

FILED

DEC 09 2022

DEPT. OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:)	DRE No. H-41807 LA
)	
ANTHONY PADUANO,)	OAH No. 2020120495.1
)	
Respondent.)	

DECISION

The Proposed Decision dated November 1, 2022, 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 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 12/29/2022.

IT IS SO ORDERED 12.2.22

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

Douglas R. McCauley

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

In the Matter of the First Amended Accusation Against:

ANTHONY PADUANO, Respondent.

Agency Case No. H-41807 LA

OAH No. 2020120495.1

PROPOSED DECISION

Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on October 13, 2022.

Steve Chu, Counsel for the Department of Real Estate (Department), represented Veronica Kilpatrick (complainant), in her official capacity as a Supervising Special Investigator of the State of California.

No appearance was made by or on behalf of Anthony Paduano (respondent).

The hearing proceeded as a default pursuant to Government Code section 11520. Documentary evidence was received. The record closed and the matter was submitted for decision on October 13, 2022.

FACTUAL FINDINGS

Jurisdictional Matters

1. Respondent is licensed by the Department as a real estate broker. Respondent's broker license, number B/01166384, was originally issued on April 14, 2003, and currently has an expiration date of September 15, 2023. Respondent also has an individual mortgage loan originator license endorsement.
2. Complainant, acting in her official capacity, made and filed the Accusation on October 28, 2020. Respondent filed a Notice of Defense on November 28, 2020, which contained his request for a hearing to allow him to present his defense or matters in mitigation or extenuation to the allegations in the Accusation.
3. On March 17, 2021, complainant, acting in her official capacity, made and filed the First Amended Accusation, which amended the Accusation filed on October 28, 2020. The First Amended Accusation is the operative pleading.
4. A Notice of Hearing for this matter was mailed to respondent on March 17, 2021, to his address of record with the Department, which was also the same address shown on his Notice of Defense. The Notice of Hearing stated the correct date and time for the hearing and that the hearing would be conducted by telephone/videoconference through Zoom. The Notice of Hearing included a telephone call-in number and instructions for accessing the hearing through Zoom.
5. Despite proper service of the Notice of Hearing on respondent, he failed to appear at the October 13, 2022 hearing and was not otherwise represented. Compliance with Government Code sections 11505 and 11509 having been established, this matter proceeded as a default against respondent pursuant to

Government Code section 11520. Under section 11520, the Department may take action "based upon the respondent's express admissions or upon other evidence" and "affidavits may be used as evidence without any notice to respondent."

Respondent's Criminal Conviction

6. On March 7, 2018, in the Superior Court of Arizona, County of Mohave, case number CR-2017-0530, respondent was convicted on his pleas of guilty to violating Arizona Revised Statutes sections 13-1803, 13-1001, 13-1801, 13-604, 13-701, 13-702, and 13-801 (unlawful use of means of transportation) (Count 3), a felony, and Arizona Revised Statutes sections 13-1805, 13-707, and 13-801 (shoplifting) (Count 4), a misdemeanor.

7. The criminal court suspended the imposition of sentence and placed respondent on 18 months' probation under the supervision of the Adult Probation Department (APD), with terms and conditions including, but not limited to: serve two days in the county jail (credit given for two days served); complete a total of 40 hours of community restitution at a site approved by the APD; pay various fees and assessments; complete up to an additional 200 community restitution hours as directed by the APD; and serve up to an additional 90 days in the county jail at the discretion of the court and upon the recommendation of the APD. The criminal court ordered respondent's felony offense be designated a misdemeanor upon his successful completion of probation.

8. On December 18, 2020, the criminal court issued an order granting respondent's motion for early termination of probation, effective immediately, and designating his felony offense as a misdemeanor. (Exh. 3, p. A89.)

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9. (A) The facts and circumstances underlying respondent's March 7, 2018 conviction were established by the summary contained in the APD's Pre-Sentence Investigation Report, which was based on the Lake Havasu City Police Department report. (See Exh. 3, p. A76.)

(B) On April 13, 2017, at approximately 12:09 p.m., respondent shoplifted \$150 worth of deli meats, bread, condiments, beer, and plates, from a Safeway supermarket. He was confronted by store management. He left the store without paying and went to his truck in the parking lot, which was occupied by two of his children (ages 9 and 16) and his daughter's boyfriend (age 16). Respondent told them to drive away. Respondent then ran towards another vehicle in the parking lot that was being driven by the victim. He yelled to the victim that his child was hurt. While the victim's vehicle was moving, respondent opened one of the doors without her permission and got into the vehicle. The victim did not know respondent. Respondent told the victim to drive him to an address on a golf course. The victim complied. Respondent repeatedly told the victim to hurry and drive faster because his child was in a bicycle crash. The victim refused to drive faster and told respondent to leave her vehicle. Respondent exited the vehicle and then was quickly identified by police officers and placed under arrest. (See Exh. 3, p. A76.)

10. A Felony Indictment was filed on April 20, 2017, based on respondent's arrest. Ultimately, respondent pleaded guilty to Count 3 of the Felony Indictment, which alleged that respondent "knowingly took unauthorized control over the victim's vehicle," and to Count 4, which alleged that respondent "committed shoplifting of merchandise of Safeway." (Exh. 3, pp. A68-A69.)

11. On September 4, 2020, a Department Special Investigator interviewed respondent by telephone and documented the interview in a memorandum. (See Exh.

10.) The memorandum summarized respondent's statement regarding the incident that resulted in his March 7, 2018 conviction, as follows:

According to [respondent], the event leading to his conviction had occurred in 2017 during his family vacation in Havasu, NV. He was shopping in a supermarket while his family members waited outside, in their cars. After paying for several hundred dollars worth of groceries and supplies, his wife called him on his cell phone, instructing him to buy additional items. While [respondent] returned to the store to fetch those items, he received a phone call from his contractor. It was a "stressful call," which caused [respondent] to absentmindedly exit the store without paying for the additional items. Then he was "attacked by several men" – a couple of store employees and an off-duty security guard – who then notified police. These men took items out of [respondent's] cart, including items he'd already purchased. Then [respondent] – or his family members – loaded the remaining cart items into their vehicle, and [respondent] watched his family drive off. Shortly afterwards, he "saw a lady and asked her for a ride." Soon they were pulled over by police, and he was arrested for shoplifting.

(Exh. 10, pp. A125-A126.)

12. During the September 4, 2020 interview with the Department investigator, respondent claimed he fled from the store employees because "he'd been

raised in [an] extremely abusive household” and the employees forcefully grabbing him triggered his post-traumatic stress disorder and he took off. (Exh. 10, p. A126.) Respondent accused the “scumbag police officers” of inflating the charges by charging him with kidnapping the victim. (*Ibid.*) Respondent claimed the victim “changed her whole story when she thought she could get money”; the District Attorney who handled the case was a young, overzealous prosecutor who “tried to throw the book” at him; and his own attorney “screwed up and made a deal for formal probation.” (*Ibid.*)

Factors in Aggravation

13. The First Amended Accusation, at paragraphs 3, 4, and 5, alleges respondent suffered other criminal convictions on specific dates, for specific offenses. (Exh. 1, p. A2.) Complainant’s evidence did not include court records for these criminal convictions. However, other documents presented by complainant were sufficient to establish the two criminal convictions alleged in paragraphs 4 and 5 of the First Amended Accusation, as described below. However, complainant’s evidence was insufficient to establish the criminal conviction alleged in paragraph 3 of the First Amended Accusation.

14. As alleged in paragraph 4 of the First Amended Accusation, on September 26, 1986, in the Superior Court of California, County of Orange, respondent was convicted on his plea of guilty to two counts of violating Penal Code section 211 (robbery), a felony. Respondent admitted to this criminal conviction in a stipulated settlement with the Department he signed on March 23, 1994, and in an application for a restricted salesperson license dated July 12, 1993. (Exh. 4, pp. A92, A97; Exh. 5, p. A101.)

15. As alleged in paragraph 5 of the First Amended Accusation, it was established that in January 1990, respondent suffered a misdemeanor conviction in the Superior Court of California, County of Orange, Santa Ana Courthouse, for "mutual combat." Respondent disclosed this criminal conviction in his application for a salesperson license dated July 12, 1993 (Exh. 5, p. A101), a letter to the Department dated July 14, 1993 (Exh. 5, p. A103), and a letter to the Department dated March 10, 2003 (Exh. 6, p. A110).

16. Effective on April 6, 1994, the Real Estate Commissioner, in Case No. H-1722 SA, denied respondent's application for a real estate salesperson license based on his criminal convictions, including those established in Factual Findings 14 and 15 above, but granted respondent a restricted real estate salesperson license under certain conditions. (See Exhs. 2, 4.)

Rehabilitation

17. Respondent is 55 years old. Respondent completed and signed an Interview Information Statement form (RE 515), which he dated September 2, 2020. (Exh. 7, pp. A111-A115.) On this form, respondent disclosed he is a high school graduate or equivalent; he is married and has five children (ages 24, 22, 19, 15, and 12); he attends church; he has a past due debt for taxes; and he claimed the "[economic] crash of '08 killed us and I was sued by a few companies." (*Id.*, p. A112.)

18. The Interview Information Statement form included a section requiring respondent to disclose all his criminal convictions, even those that had been expunged under Penal Code section 1203.4 or an equivalent non-California statute. (Exh. 7, p. A114.) Respondent disclosed his March 7, 2018 conviction in Arizona, but he did not disclose his other prior criminal convictions as he was required to do. (*Ibid.*)

19. Respondent completed and signed a Conviction Detail Report form (RE 515D), which he dated September 2, 2020. (Exh. 7, p. A116.) On this form, respondent disclosed information regarding his March 7, 2018 Arizona conviction. He indicated he completed the terms of his sentence, and the conviction has been dismissed or expunged. In the space provided for explaining the crime, respondent wrote: "Complete misunderstanding that got out of hand by the store employee." (*Ibid.*)

20. The APD's Pre-Sentence Investigation Report included a summary of respondent's criminal history, indicating that respondent, as an adult, "has one prior felony conviction and two misdemeanor convictions" and "[t]wo of his convictions are assaultive in nature." (Exh. 3, p. A78.) No further details about those three prior convictions were provided.

Cost Recovery

21. The Department incurred investigation costs of \$789.35 and enforcement costs of \$1,757.75, for a total amount of \$2,547.10. These costs are deemed reasonable, based on the certified statements of Veronica Kilpatrick and Steven Chu. (Exhs. 8, 9.)

22. In his Interview Information Statement dated September 2, 2020, respondent wrote, in part: "I have been licensed my entire adult life with the State of California as a real estate broker/agent. . . . I take care of my very large family using my brokers license. We would be devastated without my license. Real estate is my source of income to take care of my family." (Exh. 7, p. A115.)

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LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant has the burden of proving cause for discipline against respondent by clear and convincing evidence to a reasonable certainty. (*The Grubb Co., Inc. v. Department of Real Estate* (2011) 194 Cal.App.4th 1494, 1505.) This means the burden rests on complainant to adduce 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. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487.)

Legal Principles

2. Pursuant to Business and Professions Code section 10177, subdivision (b)(1), the Department may suspend or revoke the license of a real estate licensee who has:

Entered a plea of guilty . . . or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee, . . . 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.

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3. Similarly, Business and Professions Code section 490, subdivisions (a) and (b), provide that a board may suspend or revoke a license, or exercise any authority to discipline a licensee, for conviction of a crime that 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 (CCR), section 2910, subdivision (a), provides, in pertinent part:

When considering whether a license should be . . .
suspended or revoked on the basis of the conviction of a
crime, . . . the crime or act may be deemed to be
substantially related to the qualifications, functions or
duties of a licensee of the Department within the meaning
of Sections 480 and 490 of the [Business and Professions]
Code if it involves: [¶ . . . ¶] (8) Doing of any unlawful act
with the intent of conferring a financial or economic benefit
upon the perpetrator or with the intent or threat of doing
substantial injury to the person or property of another.

5. CCR section 2910, subdivision (c), states, in part: "The nature and gravity of the offense, the number of years that have elapsed since the date of the offense, and the nature and duties of a real estate licensee shall be taken into consideration when determining whether to deem an offense to be substantially related to the qualifications, functions or duties of a licensee."

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Cause for Discipline

6. Cause exists, pursuant to Business and Professions Code sections 10177, subdivision (b)(1), and 490, to suspend or revoke respondent's real estate salesperson license, in that, on March 7, 2018, respondent was convicted of unlawful use of means of transportation, a felony, and shoplifting, a misdemeanor crime substantially related to the qualifications, functions, and duties of a real estate licensee, based on Factual Findings 6-11 and Legal Conclusions 4, 7 and 8.

7. Respondent was convicted of unlawful use of means of transportation, a class 5 felony under Arizona law. Arizona Revised Statutes section 13-1803 provides that a person "commits unlawful use of means of transportation if, without intent to permanently deprive, the person . . . [k]nowingly takes unauthorized control over another person's means of transportation."

8. (A) Respondent was convicted of misdemeanor shoplifting, which is a crime substantially related to the qualifications, functions, and duties of a real estate licensee because it involves doing an unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator. (CCR § 2910, subd. (a)(8).)

(B) Arizona Revised Statutes section 13-1805 provides that a person "commits shoplifting if, while in an establishment in which merchandise is displayed for sale, the person knowingly obtains such goods of another with the intent to deprive that person of such goods by: [¶] 1. Removing any of the goods from the immediate display or from any other place within the establishment without paying the purchase price[.]"

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Disposition

9. As cause for discipline against respondent's real estate license has been established, respondent bears the burden of establishing sufficient rehabilitation to justify his continued licensure. (See, *Martin v. Alcoholic Beverage Control Appeals Bd. of Cal.* (1950) 52 Cal.2d 259, 264-265; *In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309.)

10. The Department has developed criteria of rehabilitation that are to be considered in evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of a license has been initiated. The criteria are contained in CCR section 2912, subdivisions (a)-(m).

11. Based on consideration of the Department's rehabilitation criteria, the record in this matter is insufficient to establish respondent is rehabilitated from his March 7, 2018 conviction to warrant his continued licensure. Accordingly, respondent's real estate license shall be revoked.

12. The passage of four years since respondent's conviction on March 7, 2018, and his compliance with the terms of his criminal probation, resulting in the early termination of probation on December 18, 2020, are not sufficient evidence of rehabilitation. (CCR § 2912, subd. (a).) For two of the four years that have passed since his conviction, respondent was under the supervision of the APD and the Arizona criminal court. His compliance with his probation terms occurred while under that supervision. Good behavior while on probation or parole is generally entitled to little weight as evidence of rehabilitation, since people have a strong incentive to obey the law while under the supervision of the criminal justice system. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

13. Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Respondent's statements, contained in the documentary evidence, minimized the severity of his crimes and do not reflect an acceptance of responsibility for his criminal conduct. Respondent claimed he merely asked the victim for a ride, and the shoplifting was a "misunderstanding" with a store employee. (Factual Findings 11, 19.) Respondent blamed his arrest on "scumbag police officers" who inflated the criminal charges and a victim who changed her story. (Factual Finding 12.) He blamed his conviction on an overzealous prosecutor and a "screw up" by his own attorney. (*Ibid.*) Respondent's statements do not reflect a change in attitude since the time of his conviction which is indicative of rehabilitation. (CCR § 2912, subd. (m).)

14. Respondent's entry of the guilty pleas in his Arizona criminal case is conclusive evidence of guilt upon which the ALJ must rely. "Regardless of the various motives which may have impelled the plea, the conviction which was based thereon stands as conclusive evidence of appellant's guilt of the offense charged. To hold otherwise would impose upon administrative boards extensive, time-consuming hearings aimed at relitigating criminal charges which had culminated in final judgments of conviction." (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.) Here, respondent's guilty pleas to the charges of unlawful use of means of transportation and shoplifting are conclusive evidence of his guilt of the offenses charged. The validity of his criminal conviction cannot be challenged in this administrative proceeding.

15. Based on the foregoing, respondent's real estate license shall be revoked.

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Cost Recovery

16. Pursuant to Business and Professions Code section 10106, subdivision (a), in any order issued in resolution of a disciplinary proceeding before the Department, "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."

17. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 10106. Those factors include: (1) the licentiate's success in getting the charges dismissed or reduced; (2) the licentiate's subjective good faith belief in the merits of his or her position; (3) whether the licentiate raised a colorable challenge to the proposed discipline; (4) the licentiate's financial ability to pay; and (5) whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Zuckerman, supra*, 29 Cal.4th at p. 45.)

18. Cause exists to direct respondent to pay the reasonable cost of investigation and enforcement of this matter pursuant to Business and Professions Code section 10106, subdivision (a). The reasonable cost of the investigation and enforcement of this matter is \$2,547.10. (Factual Finding 21.) However, given that respondent will be unable to work as a real estate licensee due to the revocation of his license, and he financially supports a large family, respondent will be required to pay this cost recovery amount only as a condition precedent to obtaining reinstatement of his revoked license or issuance of a new license from the Department.

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ORDER

1. All licenses and licensing rights of respondent Anthony Paduano under the Real Estate Law are revoked.

2. Respondent Anthony Paduano shall pay the Department the amount of \$2,547.10 for the reasonable costs of investigation and enforcement incurred in this matter only as a condition precedent to reinstatement of his revoked license or issuance of a new license from the Department.

DATE: 11/01/2022

Erlinda G. Shrenger
Erlinda G. Shrenger (Nov 1, 2022 15:41 PDT)

ERLINDA G. SHRENGER

Administrative Law Judge

Office of Administrative Hearings