

FILED

OCT - 7 2020

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPT. OF REAL ESTATE  
By 

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In the Matter of the Accusation of:	)	DRE No. H-41598 LA
GEORGE AYAD MAKARY	)	OAH No. 2020050445
Respondent.	)	

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DECISION

The Proposed Decision dated July 28, 2020, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The Decision suspends or revokes one or more real estate licenses.

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

Findings, Page 3, Paragraph 2B, Line 2: "Department" shall read "DRE", and on same Paragraph, line 4, "Bureau" shall read "DRE".

Findings, Page 12, Paragraph 23, Line 7: "warrant" shall read "warranted".

Legal Conclusions, Page 14, Paragraph 4, Line 7: "broker's" shall read "broker", on page 20, Paragraph 19, Line 6, "broker's" shall read "broker" and line 5, "pubic" shall read: "public".

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 November 6, 2020.  
IT IS SO ORDERED 9.24.20

DOUGLAS R. McCAULEY  
REAL ESTATE COMMISSIONER

Douglas R. McCauley

*Sc...*

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

**FILED**

OCT - 7 2020

In the Matter of the Application of:  
MAKARY CORP; and  
GEORGE AYAD MAKARY,  
individually and as designated officer  
of Makary Corp.  
Respondents

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DRE No. H-41599 LA  
OAH No. 2020050446

DEPT. OF REAL ESTATE  
By 

DECISION

The Proposed Decision dated July 28, 2020, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The application for a mortgage loan originator license endorsement is denied. The earliest date on which the applicant may reapply for a license is one year from the effective date of this Decision. If and when application is again made for this license, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner.

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

Findings, Page 3, Paragraph 2B, Line 2: "Department" shall read "DRE", and on same Paragraph, line 4, "Bureau" shall read "DRE".

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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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IT IS SO ORDERED 9.24.20.

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:**

**GEORGE AYAD MAKARY, Respondent,**

**Case No. H-41598 LA**

**OAH No. 2020050445**

**and**

**In the Matter of the Statement of Issues Against:**

**MAKARY CORP; and GEORGE AYAD MAKARY, individually  
and as designated officer of Makary Corp., Respondents.**

**Case No. H-41599 LA**

**OAH No. 2020050446**

**PROPOSED DECISION**

Carmen D. Snuggs, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard these consolidated matters by videoconference and telephonically on June 29, 2020.

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

Natalia Matusik, Attorney at Law, represented respondents Makary Corp. (Respondent MC) and George Ayad Makary (Respondent Makary), who appeared individually and as designated officer of Respondent MC (collectively, Respondents).

During the hearing, complainant moved to amend the Statement of Issues in OAH No. 2020050445 to strike paragraphs 17 and 18. Complainant also moved to amend the Statement of Issues in OAH No. 2020050445 to change the word "MU2" to "MU1" at paragraph 5b. There was no opposition, and the motions were granted.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on June 29, 2020.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. On December 24, 2018, the Department of Real Estate (DRE), issued real estate corporation license No. C/02081770 to Respondent MC. The license expires December 23, 2022, unless renewed or revoked. There is no history of prior discipline of the license.

2. A. On April 6, 2018, the DRE issued broker's license number B/01950892 to Respondent Makary. The broker's license expires April 5, 2022, unless renewed or revoked. There is no history of prior discipline of that license. In addition, Respondent Makary was licensed by the DRE as a real estate salesperson from July 9, 2014, to April 6, 2018.

B. On January 21, 2015, Respondent made an application (2015 Individual Application) to the Department for an individual (MU4) mortgage loan originator license endorsement (MLO license endorsement) on the National Mortgage Licensing System and Registry (NMLS). On February 6, 2015, the Bureau granted the MLO under Respondent Makary's real estate salesperson license.

3. On May 10, 2018, Respondent Makary submitted an application (2018 Individual Application) to the DRE for an individual (MU4) MLO license endorsement on the NMLS.

4. On January 3, 2019, Respondent Makary submitted an application (Officer Application) to the DRE for an officer (MU1) MLO license endorsement on the NMLS.

5. On January 3, 2019, Respondent MC through Respondent Makary as its control affiliate made an application (Company Application) to the DRE for a company (MU2) MLO license endorsement on the NMLS. The Company Application names Respondent Makary as Respondent MC's President and Chief Executive Officer (CEO).

6. A. On January 28, 2020, complainant filed a Statement of Issues seeking to deny Respondents' applications for MLO license endorsements on the grounds that Respondents failed to demonstrate such financial responsibility, character, and general fitness as to warrant a determination that Respondents will operate honestly, fairly, and efficiently. Specifically, complainant alleges that Respondent Makary suffered prior license discipline by the Respiratory Care Board, he failed to disclose the discipline, a small claims judgment was entered against Respondent Makary, and Respondent Makary suffered multiple convictions for driving with a blood alcohol content of 0.08 percent or more.

B. Also on January 28, 2020, complainant filed an Accusation seeking to discipline Respondent Makary's real estate license on the grounds he was convicted of driving with a blood alcohol content of 0.08 or more in 2017, and he failed to report his conviction to the DRE. As aggravation, complainant asserts respondent suffered two prior convictions for driving with a blood alcohol content of 0.08 percent or more in 2005 and 2009.

C. Respondents timely filed a Notice of Defense. All jurisdictional requirements have been met. On June 1, 2020, the two matters were consolidated for hearing.<sup>1</sup>

### **Prior Disciplinary Action**

7. In a disciplinary action entitled *In the Matter of the Statement of Issues Against: George Ayad Makary*, Case No: 1H 2009 587, the Respiratory Care Board (Board), Department of Consumer Affairs, State of California, adopted a Stipulated Settlement and Disciplinary Order, and issued a Decision and Order (Probation Order) effective May 12, 2010. The basis for the disciplinary action was Respondent Makary's convictions for driving with a blood alcohol content more than 0.08 percent. In its Probation Order, the Board issued a conditional license to practice respiratory care to Respondent Makary and placed his license on probation for three years with certain terms and conditions.

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<sup>1</sup> On the hearing date, complainant agreed to issuance of a single proposed decision for these consolidated cases. (Cal. Code Regs., tit. 1, § 1016, subd. (d).)



8. A. In a disciplinary action entitled *In the Matter of the Accusation and Petition to Revoke Probation Against: George Ayad Makary*, Case No. D1 2009 587, the Board adopted a Stipulated Surrender of License and Order and issued a Decision and Order (Surrender Order), effective December 12, 2013.

B. The Accusation in that matter alleged that Respondent Makary violated Condition 7 of his probation, which states:

Respondent shall file quarterly reports of compliance under penalty of perjury on forms provided to the probation monitor assigned by the Board. Omission or falsification in any manner of any information on these reports shall constitute a violation of probation. . . .

(Ex. 9, p. 14.)

C. The Accusation, further alleged that Respondent Makary falsified his quarterly reports of compliance for reporting periods of April 1 through June 30, 2012, and July 1 through September 30, 2012, by failing to notify the Board of his employment at Keck Hospital.

D. Respondent Makary agreed that the Board could establish a prima facie case regarding the charges and allegations contained in the Accusation. In addition, he agreed that cause existed to discipline his license and voluntarily surrendered his Respiratory Care Practitioner License.

### **Small Claims Judgment**

9. A. On January 30, 2013, in the Superior Court of California, County of Los Angeles, Case No. 12SG2093, the court entered judgment in favor of Respondent

Makary's ex-girlfriend, and against Respondent Makary in the amount of \$6,594.42. On September 26, 2013, a Writ of Execution (Money Judgment) was filed ordering Respondent to pay a total of \$7,006.05, which consisted of the judgment and \$386.63 in interest.

B. The judgment was the result of credit card debt accrued by Respondent Makary and his ex-girlfriend. Respondent paid the judgment on April 10, 2015. Respondent's ex-girlfriend mailed a Satisfaction of Judgment form to the Alhambra courthouse. It was later discovered that the Alhambra courthouse no longer handled civil matters and that the Satisfaction of Judgment form should have been filed at the Pasadena courthouse. The Satisfaction of Judgment form was filed at the Pasadena courthouse on December 10, 2019.

## **Convictions**

10. A. On April 5, 2017, in the Superior Court of California, County of Los Angeles, Case No. 7CS01064, Respondent Makary was convicted on his guilty plea of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol content of 0.08 percent or more), a misdemeanor. The court found a factual basis for the plea, suspended imposition of sentence, and placed Respondent Makary on probation for 48 months on condition that he: 1) serve 96 hours in the county jail less 24 hours for time served; 2) pay fines and fees; 3) in lieu of jail time and fees, perform 47 hours of community service by April 5, 2018; 4) enroll in and complete an 18-month second-offender drug and alcohol education counseling program by April 5, 2019; 5) complete the victim impact program of Mothers Against Drunk Driving (MADD); and 6) install an ignition interlock device in his vehicle.

B. The facts and circumstances underlying the conviction are that on September 11, 2016, Respondent Makary drove a vehicle while under the influence of alcohol.

C. Respondent Makary completed the 18-month drug and alcohol education counseling program on November 24, 2019. He also completed the MADD victim impact program. The ignition interlock device has been removed from Respondent Makary's vehicle and he now has an unrestricted driver's license. He asserted that he filed a motion for early termination of his probation, but did not know if a decision on his motion had been made. Respondent Makary remains on probation until April 2021.

D. As of July 19, 2018, Respondent Makary failed to report the conviction to the DRE.

11. A. On November 9, 2009, in the Superior Court of California, County of Orange, Case No. 09WM08052, Respondent Makary was convicted on his guilty plea of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level of 0.08 percent or more); a misdemeanor. The court found a factual basis for the plea and suspended imposition of sentence. The court placed Respondent Makary on informal probation for five years on condition that he: a) serve 45 days in the county jail; b) attend and complete an 18-month licensed multiple offender alcohol program; c) attend and complete a MADD victim's impact panel; and d) pay various fines and fees.

B. The facts and circumstances underlying the conviction are that on March 21, 2009, Respondent Makary drove while under the influence of alcohol.

C. Respondent Makary complied with the terms and conditions of his probation.

12. A. On August 9, 2005, in the Superior Court of California, County of Los Angeles, Case No. 5WL01780, Respondent Makary was convicted on his nolo contendere plea of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level of 0.08 percent or more), a misdemeanor. The court found a factual basis for the plea, suspended imposition of sentence, and placed Respondent Makary on summary probation for 36 months on condition that he: a) pay various fines and fees or serve 13 days in the county jail; b) complete a three-month licensed first offender alcohol and other drug education and counseling program; and c) restrict his driving for 90 days to travel to and from work and the alcohol and drug program.

B. The facts and circumstances underlying the conviction are that on March 18, 2005, Respondent Makary drove while under the influence of alcohol.

C. Respondent Makary complied with the terms and conditions of probation.

13. Complainant alleged the convictions set forth in Factual Findings 12 and 13 as aggravating factors for licensing discipline.

### **Respondents' MLO License Endorsement Applications**

14. Question K(9) in the Regulatory Actions section of Respondent Makary's 2018 Individual Application and Officer Application, asked: "Has any State or federal regulatory agency or foreign financial regulatory authority or self-regulatory organization (SRO) ever . . . entered an order concerning you in connection with any

license or registration?" (Ex. 6, p. 8; Ex. 8, p. 8.) Respondent Makary answered "No" on both applications, which was false in light of the disciplinary actions set forth in Factual Findings 8 and 9.

15. Complainant failed to establish that Respondent Makary answered "No" to question K(9) on his 2015 Individual Application, as alleged in the Statement of Issues. The Individual Application does not include question K(9). (Ex. 1, p. 32.)

### **Respondent's Evidence**

16. Respondent Makary is a veteran of the United States Air Force where he served as a combat linguist. He was medically discharged in 2009 because of a knee injury. Respondent has been married for four years and has a 16-month-old daughter. He is expecting another child in November 2020.

17. Respondent Makary's father is a real estate broker and previously sponsored Respondent Makary's real estate salesperson activities. His father became unable to continue sponsoring him due to medical reasons. Respondent Makary obtained his broker's license and established Respondent MC so that he could work independently from his father. Respondent Makary described being joyful and optimistic upon receiving his real estate salesperson license in 2014 and MLO in 2015.

18. A. Respondent Makary acknowledged that he suffered the convictions listed in Factual Findings 11 through 13. Respondent Makary accepted the consequences of his actions and stated he turned to alcohol because his life did not go as planned. He previously relied on alcohol to relieve the stress resulting from his combat experience and his limited mobility, which was caused by his knee injury.

B. Respondent Makary testified that he has "gotten a grip" on life and made a "180 degree" turn from where he was at the time he suffered his last conviction. His sobriety date is September 4, 2017. Respondent Makary described being disgusted by his prior conduct and tired of being hungover. He attended five Alcoholics Anonymous meetings in 2019 and relies on his relationship with God to maintain his sobriety. In addition, Respondent Makary communicates with his family, expresses his emotions, and practices jiu-jitsu. Respondent Makary believes these coping techniques will prevent him from turning to alcohol if he experiences difficulty in the future. He indicated that his sobriety and doing well in the real estate industry is important to him because he wants to set a good example for his children.

19. Respondent Makary acknowledged failing to inform the Board about his job with Keck Hospital. He stated that he was intimidated and scared to tell his supervisor about the quarterly reports because he believed that he would not be assigned shifts due to his probationary status. Respondent Makary was also experiencing financial difficulty at that time. While he admits that he was dishonest with the Board because he did not inform the Board of his employment at Keck Hospital, he disputes falsifying records provided to the Board on the grounds that he never altered any quarterly reports.

20. A. In answering Question K(9) on his 2018 Individual and Officer Applications, Respondent Makary denied attempting to deceive the DRE. He explained that he thought the question pertained to financial fraud or fraud related to clients. Respondent Makary answered a similar question the same way on his 2015 Individual Application, and answered "No" in applications he submitted to the DRE in 2016, 2017, and again in 2018.

B. The Regulatory Action Disclosure section of Respondent Makary's 2015 Individual Application contains six out of seven questions that specifically pertain to financial-services related regulatory actions. Accordingly, Respondent's Makary's contention regarding his misunderstanding of Question K(9) on his 2018 Individual and Officer Applications is persuasive. However, Respondent's Makary's misunderstanding, while understandable, does not obviate his duty to disclose prior disciplinary actions to the Board.

21. Respondent Makary offered 10 character letters written by individuals who have known him in a personal or professional capacity for between three and 15 years. His former clients describe Respondent Makary as professional, honest, knowledgeable about new laws and policies, caring and authentic. Similarly, Bishoy Gaid, a real estate agent who has known Respondent Makary for 10 years, expressed confidence that Respondent Makary has demonstrated the financial responsibility, character, and general fitness that would warrant the granting of an MLO license endorsement. Mr. Gaid described Respondent Makary as extremely competent, organized, and innovative. Mark Mikhail, a member of Respondent Makary's church, described the impact Respondent Makary had on him. Mr. Mikhail considers Respondent Makary to be relatable and a role model and stated that Respondent Makary taught him the importance of learning from past mistakes. Two of the letter writers are familiar with Respondent Makary's practice of abstaining from alcohol and one individual witnessed him turn down alcoholic beverages when they were offered. All of the character reference letters were admitted as administrative hearsay in that they explained and supplemented Respondent Makary's testimony about his professional conduct and abstention from alcohol.

22. Respondent has volunteered with the Foundation of the Homeless, and is active with the International Gracie Jiu-Jitsu Foundation and the St. George Coptic Orthodox Mission Church.

### **Costs**

23. The DRE incurred costs of investigation and prosecution totaling \$7,297.08. However, a majority of these costs are related to investigation and prosecution of the Statement of Issues, for which costs are not recoverable. The Accusation against Respondent Mackary contains two causes for discipline, namely the convictions and failure to report the 2017 conviction. As such the claimed costs must be apportioned between the Statement of Issues and the Accusation. Reducing the DRE's costs and investigation by two-thirds is warrant. Accordingly, costs of investigation and prosecution totaling \$2,432.36 are reasonable pursuant to Business and Professions Code section 10106.

24. Very little evidence regarding Respondents' ability to pay the DRE's costs was presented by either party, with the exception of Respondent Makary's contention that he needs to maintain his licensure in order to support his family.

## **LEGAL CONCLUSIONS**

### **Accusation against Respondent Makary**

1. The standard of proof applied to the allegations in the accusation is clear and convincing evidence to a reasonable certainty and the burden of proof is on the complainant. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)



2. Business and Professions Code section 490, subdivision (a), authorizes the suspension or revocation of a license if the licensee has been convicted of a crime that is substantially related to the qualifications, functions or duties of the licensed business or profession. Business and Professions Code section 10177, subdivision (b), which is specific to real estate licenses, authorizes the suspension or revocation of a license if the licensee has been convicted of a crime that is substantially related to the qualifications, functions and duties of a licensee of the DRE. Complainant alleges that Respondent Makary's 2017 conviction for violating Penal Code section 23152, subdivision (b), is substantially related to the qualifications, functions and duties of a real estate licensee.

3. California Code of Regulations, title 10, section 2910, sets forth criteria for determining whether a crime is substantially related to the qualifications, functions or duties of a real estate licensee. A crime is deemed to be substantially related to the licensed activity if it involves committing an unlawful act with the intent or threat of doing substantial injury to the person or property of another (subd. (a)(8)). Respondent Makary's 2017 conviction for violating Vehicle Code section 23152, subdivision (b), involved the threat of substantial injury to the person or property of another. (Factual Finding 10.) In aggravation, Respondent Makary suffered two prior convictions, also for violating Vehicle Code section 23152, subdivision (b). (Factual Findings 11 and 12.) Respondent Makary's 2017 conviction is therefore substantially related to the qualifications, functions and duties of a real estate licensee and, in conjunction with suffering two prior convictions, constitutes cause to revoke or suspend Respondent Makary's broker's license pursuant to Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b).

4. Business and Professions Code section 10186.2 requires licensees to report a conviction to the DRE in writing within 30 days. Respondent failed to report his 2017 conviction to the Bureau within 30 days. (Factual Finding 10.) Business and Professions Code section 10177, subdivision (d), authorizes the commissioner to suspend or revoke the license of a real estate licensee who willfully disregards or violates the Real Estate Law (Bus. & Prof. Code, §§ 10000 et seq.). Cause to suspend or revoke Respondent Makary's broker's license therefore exists pursuant to Business and Professions Code sections 10177, subdivision (d), and 10186.2.

### **Costs of Investigation and Enforcement of the Accusation**

5. Business and Professions Code section 10106 permits the DRE to seek reimbursement of the reasonable costs of investigating and enforcing a case involving a licensee found to have violated the Real Estate Law. The DRE reasonably incurred costs of investigation and enforcement in the amount of \$2,432.36. *In Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the Supreme Court enumerated several factors that a licensing board must consider in assessing costs. Respondent Makary did not advance a basis to reduce the amount of costs. He has been found to have violated the Real Estate Law. (Legal Conclusions 2 through 4.) Respondent Makary will be ordered to reimburse the DRE for the costs of the investigation and enforcement of the Accusation. However, in light of the Order below, Respondent Makary shall reimburse the DRE in the event that his license and licensing rights are reinstated.

## Statement of Issues against Respondent MC and Respondent Makary

6. The standard of proof applied to the allegations in the statement of issues is a preponderance of the evidence and the burden is on Respondents. (*Martin v. Alcohol Beverage Control Appeals Bd.* (1959) 52 Cal.2d 238; Evid. Code, §§ 115, 500.)

7. Business and Professions Code sections 10166.05 provides in part:

[T]he commissioner shall not issue a license endorsement to act as a mortgage loan originator to an applicant unless the commissioner makes all of the following findings:

[¶] . . . . [¶]

(c) The applicant has demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of the article.

8. The commissioner may deny an application for an MLO license endorsement if the applicant fails at any time to meet the requirements of Business and Professions Code section 10166.05, withholds information or makes a material misstatement in an application for a license endorsement or license endorsement renewal. (Bus. & Prof. Code, § 10166.051, sub. (b).)

9. California Code of Regulations, title 10, section 2758.3, provides in part:

The Commissioner's finding required by Section 10166.05(c) of the Business and Professions Code relates to any matter, personal or professional, that may impact upon an applicant's propensity to operate honestly, fairly, and efficiently when engaging in the fiduciary role of a mortgage loan originator.

(a) The applicant may be precluded from obtaining a mortgage loan originator license endorsement where his or her personal history includes:

(1) any liens or judgments for fraud, misrepresentation, dishonest dealing, and/or mishandling of trust funds, or

(2) other liens, judgments, or financial or professional conditions that indicate a pattern of dishonesty on the part of the applicant.

(b) Notwithstanding the requirements above, where an applicant for a mortgage loan originator license endorsement (1) is currently holding a restricted real estate license, or (2) has a right to a restricted license and is making a dual application for the restricted license and mortgage loan originator license endorsement, such applicant must demonstrate, where pertinent, the completion of restitution to any person who has suffered monetary losses through acts or omissions of the applicant

that include, but are not limited to, those that substantially related to the qualifications, functions or duties of a real estate licensee as defined in Section 2910 of these regulations, and/or the discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.

10. Cause exists to deny Respondent Makary's applications for MLO license endorsements under Business and Professions Code sections 10166.051, subdivision (b) and 10166.05, subdivision (c), and California Code of Regulations, title 10, section 2758.3. Respondent Makary falsified his quarterly reports of compliance for reporting periods April 1 through June 30, 2012, and July 1 through September 30, 2012, by failing to notify the Board of his employment at Keck Hospital, a professional condition that indicates a pattern of dishonesty on the part of Respondent Makary. (Factual Findings 7-9, 18.) Accordingly, he failed to demonstrate the requisite character, and general fitness to command the confidence of the community and warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently.

11. Cause does not exist to deny Respondent Makary's applications for MLO license endorsements under California Business and Professions Code section 10166.05, subdivision (c), and California Code of Regulations, title 10, section 2758.3, subdivision (a)(2). Although a small claims judgment was entered against Respondent Makary, the facts and circumstances underlying the judgment do not evidence the judgment was the result of dishonesty or unfair dealing. In addition, Respondent Makary satisfied the judgment. (Factual Finding 9.)

12. Cause does not exist to deny Respondent Makary's applications for MLO license endorsements under Business and Professions Code section 10166.05, subdivision (c), and California Code of Regulations, title 10, section 2758.3, subdivision (a)(2). Respondent Makary filed the application as the proposed designated broker officer of Respondent MC. He has suffered multiple convictions for driving with a blood alcohol content of 0.08 percent or more. While Respondent Makary's conduct demonstrates a pattern of repeated and willful disregard of the law, his conduct does not constitute "other liens, judgments, or financial or professional conditions that indicate a pattern of dishonesty on the part of the applicant," as alleged by complainant.

13. Cause exists to deny Respondents' applications for MLO license endorsements under Business and Professions Code sections 10166.051, subdivision (b), and 10166.05, subdivision (c), in that Respondents failed to disclose Respondent Makary's prior disciplinary actions in response to Question K(9) of the 2018 Individual and Officer Applications. (Factual Findings 15, 19 and 20.) As such, Respondents withheld information or made a material misstatement in an application for a license endorsement.

### **Rehabilitation Analysis**

14. Cause for discipline and denial of the application having been established, the question is whether Respondents offered sufficient evidence of rehabilitation to justify allowing Respondent Makary to retain his broker's license and/or allowing Respondent to receive the requested MLO license endorsements.

15. Regulations section 2911 sets forth rehabilitation criteria in evaluating an application for licensure. Section 2912 sets forth criteria for determining the

rehabilitation of a licensee in a disciplinary proceeding. The factors to be considered in evaluating rehabilitation include the following: the passage of not less than two years since the date of the most recent criminal conviction; expungement of criminal convictions; the successful completion of probation; the payment of fines imposed in connection with the criminal conviction; stability in family life; completion or sustained enrollment in formal education or vocational training; significant or conscientious involvement in the community; and a change in attitude from that which existed at the time of the conviction.

16. Respondent Makary successfully completed the probationary terms for his 2009 and 2005 convictions. It has been almost eight years since Respondent Makary engaged in the conduct that led to disciplinary action with the Board, and he satisfied the small claims judgment against him five years ago. He has a stable family life and is regularly involved at his church. Respondent Makary has abstained from alcohol for more than two years and his own testimony as to his change in attitude toward alcohol was corroborated by two character references. In addition, he has no history of professional misconduct and his colleagues and clients support his continued licensure.

17. On the other hand, Respondent Makary suffered his most recent conviction three years ago and remains on probation until April 2021. In aggravation, he suffered multiple convictions for driving while under the influence. In addition, he failed to disclose his prior disciplinary action with the Board, and he failed to notify the DRE of his 2017 conviction.

18. The purpose of this proceeding is not to further punish respondent for his criminal conduct (*Donaldson v. Department of Real Estate* (2005) 134 Cal.App.4th 948, 958, fn. 10), but to ensure that real estate brokers and salespersons will be honest,

truthful, and worthy of the fiduciary responsibilities they bear (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402). The protection of the public is the highest priority of the DRE. (Bus. & Prof. Code, § 10050.1.) Here, Respondent Makary has not suffered any convictions since 2017. However, the fact that his behavior has been exemplary during probation carries "little weight" because "persons under the direct supervision of correctional authorities are required to behave in exemplary fashion." (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) Moreover, 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.)

19. When all the evidence is considered, while Respondent Makary appears to be on the right path, insufficient time has passed for Respondent Markary to establish sufficient rehabilitation to justify allowing him to retain his broker's license on a restricted basis or to justify Respondents receiving the MLO license endorsements for which they applied. The protection of the public requires the revocation of Respondent Makary's real estate broker's license and denial of Respondents' MLO license endorsement applications.

## **ORDER**

1. All licenses and licensing rights of respondent George Ayad Makary under the Real Estate Law are revoked.



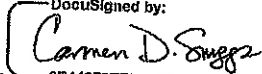
2. Respondent George Ayad Makary shall pay the Department of Real Estate the amount of \$2,432.36, as reimbursement for the costs of investigation and enforcement of the accusation in the event his license and licensing rights are reinstated.

3. The application of Respondent Makary Corp for a company (MU2) mortgage loan originator license endorsement is denied.

4. The application of Respondent George Asad Makary for an individual (MU4) mortgage loan originator license endorsement is denied.

5. The application of respondent George Asad Makary for an officer (MU1) mortgage loan originator license endorsement is denied.

DATE: July 28, 2020

DocuSigned by:  
  
CARMEN D. SNUGGS

Administrative Law Judge

Office of Administrative Hearings