimes committed by the licensee. The law recognizes that people can and do reform and that in such circumstances they should not be barred from licensure. (See *Tardiff v. State Bar* (1980) 27 Cal.3d 395, 404.)

12. The Department's criteria for rehabilitation, which are codified in California Code of Regulations, title 10, section 2912, include, among other things, the elapse of time since commission of the acts or offenses; expungement of the convictions which culminated in the administrative proceedings to take disciplinary action; successful completion or early discharge from probation; payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license; stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction; significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems; and change in attitude from that which existed at the time of the commission of the criminal acts in question.

13. Respondent bears the burden of establishing his rehabilitation and present fitness and qualifications to perform the functions and duties of a licensed real

estate salesperson consistent with the Real Estate Laws and regulations. (Evid. Code, § 500; *Coffin v. Alcoholic Beverage Control Appeals Bd.* (2006) 139 Cal.App.4th 471, 476.)

14. Respondent's criminal record consists of convictions for insurance fraud and the filing of a false report of vehicle theft with intent to deceive (Factual Findings 6 and 7), both of which he failed to report to the Department when obligated to do so. (Legal Conclusion 10.) Respondent's criminal convictions are recent; they occurred approximately two years ago. Respondent's criminal convictions have not been expunged. Respondent remains on probation until 2021. (Factual Finding 12.) Respondent offered no evidence establishing he has fulfilled his obligation to pay restitution in an amount totaling \$549.33 to Geico. Respondent offered no evidence addressing his family life subsequent to his criminal convictions or his community involvement.

15. Respondent expressed remorse about his misconduct. (Factual Finding 13.) Remorse for one's conduct is a cornerstone of rehabilitation. (See *In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309.) Fully acknowledging the wrongfulness of past actions is an essential step toward rehabilitation. (See *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933.) Nonetheless, mere expression of remorse does not demonstrate rehabilitation. This is particularly so where, as in this case, dishonesty is central to respondent's misconduct resulting in his criminal convictions. Given the facts of this case, a truer indication of respondent's rehabilitation is exemplary conduct sustained over an extended period of time. (See *In re Menna* (1995) 11 Cal.4th 975, 991.)

16. A manager and a mentor opined positively on respondent's business ethics. (Factual Findings 15 and 16.) But character evidence in and of itself, no matter how laudatory, is not decisive of rehabilitation. (*Seide v. Committee of Bar Examiners*,

supra, 49 Cal.3d at 939.) Critically, respondent's manager and mentor's opinions regarding respondent's business ethics are incongruous with the evidence of respondent's fraudulent, and therefore unethical, conduct occurring outside respondent's real estate practice.

17. Respondent's conduct outside the context of his practice of real estate reflects on respondent's fitness and qualifications to perform the functions and duties of a Department licensee. Respondent has shown dishonesty, poor character, a lack of integrity and an unwillingness to abide by the law. Plainly put, respondent has demonstrated professional unfitness meriting license discipline. (See *Griffiths v. Superior Court of Los Angeles County* (2002) 96 Cal.App.4th 757, 771.)

18. Subsequent to his criminal convictions, respondent was awarded CPRES certification. (Factual Finding 14.) Even if fully credited, without more, the awarded certification is insufficient evidence of the exemplary conduct respondent must demonstrate over an extended period of time to overcome the level of dishonesty and lack of integrity his misconduct revealed.

19. Based on the entirety of the record, revocation of respondent's real estate salesperson license number S/01916699 and accompanying licensing rights protects the public.

Cost Award

20. Business and Professions Code section 10106 authorizes the recovery of the Department's prehearing investigation and enforcement costs.

21. Under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the Department must exercise its discretion to reduce or eliminate cost

so as to prevent cost award statutes from deterring licensees with potentially meritorious claims or defenses from exercising their right to a hearing. "Thus the [Department] must not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [licensee] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed." (*Ibid.*) The Department, in imposing costs in such situations, must consider the licensee's subjective good faith belief in the merits of his or her position and the Department must consider whether or not the licensee has raised a colorable defense. The Department must also consider the licensee's ability to make payment.


22. Considering the *Zuckerman* factors, including the absence of evidence regarding respondent's financial ability to pay a cost award and the likely negative impact of license revocation on respondent's financial resources, the Department shall recover its costs of investigation and prosecution from respondent in an amount totaling \$1,351.60 only in the event respondent's real estate salesperson license and accompanying licensing rights are reinstated.

ORDER

1. Real Estate Salesperson License S/01916699, and accompanying licensing rights, issued to respondent Julian More Ojeda is hereby revoked.

2. Respondent Julian More Ojeda shall pay the Department its costs of investigation and enforcement in an amount totaling \$1,351.60 in the event Real Estate Salesperson License S/01916699 is reinstated.

DATE: February 19, 2020

DocuSigned by:

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JENNIFER M. RUSSELL
Administrative Law Judge
Office of Administrative Hearings