

FILED

DEC 29 2021

DEPT. OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

[Handwritten signature]

STATE OF CALIFORNIA

In the Matter of the Accusation of:

JUNHAO GUO,

Respondent.

) DRE No. H-42053 LA

) OAH No. 2021090062

DECISION

The Proposed Decision dated November 5, 2021, 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.

///

///

///

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 1/18/2022.

IT IS SO ORDERED 12.20.21

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:

JUNHAO GUO, Respondent,

Case no. H-42053 LA

OAH Case No. 2021090062

PROPOSED DECISION

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on October 7, 2021, by video and telephonic conference.

Lisette Garcia, counsel, Department of Real Estate (Department) represented Complainant. Respondent Junhao Guo represented himself.

The matter was heard with a consolidated case, *In the Matter of the Application of Junhao Guo, Respondent*, case number H-42075 LA, OAH No. 2021090063. Separate Proposed Decisions are issued, in compliance with California Code of Regulations, title 1, section 1016, subdivision (d).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on October 7, 2021.

FACTUAL FINDINGS

The Parties and Jurisdiction

1. Complainant Maria Suarez is a Supervising Special Investigator for the Department and she filed and maintained the Accusation in her official capacity.

2. On May 3, 2017, Respondent Junhao Guo was first licensed by the Bureau of Real Estate (the predecessor agency of the Department) as a real estate salesperson, license number S/02034300. His license expired June 30, 2021. He has the right to renew the license within two years of its expiration pursuant to Business and Professions Code section 10201.

3. After receiving the Accusation Respondent filed a Notice of Defense, thereby demanding a hearing. As noted in the preamble, this matter was consolidated for hearing with a Statement of Issues.

Respondent's Criminal Conviction

4. On August 12, 2020, a felony complaint was filed against Respondent in the Superior Court of California, County of San Bernardino, Rancho Cucamonga District. Thereafter, on October 26, 2020, Respondent was convicted of violating Penal Code section 245, subdivision (a)(1), assault with a deadly weapon not a firearm, likely to lead to great bodily injury. Respondent's conviction was entered on his no contest plea, and he was thereby convicted of a felony.

5. The court placed Respondent on five years' formal probation, with the condition that he serve 364 days in county jail. He received credit for 78 days served. Numerous conditions of probation were imposed, including the condition that

Respondent not own or possess firearms for 10 years, that he complete a 52-week domestic violence batterers program, that he not have contact with the victim of his crime, and that he pay fines, penalties and fees. Other terms of probation, typical to probation grants, were imposed as well.

6. Respondent's crime involved violence toward his former girlfriend. On the afternoon of August 10, 2020, San Bernardino Sheriff's deputies were called to a residence in Chino Hills, where Respondent then lived with his former girlfriend. The two had an argument and altercation, apparently started by the girlfriend's decision to take a trip to Alaska without Respondent. Respondent admitted to one of the deputies that to prevent the trip, he burned his girlfriend's driver's license, credit cards and citizenship documents. In the course of the altercation Respondent destroyed a computer and television, and Respondent struck his girlfriend several times. One of the deputies arrived at the scene to find Respondent's girlfriend on an ambulance gurney with blood on her legs and arms, and he later observed that she had a three-inch laceration on her left arm that required five staples to close. She also had severe bruising on her left thigh, which corroborated her claim to deputies that Respondent had repeatedly kicked her. That deputy observed blood in several rooms of the residence.

7. Respondent's conviction is for a crime substantially related to the duties, qualifications, and functions of a real estate licensee.

Failure to Notify the Department

8. Respondent did not give the Department notice of the felony charges against him within 30 days of being charged, as required by Business and Professions

Code section 10186.2, subdivision (a)(1)(B)¹. He did not report his conviction within 30 days of the conviction, as required by section 10186.2, subdivision (b).

Respondent's Case

9. Respondent immigrated to the United States from China approximately eight years ago. He was educated as a civil engineer in China. He has obtained a contractor's license in California.

10. When Respondent immigrated to the United States from China, he left behind an eight-year-old daughter. He sends \$1,000 per month home to support her.

11. Respondent was released from jail on February 21, 2021. While in custody, he studied for the broker's exam, and he passed that exam. Respondent remains on criminal probation, which is scheduled to end in October 2025. He is in compliance with his probation terms. He has taken some of the batterer's classes, which may be completed over the course of a year. He paid over \$2,200 in various fees, fines, penalties, and assessments.

12. Respondent did not contest the statements that were made by his ex-girlfriend in the arrest reports, and he acknowledged his crime, and remorse for it. He explained that the year prior had been very tough on his business. He was selling the residence, both circumstances implying that he was stressed at the time of the incident. He explained that at this point in time he just wants to be able to sell real estate again, as he has not since June 2021 due to the expiration of his license.

¹ All further statutory citations are to the Business and Professions Code.

13. Respondent stated that he did not notify the Department of the filing of the criminal complaint or his conviction because he was in jail. The court records do indicate that he was in custody prior to his plea, and he was given credit for 78 days of actual time served. He did not, however, have an explanation for his failure to give notice once he was released from custody.

14. Respondent recently moved, sharing a residence with others. He has had some income from assisting other licensees. Respondent testified that his ex-girlfriend took possession of everything he had, while he was incarcerated. He declined to take steps to get anything back.

Costs

15. The Department has incurred costs of investigation and enforcement totaling \$2,017.30, which costs are reasonable.

LEGAL CONCLUSIONS

1. The Department has jurisdiction to proceed on the Accusation pursuant to sections 10100, subdivision (a), 118, subdivision (b), 10103, and 10175, based on Factual Findings 1 through 3.

2. Complainant was obligated to prove her case by clear and convincing evidence, to a reasonable certainty. (*Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204.)

3. Respondent's conviction is substantially related to the duties, functions, and qualifications of a real estate license, pursuant to California Code of Regulations,

title 10 (CCR), section 2910, subdivisions (a)(8) and (c). This Conclusion is based on Factual Findings 4 through 7.

4. Cause was established to suspend or revoke Respondent's salesperson's license pursuant to sections 490 and 10177, subdivision (b), for his conviction of a crime substantially related to the duties, qualifications, and functions of a real estate licensee. This Conclusion is based on Factual Findings 4 through 7, and Legal Conclusion 3.

5. Cause was established to suspend or revoke Respondent's salesperson's license pursuant to sections 10186.2, subdivision (b), and 10177, subdivisions (d) and (g) for his failure to report that a felony complaint had been filed against him, and for his failure to report his conviction, based on Factual Findings 4 through 8.

6. (A) The Department is entitled to recover its costs of investigation and prosecution pursuant to section 10106, based on Legal Conclusions 1 through 5. The reasonable costs are \$2,017.30, based on Factual Finding 15.

(B) The case of *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45 (*Zuckerman*) must be considered when determining costs. *Zuckerman* pertained to a cost regulation with language similar section 10106. In that case the Supreme Court held that an agency must exercise its discretion to reduce or eliminate cost awards in a manner which will ensure that the costs statute does not deter licensees with potentially meritorious claims or defenses from exercising their right to a hearing. The court stated: "Thus, the Board must not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [licensee] who has committed some misconduct, but who has used the hearing process to obtain

dismissal of other charges or a reduction in the severity of the discipline imposed.”
(*Zuckerman, supra*, 29 Cal.4th at 45.)

(C) Under *Zuckerman*, the agency must also consider the licensee's subjective good faith belief in the merits of his or her position and whether the licensee has raised a colorable challenge to the proposed discipline. The Court further required that the agency must determine that the licensee will be financially able to make later payments. It concluded by stating that an agency “may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation to prove that a [licensee] engaged in relatively innocuous misconduct.” (*Ibid.*, footnote omitted.)

(D) In this case the costs are themselves reasonable, but Respondent is unable to work as a salesperson, and appears to have limited means. In light of the order that follows, costs will not be assessed at this time. If Respondent applies for a license in the future, the Department may assess costs at that time, through a payment plan.

7. (A) The Department has established criteria for determining rehabilitation of a licensee who has suffered a criminal conviction. The criteria are found at CCR section 2912.

(B) The Department looks to the passage of time from the most recent conviction or act, with the proviso that a period of less than two years from the conviction does not demonstrate rehabilitation. The two-year period may be increased by the severity of the crime or crimes, or by a history of convictions. Here Respondent has no other criminal convictions, but his conviction is for a serious felony.

(C) Other criteria relevant here include restitution to a person who has suffered a loss due to the licensee's wrongful acts; expungement of the conviction(s); completion of or early discharge from probation or parole; payment of fines or other penalties ordered in connection with a conviction; completion of or sustained enrollment in education or training; discharge of debts; significant or conscientious involvement in community, church, or other programs designed to provide social benefits; change in attitude from the time of the wrongdoing, evidence of which may come from the applicant or licensee, or others such as family, friends, or others.

8. Applying the criteria, Respondent falls short of establishing rehabilitation. His conviction occurred less than 13 months ago, so he does not meet the two-year standard, which should be the minimum for such a serious crime. He remains on probation and is scheduled to remain on probation for nearly four more years, unless he can persuade the court to terminate probation early. Respondent is, however, is current with his probation obligations, and he has paid fines and penalties. His criminal conviction has not been expunged. He did engage in education while in jail, studying for the broker's exam. He did not present other evidence of rehabilitation.

9. The purpose of proceedings of this type is to protect the public, and not to punish an errant licensee. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161.) In this case, Respondent attacked his ex-girlfriend with a knife, seriously injuring her. The conviction is barely one year old; indeed, two years have not elapsed from the day of the assault. The evidence of rehabilitation is weak, and insufficient to save Respondent's license, which must be revoked in the public interest. Respondent may re-apply for licensure at such time as the law allows, and at that time he may be able to show sufficient rehabilitation that would justify re-licensure.

ORDER

1. The real estate salesperson's license, number S/02034300, held by Respondent Junhao Guo, and attendant licensing rights, are hereby revoked.

2. If Respondent seeks reinstatement of his license, then the Department may recover its costs, in the amount of \$2,017.30, as a condition of re-licensure, the costs to be paid in installments as the Department may direct.

DATE: 11/05/2021

Joseph Montoya

JOSEPH D. MONTOYA

Administrative Law Judge

Office of Administrative Hearings