

FILED

AUG 19 2020

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPT. OF REAL ESTATE
By 

* * *

In the Matter of the Accusation of:

JUSTIN OMID MONEMPOUR,

Respondent.

) DRE No. H-41545 LA

) OAH No. 2019121037

DECISION

The Proposed Decision dated June 26, 2020, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

Pursuant to Section 11517 (c) (2) (C) of the Government Code, the following correction is made:

Findings, under Criminal Conviction, page 6, Paragraph 11, Line 1:

“May 3, 3016” shall read “May 3, 2016”.

The Decision suspends or revokes one or more real estate licenses, but the right to a restricted broker 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 September 18, 2020.

IT IS SO ORDERED

8.4.20

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:

JUSTIN OMID MONEMPOUR, Respondent

Case No. H-41545 LA

OAH No. 2019121037

PROPOSED DECISION

Eileen Cohn, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by telephone on May 28, 2020.

Diane Lee, Counsel, represented Maria Suarez, Supervising Special Investigator of the State of California (Complainant).

Raymond J. MacMahon, Attorney at Law, represented Justin Omid Monempour (respondent) who was present on the telephone.

Oral and documentary evidence was received. The record was closed and the matter submitted at the conclusion of the hearing on May 28, 2020.

ISSUES PRESENTED

1. Whether Respondent's real estate broker license should be disciplined due to his misdemeanor conviction?
2. Whether Respondent's real estate broker license should be disciplined due to his failure to report his misdemeanor conviction within thirty days of sentencing?

SUMMARY

Complainant seeks to discipline by revocation respondent's real estate broker license because of respondent's misdemeanor criminal conviction for workers' compensation premium fraud and his failure to report that conviction within 30 days of sentencing. At hearing, respondent established rehabilitation from his crime. Due to his substantial evidence of rehabilitation, respondent has shown that outright revocation of his license is not warranted. Nevertheless, the nature of respondent's misdemeanor conviction and his failure to timely report that conviction warrants a limited time of further monitoring by the Department of Real Estate (DRE) and therefore issuance of a restricted license is necessary and appropriate to protect the public interest.

FACTUAL FINDINGS

Jurisdiction

1. Complainant brought the Accusation on November 19, 2019, in her official capacity as a Supervising Special Investigator of the State of California.

2. Respondent is a licensed real estate broker. The DRE issued respondent's real estate salesperson license on December 1, 2003. The DRE issued his real estate broker license number B/01403877 on October 24, 2008. Respondent's real estate broker license expires on October 23, 2020, unless renewed.

3. Respondent timely filed a Notice of Defense. All jurisdictional requirements for this matter to proceed to hearing have been met.

Criminal Conviction

4. On October 31, 2018, in the Superior Court of California, County of Los Angeles, Case No. BA467176, on his plea of no contest to amended count one of the criminal complaint, respondent was convicted of violating Insurance Code section 11880, subdivision (a) (workers' compensation premium fraud), a misdemeanor. Count one of the criminal complaint was amended to reduce the conviction from a felony to a misdemeanor. The court found a factual basis for the respondent's plea, suspended respondent's sentence, imposed a one-year period of probation, ordered restitution to the state compensation insurance fund (SCIF) in the amount of \$21,791.79 and \$1000 to the Department of Insurance, 250 hours of community service, and other fines and restitution in the amount of \$220.

5. Respondent satisfied the terms of his probation. He paid the restitution in full and completed his community service prior to his conviction and sentencing on October 18, 2018.

6. Count one of the criminal complaint executed on April 13, 2015 states as follows:

On or between July 1, 2010 and July 1, 2015, in the County of Los Angeles, the crime of WORKERS' COMPENSATION FRAUD, in violation of INSURANCE CODE SECTION 11880, subdivision (a), [a misdemeanor], was committed by JUSTIN MONEMPOUR, who did knowingly make and cause to be made a false and fraudulent statement, orally and in writing of a fact material to the determination of the premium, rate, and cost of a policy of workers' compensation insurance issued and administered by the State Compensation Insurance Fund, for the purpose of reducing the premium, rate, and cost of insurance.

It is further alleged as to Count 1, offenses described in Penal Code section 803(c), that the above violation was not discovered until on or about May 3, 2016, the claims adjuster, Mr. John Merritt, for EPI Investment Realty, and that no victim of said violation and no law enforcement agency chargeable with the investigation and prosecution of said violation had actual and constructive knowledge of said violations prior to that date because the defendant omitted, misrepresented and concealed their criminal activities, within the meaning of Penal Code section 803(c).

7. The circumstances of the conviction are as follows: Between July 1, 2010 and July 1, 2015, respondent, along with his father, were sole corporate owners and managing members of EPI Investment Realty (EPI), a residential property management and investment company. Respondent eventually became the sole corporate owner and

Chief Executive Officer of EPI. At the time of the incident and the following investigation, respondent was operating the business, supervising employees and managing the books. EPI operates as a property management company and a real estate investment company where third party investors reimburse EPI for "most of EPI's operating expenses" and "all" of the SCIF premiums, which were reimbursed within the same fiscal year they were paid to SCIF. (Respondent's Declaration, Ex. B.) A financial investor of EPI confirmed respondent's representation. (Declaration of Behzad Broukhim, Ex. C.) Respondent retained a certified public accountant (CPA) for taxes and reporting payroll to the Employment Development Department (EDD), but had his staff record payroll separately through Quick Books for reporting to SCIF.

8. Between July 1, 2010 and July 1, 2015, respondent timely submitted payroll reports as required to SCIF, which were used to calculate workers' compensation premiums.

9. Respondent's conviction was the result of an initial investigation conducted by SCIF in September 2016, and a follow-up investigation conducted by the Department of Insurance, Fraud Division (DOI). (Ex. 4.) Respondent had secured SCIF insurance for EPI beginning in 2009. During the applicable period of the investigation respondent used his staff to calculate the SCIF premium from EPI's payroll, not his certified public accountant. Respondent used his certified public accountant to calculate and submit all payroll reports to the EDD. The EDD reports were audited and no irregularities were found.

10. The payroll reports to SCIF were mailed semi-annually from July 2009 to 2011. Between July 2011 and July 2013, the payroll reports were submitted on-line semi-annually. Between July 2013 and July 2015, the payroll reports were submitted annually. In total, three payroll reports to SCIF bear respondent's signature and eight payroll

reports were submitted electronically to SCIF with respondent's name as the person completing and submitting the payroll. The payroll reports were submitted under respondent's name on behalf of EPI, as its authorized representative, owner, bookkeeper or accountant of the business. Each payroll report contains a statement at the end from the authorized representative: "I, certify that as an authorized representative of the above named insured that the information provided for the purposes of this workers' compensation audit is complete and accurate, to the best of my knowledge." (Ex. 4.)

11. A SCIF claims adjuster first reported irregularities in May 3, 2016, after an EPI employee retained a lawyer and filed a claim. In August 2016, SCIF compared respondent's EDD wage records to the payroll reports submitted to SCIF for a five-year period beginning fiscal year July 2010 to July 2011 and ending fiscal year July 2014 through July 2015. After respondent's May 2016 phone call with the SCIF adjuster, respondent corrected the irregularities and EPI's payroll matched his EDD payroll records. The total differential between the EDD Wage records and the payroll reports to SCIF over the five-year period was \$139,129.29, resulting in a total underpayment of the premium owed to SCIF in the amount of \$21,794.79.

12. After the SCIF investigator, Maggie Perez (Perez), completed her investigation she referred her findings to the Department of Insurance Fraud Division. (Ex. 4.)

13. Ms. Perez opined that respondent had committed fraud. However, her opinion was not clearly shared by Mario Larranaga, SCIF's Senior Payroll Auditor. Mr. Larranaga conducted the audit on August 19, 2016. Although he could not explain why respondent did not reconcile EPI's EDD reports with its SCIF payroll reports, he explained that many employers do not think the payroll reports are important. Mr.

Larranaga concluded from his interview with respondent, that respondent may not have known the correct classifications of employees.¹

14. Detective Rebekah McClain conducted the investigation on behalf of DOI.²She interviewed respondent on February 23, 2018. She told him the difference between the wages reported to EDD and the wages reported to SCIF between July 1, 2010 and

¹ Detective McClain and Ms. Perez's conclusions and opinions were given little weight as they did not testify and without more their role as investigators did not qualify them to reach legal conclusions. Aside from their legal conclusions, the report, which contained data reflected in the criminal conviction, was given weight, and the statements attributed to respondent by Mr. Larranaga, who did not testify, and Detective McClain were treated as administrative hearsay. Complainant refused to produce to respondent the attachments to the investigator's report which included the full interview with Mr. Larranaga and respondent's interview. As such, any interpretation given to Mr. Larranaga's responses to Ms. Perez, contained in the SCIF investigative report, which were not supported or explained by other evidence or respondent's testimony, was disregarded.

² DOI's auditor identified a broader discrepancy between the EDD payroll reports and the SCIF reports than identified by the SCIF investigator and auditor. However, the SCIF investigator's conclusion that the total amount of the discrepancy was \$21,791.79 was determined to be the amount owed in restitution and made part of the criminal conviction. As such, that amount, and not the amount claimed to be underreported by the DOI, was proven by clear and convincing evidence.

July 1, 2015, was \$139,129.29, resulting in a total unpaid premium for the five-year period of \$21,794.79. The difference for each year ranged from \$922.82 and \$10,610.37. During that interview respondent acknowledged the EDD reports should match the SCIF reports; however, he explained he only has two or three employees, and many licensed contractors he pays as independent contractors. Respondent stated he runs a "clean business" and if there were mistakes he did not "intend for it to occur." (Ex. 4.) He confirmed his role as managing member and his responsibility to run the business, supervise employees and manage the books. He stated he used a spreadsheet for the payroll and may have accidentally missed some quarterly figures, and that he had someone helping him in prior years with Quick Books. (Ex. 4.) During the hearing, respondent stated he relied upon his staff and did not provide appropriate oversight.

15. There is no evidence respondent provided further information about subcontractors or the sources of his calculations prior to his plea of no contest.

Failure to Disclose Conviction

16. Respondent failed to report his misdemeanor conviction within 30 days, or no later than November 30, 2018, as required by Business and Professions Code section 10186.2, subdivision (a)(1)(B).³ Respondent filed a Conviction Detail Report with DRE on March 28, 2019, four months late. (Exs. 5 and 6.)

³ The Accusation alleges failure to report the conviction, not the original felony charge.

Respondent's Evidence of Rehabilitation

17. Respondent obtained his Bachelor of Arts from the University of California, Los Angeles (UCLA) in 2006, at 22 years of age. Respondent became co-owner of EPI shortly thereafter and admits to being very young and relatively inexperienced when he began managing EPI. During the time period relevant to his conviction, he was between 26 and 31 years of age. Respondent is now 36 years of age. He married in 2018, had his first child in November 2018 and his second child one year later in 2019.

18. In addition to being the owner and managing member of EPI, which is now, EPI Investment Group, LLC, a real estate investment group, respondent is the owner and CEO of Monem Enterprises, Inc., a property management company. Through his businesses he financially supports his young family and seven full-time employees. His employees have established long-term careers with his businesses; the most junior employee has worked for him for six years, the senior employee, 15 years, and the remaining five employees, somewhere in between. In addition, respondent retains numerous contractors to perform repairs and remediation on the properties.

19. Respondent's criminal conviction is inconsistent with his personal and professional history. Respondent has no other criminal convictions, or criminal record of any kind, has never been disciplined by the DRE and has no record of complaints against him either as a real estate salesperson or as a real estate broker.

20. After he graduated from UCLA, respondent worked as a licensed real estate salesperson under Babak Siminou, who has been licensed by DRE as a real estate broker since 1987. As of the date of his declaration, May 13, 2020, (Exhibit D, pp. 4-5), Mr Siminou had known respondent for 15 years during which time he also invested with respondent in two real estate properties, which were renovated and resold. He has

known respondent to be diligent and professional in his handling of every transaction and to have a "great work ethic." One other investor also attested to his ethics and honesty.

21. Respondent has a record of ethical conduct as a real estate broker. He relies on other licensed real estate salespersons or brokers to complete real estate transactions for properties he sells as an investor, and generally limits his direct sales of real estate properties to family and friends. Larry Weiner, of Flans & Weiner, Inc., a real estate broker, licensed with DRE since 1989, has known respondent since 2016 and represented him as a seller in several transactions. From his dealings with respondent he considers him to be an "honest person of the highest moral and ethical standards." (Ex. D, p.6.)

22. Lorin Ruttenberg has worked with respondent as a DRE-licensed real estate salesperson for the past nine years, representing him as a buyer, seller or as part of a dual agency relationship. She has never observed him engage in any unethical conduct as a licensee, e.g., make false representations, misappropriate funds, or breach his fiduciary obligations. (Ex. D, p. 3.)

23. With the exception of the SCIF payroll reports during the relevant period of the conviction, respondent has entrusted his certified public accountant, Mr. John W. Walton, with his personal and company taxes and company EDD payroll taxes since 2008. Beginning in 2018 all payroll services, including SCIF, have been provided by an independent company that goes by the acronym, ADP. Respondent clarified in his testimony that SCIF payroll was handled by ADP as early as 2016. Mr. Walton represented respondent for two IRS audits of his business entities and reported that due to respondent's "excellent record keeping and documentation both audits resulted in very small adjustments." (Ex. D, p. 2.)

24. Respondent is involved in community service. His community service was performed to satisfy his probation, but it went beyond his probation. Respondent contributed his skills to New Horizons, a non-profit organization focused on practical job training and placement for adults with disabilities. The President and Chief Executive Officer of New Horizons, John C. Bauer, testified on respondent's behalf during the hearing and his testimony was consistent with his character reference letter. (Ex. D., p.1) New Horizons is a \$19 million-dollar nonprofit organization that employs 450 staff persons and provides services to over 1500 individuals with special needs. New Horizons finds employment for its clients in service businesses, including grocery stores, paper shredding services or wood shops. Respondent worked with Mr. Bauer directly to develop a food program inclusive of packaged meals which would employ the clients of New Horizons and provide financial support to the organization. Respondent created a business plan for the organization's catering business tailored to the organization's needs. Respondent became involved in every step of the planning stage, and became Mr. Bauer's trusted advisor and friend. Prior to the Covid-19 pandemic, respondent and Mr. Bauer would meet face-to-face bi-weekly to exchange ideas about programs. Mr. Bauer did not know initially about respondent's conviction, just his need for community service, but has since learned about his conviction.

25. As a result of his underreporting to SCIF which led to his conviction, respondent has participated in continuing education through UCLA extension to keep informed about best business practices, retained his certified public accountant to oversee all payroll and taxes, and further retained an outside company to process all payroll information and reports to ensure all reports are accurate. There is no evidence that respondent has failed to meet his obligations to SCIF after 2015. In fact, Detective McClain's investigative report notes that after the May 2016 call from the SCIF auditor, respondent's payroll reports to SCIF were accurate.

26. Respondent filed a Petition for Dismissal of his October 31, 2018 conviction on March 2, 2020, under Penal Code section 1203.4 with the Superior Court. Ex. E, pp 1-3.) The hearing and decision have been delayed due to the Covid-19 pandemic.

27. Respondent's testimony was candid and insightful. Respondent readily acknowledged he signed the reports and took responsibility for his staff's calculations and payments. He acknowledged he was remiss in his oversight, although he insisted, despite his plea, he did not intend to defraud SCIF. According to respondent, the conviction was a sobering reminder to him of the need for extra diligence.

28. Respondent is regularly reminded of his need for vigilance. The conviction has threatened respondent's ability to retain current financing on his properties, and also threatens financing on future projects, including a previously approved Section 8 affordable housing project. (Ex. E, pp. 4-7.) According to respondent, loss of his broker license will prevent him from operating his property management business, and risk not only his livelihood, but that of his employees.

29. Respondent acknowledged he had forgotten to report the conviction. He testified that he had never been convicted of a crime before and did not intend to violate the statute. Respondent thought the reporting requirement was limited to a felony, and since he was convicted of a misdemeanor and intended to have it expunged, he overlooked the reporting requirement.

Cost of Prosecution and Investigation

30. The DRE incurred \$528 dollars (5.5 hours X \$96.00 an hour) for attorneys' fees through May 5, 2020, and \$739.20 in investigative costs related to this matter, in the total amount of \$1,267.20. (Ex. 7.) The costs are reasonable.

LEGAL CONCLUSIONS

Legal Principles

1. In this case involving discipline of a professional license, complainant bears the burden of proving cause for discipline by clear and convincing evidence to a reasonable certainty. (*The Grubb Co., Inc. v. Dept. of Real Estate* (2011) 194 Cal.App.4th 1494, 1505.) This standard applies specifically to real estate brokers. (*Small v. Smith* (1971) 16 Cal.App.3d 350; *Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204.)

2. This means the burden rests on complainant to establish the charging allegations by 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. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

Cause for Discipline for a Substantially Related Conviction

3. The Commissioner of the DRE may take disciplinary action against a licensee for reasons listed in Code sections 490 and 10177, subdivision (b). As relevant to the allegations in this matter, Code section 10177, subdivision (b) sets forth the following ground for license discipline:

(b)(1)Entered a plea of guilty or no contest to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a

subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw that licensee's plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

4. Under Business and Professions Code sections 490, and 10177, subsection (b) the Commissioner may discipline a real estate licensee for a misdemeanor conviction which is substantially related to the qualifications, functions, or duties of a real estate licensee. California Code of Regulations, title 10 (Regulation), section 2910, sets forth several criteria to be used to determine whether a crime is substantially related to the qualifications, functions, or duties of a Department licensee. The criteria particularly pertinent to the findings in this matter is whether the crime was committed with the intent of conferring a financial or economic benefit upon the perpetrator (8). However, based upon the conviction, as set forth in legal conclusion 5, below, respondent's conduct is also substantially related to his licensure under (2) for uttering a false statement, (3) making a false statement to reduce an assessment imposed by government; and (4) for his employment of misrepresentation to achieve an end. ⁴

⁴ Complainant contends that respondent's underpayment of SCIF premiums also met the criteria for repeated acts under Regulation section 2910, subdivision (8) because he executed the payroll reports multiple times a year, upwards of 25 times a year. However, although the evidence established multiple filings with SCIF over the period of time of the conviction, his conviction was for one count and a single total amount of unreported payroll.

5. Respondent maintains that the DRE failed to meet its burden of proof that respondent committed the crime with either intent or with the intent of conferring a financial or economic benefit to himself by his underpayment to SCIF. However, the evidence establishes clearly and convincingly that he did. Respondent pleaded no contest to a violation of Insurance Code section 11880, which states: "It is unlawful to make or cause to be made any knowingly false or fraudulent statement, oral or written, of any fact material to the determination of the premium rate or cost of any policy of workers' compensation insurance issued or administered by State Compensation Insurance Fund for the purpose of reducing the premium rate, or cost of insurance." The elements of the crime, include an intentional act of "knowingly" making a false or fraudulent statement, and a presumption of an intent to obtain a personal benefit in that the making or causing to make a knowingly false or fraudulent statement, of any material fact used to determine the premium rate is done "for the purpose of reducing the premium rate and cost of insurance." As such, respondent's protestation that his conviction was substantially *unrelated* to his broker license because he was not "personally" conferred a benefit is inconsistent with the language of the crime for which he was convicted.

6. Nor does respondent's evidence that his investors reimbursed him for all costs incurred on their behalf further his position. As part of respondent's oversight of real estate properties, he advanced the costs of the premiums and received a "personal benefit" by not having to advance funds on behalf of investors for workers' compensation insurance he was obligated to pay. Respondent's responsibilities as a property manager or co-investor for which, by his own admission, he relies upon his license as a real estate broker, extended to his payment of a substantial amount of wages to staff and others over the same period of time as evidenced by his correct payroll reports to the EDD. It is unknown if he was reimbursed for wages for his property

management and co-investors; however, it is clear that he advanced funds and benefitted from the reduction of any funds he needed to advance.

7. Cause for discipline by clear and convincing evidence has been established pursuant to Business and Professions Code sections 490, and 10177, subsection (b) together with California Code of Regulations, title 10 (Regulation), section 2910.

Failure to Report the Conviction

8. Respondent's failure to report his conviction within 30 days, by reason of finding 16, constitutes a cause for discipline under Business and Professions Code section 10186.2.

Costs

9. Under Business and Professions Code section 10106, subdivision (a), in a disciplinary hearing, the commissioner "may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case." Under subdivision (d), the administrative law judge "shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case." By reason of finding 30, the costs for investigation and prosecution are \$1,267.20.

Disposition

10. California Code of Regulations, title 10, section 2912, provides guidance for determining the appropriate discipline:

The following criteria have been developed and will be considered by the Bureau [Department] pursuant to Section

482 of the Business and Professions Code for the purpose of evaluating whether or not a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee is rehabilitated:

(a) The time that has elapsed since commission of the acts(s) or offense(s):

(1) The passage of less than two years after the most recent criminal conviction or act of the licensee that is a cause of action in the [Department's] Accusation against the licensee is inadequate to demonstrate rehabilitation.

(2) Notwithstanding subdivision (a)(1), above, the two-year period may be increased based upon consideration of the following:

(A) The nature and severity of the crime(s) and/or act(s) committed by the licensee.

(B) The licensee's history of criminal convictions and/or license discipline that are "substantially related" to the qualifications, functions, or duties of a real estate licensee. However, no rehabilitation shall be required where the sole proven basis or bases for denial of an application is an expunged conviction as described in Business and Professions Code Section 480(c).

- (b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee, or escheat to the State of these monies or other properties if the victim(s) cannot be located.
- (c) Expungement of criminal convictions which culminated in the administrative proceeding to take disciplinary action.
- (d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.
- (e) Successful completion or early discharge from probation or parole.
- (f) Abstinence from the use of controlled substances and/or alcohol for not less than two years if the conduct which is the basis to deny the Bureau action sought is attributable in part to the use of controlled substances and/or alcohol.
- (g) Payment of any fine imposed in connection with a criminal conviction that is the basis for revocation or suspension of the license.
- (h) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.

(i) New and different social and business relationship from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.

(j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.

(k) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.

(l) Significant or conscientious involvement in community, church or privately sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) Change in attitude from that which existed at the time of the conduct in question as evidenced by the following:

(1) Testimony and/or other evidence of rehabilitation submitted by the applicant.

(2) Evidence from family members, friends and/or other persons familiar with applicant's previous conduct and with his or her subsequent attitudes and/or behavioral patterns.

(3) Evidence from probation or parole officers and/or law enforcement officials competent to testify as to applicant's social adjustments.

(4) Evidence from psychiatrists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

(5) 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.

11. Based upon the relevant DRE's criteria, by reason of findings 5 and 17 through 29, respondent has established that he is rehabilitated from his conviction. His conviction, although less than two years prior to the hearing, was for one misdemeanor count for premium fraud, during a five-year period ending in 2015, five years ago. He was young when he started his company and as a result of the charges against him and ultimate conviction he corrected his business practices, took continuing education courses to further improve his business management, and gave oversight of all his payroll to his certified public accountant and an independent processing company, ADP. Notably, there has been no underpayment of SCIF since that time. Respondent satisfied the terms of his short probation, made restitution in full to SCIF and completed the terms of his probation. He has contributed to the community beyond his probationary requirements of 250 hours, and is a valued contributor to an organization serving the needs of the disabled. Respondent's family life is stable and he is trusted by his clients and other licensees, and employs seven full-time and long term employees. He has requested expungement of his criminal conviction and is awaiting a court date, which has been delayed due to the Covid-19 pandemic. Based on the persuasive evidence of

his rehabilitation, revocation or suspension of his license is not required to protect the public.

12. Respondent's failure to timely report his criminal conviction does not warrant suspension or revocation based upon the evidence. Respondent acknowledged he made a mistake when he filed the report four months after the conviction, but his failure to do so, by reason of finding 16 and 29 was an unfortunate mistake.

13. Respondent provided substantial evidence of rehabilitation and the value to the public of his continued licensure. However, given the nature of his conviction and his untimely report of that conviction to the DRE some additional oversight is required to protect the public. Consistent with the guidelines provided in Regulation, section 2930, respondent real estate broker license will be subject to a two-year period of probation, with appropriate terms and conditions.

ORDER

All licenses and licensing rights of respondent Justin Omid Monempour under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate 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 all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

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

2. 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.

3. 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.

4. Respondent shall, within nine months 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 the 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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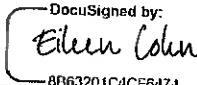
5. Reporting Condition:

Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 137000, Sacramento, CA 95813-7000. The letter shall set forth the date of respondent's arrest, the crime for which respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

6. Costs of Investigation and Prosecution.

Within 30 days of the effective date of this Decision, respondent shall pay to the Department of Real Estate the cost of investigation and prosecution in the amount of \$1,267.20.

DATE: June 26, 2020

DocuSigned by:

EILEEN COHN
Administrative Law Judge
Office of Administrative Hearings