

**FILED**

**MAY 21 2024**

**DEPT. OF REAL ESTATE**

By: 

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	DRE NO. H-42104 LA
JUNIUS JOHNSON, JR,	)	OAH NO. 2021120465
Respondent(s).	)	

ORDER NUNC PRO TUNC  
CORRECTING CLERICAL ERROR

It having been called to the attention of the Real Estate Commissioner that there was a clerical error in the Order filed on May 15, 2024, in the above-entitled matter to become effective May 14, 2024, and good cause appearing therefor, the following correction is made to the Order pursuant to California Government Code section 11517(c)(2). The effective date of May 14, 2024 is corrected to be August 19, 2024.

This Order shall become effective immediately.

IT IS SO ORDERED 5/20/2024

CHIKA SUNQUIST  
REAL ESTATE COMMISSIONER



By: Marcus L. McCarther  
Chief Deputy Real Estate Commissioner

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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**MAY 15 2024**

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In the Matter of the Accusation of:        )  
  ) DRE No. H-42104 LA  
  ) JUNIUS JOHNSON, JR,  
  ) OAH No. 2021120465  
  ) Respondent.

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DECISION

The Proposed Decision dated January 10, 2023, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted by operation of law pursuant to Section 11517(c)(2) of the Government Code as the final Decision of the Real Estate Commissioner in the above-entitled matter.

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 (the Department) 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 immediately.

IT IS SO ORDERED

5/14/2024

Chika Sunquist  
REAL ESTATE COMMISSIONER



By: Marcus L. McCarther  
Chief Deputy Real Estate Commissioner

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

**In the Matter of the Accusation Against:**

**JUNIUS JOHNSON, JR.,**

**Respondent.**

**Agency No. H-42104 LA**

**OAH No. 2021120465**

**PROPOSED DECISION**

Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on December 13, 2022, by videoconference.

Julie L. To, Staff Counsel, represented complainant.

Eugene S. Alkana, APLC, Eugene S. Alkana, Richard M. Macias, Attorneys, represented respondent.

The record closed and the matter was submitted for decision at the conclusion of the hearing.

## **SUMMARY**

Complainant seeks to discipline respondent's real estate broker license based on allegations he misrepresented to the parties of a commercial sublease that the property owner of the premises had given its consent to the sublease. However, complainant failed to clearly and convincingly establish respondent made any such false representation or promise of that kind to the parties. Nonetheless, having affirmatively undertaken to broker the sublease, respondent breached his duty of care to the parties by failing to advise them the property owner's written consent was needed in order for the sublease to be valid, request the property owner for its written consent of the sublease, and advise the parties to not proceed with the sublease until written consent was received. Therefore, complainant clearly and convincingly established respondent acted negligently, which is cause to discipline his broker license. Respondent's misconduct was not so egregious as to warrant revocation of his license. But respondent's prior discipline in 2003 merits more progressive discipline now, which is a restricted broker license for two years under terms including a suspension, restitution to one of the parties to the sublease, and reimbursement of costs to the Department of Real Estate.

## **FACTUAL FINDINGS**

### **Parties and Jurisdiction**

1. Veronica Kilpatrick (complainant) is a Supervising Special Investigator of the Department of Real Estate (Department). (Ex. 1.)

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2. Junius Johnson, Jr. (respondent) is presently licensed as a real estate broker under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), license number 00407357, issued by the Department. (Undesignated statutory references are to the Business and Professions Code.) Respondent originally was licensed as a broker on April 3, 1979. Respondent's broker license was valid at all times relevant and will expire on June 21, 2025, unless renewed. (Ex. 2.)

3. On September 2, 2021, complainant filed the Accusation against respondent in her official capacity with the Department. (Ex. 1.)

4. Respondent timely submitted a Notice of Defense, which contained a request for a hearing to contest the Accusation. (Ex. 1.)

### **Respondent's Pertinent Background Information**

5. Respondent originally was licensed by the Department as a real estate salesperson in 1971. (Ex. 2.)

6. While using his broker license, respondent has used various fictitious business names, including Allstar Property Management and LA City Properties. (Ex. 2.)

7. After becoming a broker in 1979, respondent has focused on commercial transactions, such as marketing retail shopping centers, developing office buildings and apartments, and leasing retail space. Respondent also has worked as an auctioneer and property manager. (Ex. 11.) Respondent testified he has given testimony as a real estate expert in depositions and trials.

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## **Respondent's Prior Discipline**

8. On September 1, 2003, by a Decision After Rejection of an administrative law judge's Proposed Decision following an administrative hearing (Decision) in Department case number H-29666 LA, respondent's broker license was suspended for 30 days. The first 15 days of the suspension were stayed for one year upon condition respondent pay a \$2,250 monetary penalty; the remaining 15 days of the suspension were stayed upon respondent complying with other conditions. (Ex. 3.)

9. The Decision found respondent committed numerous trust account record keeping and other violations, as revealed by audits of respondent's fictitious businesses Allstar Property Management and LA City Properties. It also was found respondent negligently paid operating expenses from the trust account used to collect rent from tenants. (Ex. 3.)

10. The Decision concluded respondent's actions violated the following provisions of the Real Estate Law: section 10145 and California Code of Regulations, title 10, section (regulation) 2832.1 (trust account shortage of over \$1,200); section 10145 and regulation 2831 (failure to maintain adequate control record of trust account); section 10145 and regulation 2831.1 (failure to maintain a separate record for each transaction); section 10145 and regulation 2831.2 (failure to perform monthly reconciliation of trust account.); section 10145 and regulation 2832 (failure to place rent from tenants into trust account); section 10177, subdivision (g) (negligence in using trust funds to pay an employee); regulation 2726 (failure to maintain written broker-salesperson agreement); and section 10177, subdivision (d) (willful violation of the Real Estate Law). (Ex. 3.)

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## The Sublease

11. T & T Pharmacy (or the pharmacy) leased space located at 320 E. Manchester Avenue, Unit C, in Inglewood, California (premises). The premises are owned by 330 Manchester Management LLC (or property owner). The managing partner of the property owner is Mohamad P. (Initials are used for last names to protect the privacy of those involved.) The lease was due to expire in 2021. As of September 2019, the rent was \$2,500 per month. (Exs. 5, 13.)

12. The pharmacy's premises lease contained a sublease clause, which provided, "Lessee [the pharmacy] shall not voluntarily or by operation of law . . . sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's [property owner's] prior written consent." (Ex. 13, p. A278.)

13. The pharmacy decided to move out of the premises by September or October 2019. Respondent's office was located in the same building as the pharmacy. On a date not established in 2019, respondent went into the pharmacy and had a conversation with one of the pharmacy's partners, Jason T. During their conversation, Jason T. mentioned the pharmacy's plan to vacate the premises. (Testimony [Test.] of respondent; Ex. 16.)

14. A few weeks after respondent's conversation with Jason T., respondent informed Jason T. he might have tenants interested in taking over the lease of the premises. Jason T. told respondent he was willing to work with him. However, respondent never presented Jason T. or the pharmacy with a contract regarding respondent's efforts to sublease the premises. (Test. of respondent; Ex. 16.)

15. Around this time, Dr. Melvin K. sought to relocate his ministry, which he was then operating out of a middle school auditorium. Dr. K testified one of the



members of his ministry referred him to respondent. Dr. K. contacted respondent, who referred him to look at several potential spaces available. Dr. K was not satisfied with those spaces. Respondent also told Dr. K about the pharmacy's plan to move out of the premises in September or October 2019. (Test. of Dr. K., respondent; Ex. 4.)

16. Respondent brought three different potential tenants, including Dr. K., to examine the premises. Dr. K. liked the premises and wanted to lease them. Respondent vetted the three prospective tenants, including performing credit and financial checks. Respondent decided Dr. K. was the most viable prospective tenant. Respondent recommended the pharmacy select Dr. K. The pharmacy agreed to proceed on a sublease with Dr. K. (Test. of respondent, Dr. K.; Ex. 16.)

17. Respondent advised the parties he would prepare all the necessary paperwork for Dr. K. to sublet the premises from the pharmacy. Around this time, respondent provided Dr. K. with a copy of the lease for the premises between the property owner and the pharmacy. (Test. of respondent, Dr. K.; Ex. 16.)

18. Respondent told Dr. K. he would check with the City of Inglewood to confirm the premises were properly zoned to conduct religious services. Respondent learned from the city one more church could open in that area. Respondent advised Dr. K. he could operate a church from the premises. (Test. of respondent, Dr. K.)

19. On August 5, 2019, the pharmacy and Dr. K. signed a sublease for the premises. (Test. of respondent, Dr. K.; Exs. 16, 4, 5.)

20. The parties agreed Dr. K. would pay \$5,000 to execute the sublease. At respondent's request, Dr. K. wrote two separate checks. One check was for \$2,500 payable to the pharmacy and the other check was for \$2,500 payable to respondent.

The check payable to respondent was his commission for presenting Dr. K. to the pharmacy to take over the lease. (Test. of respondent; Exs. 6, 7, 16.)

21. Respondent contacted the managing partner of the property owner, Mohamad P., about Dr. K taking over the pharmacy's lease. According to respondent, he had a business relationship of over 30 years with Mohamad P. When respondent presented Mohamad P. with the sublease, Mohamad P. said he "did not care," and only was concerned with who would pay respondent's commission. Respondent testified he gave a copy of the executed sublease to Mohamad P. to make him aware of what was happening in his building. Mohamad P. did not sign the sublease; respondent did not indicate in his testimony whether he asked Mohamad P. to sign it. Nonetheless, respondent testified he "felt comfortable" going ahead with the sublease without the property owner's written consent. (Test. of respondent; Ex. 5.)

22. Meanwhile, Dr. K. did not think he needed to contact the property owner to confirm whether it approved the sublease. Dr. K. assumed respondent handled that task as the broker of the transaction. Jason T. did not contact the property owner either. However, Jason T. told respondent he would only agree to the sublease if "it was all completed legally," to which respondent "repeatedly said yes." (Test. of Dr. K.; Ex. 16, p. A414.)

23. The pharmacy vacated the premises on September 30, 2019, and Dr. K. occupied the premises by mid-October 2019. Dr. K. estimates he spent \$12,000 converting the premises to a place of worship. (Test. of Dr. K.; Exs. 4, 16.)

### **Eviction Procedures**

24. On a date in November 2019 not established, the property owner had the pharmacy served with a "Notice to Permanently Perform Covenant or Quit" (NTQ)

dated October 20, 2019, and November 9 and 10, 2019. The NTQ stated the pharmacy had violated the agreed use provision of the premises lease, and ordered the removal of "the unauthorized business," i.e., Dr. K.'s ministry, within three days. The property owner also had Dr. K. served with a copy of the NTQ, which happened during a ministry service. (Test. of Dr. K.; Exs. 4, 5, 16.)

25. Dr. K. contacted respondent about the NTQ. Respondent assured Dr. K. he could continue to occupy the premises and to "not worry about it" because respondent would contact the property owner. Based on that advice, Dr. K. did not vacate the premises. (Test. of Dr. K.; Ex. 4.)

26. Respondent testified he tried to contact Mohamad P. about the NTQ, but Mohamad P. would "not take my call." Respondent's testimony is not credible, in light of his purportedly having a 30-year business relationship with Mohamad P., being a tenant in the same building, and his status as the broker who negotiated the sublease and previously spoke to Mohamad P. about it. (Test. of respondent.)

27. On November 27, 2019, an unlawful detainer lawsuit against the pharmacy was filed by an attorney on behalf of the property owner. (Ex. 14.)

28. Around the time the unlawful detainer action was filed, Dr. K. tried to contact the property owner without success; each time he was referred to the property owner's attorney. Dr. K. testified the attorney told him she "did not care about the sublease" and advised him to vacate the premises as soon as possible. (Test. of Dr. K.)

29. Dr. K. and Jason T. contacted respondent after the unlawful detainer lawsuit was filed. Respondent advised them to hire an attorney, and either exercise the arbitration clause of the lease between the property owner and the pharmacy and/or

sue the property owner "for discrimination." Respondent offered no other advice or assistance. (Test. of Dr. K.; Ex. 16.)

30. Dr. K. and Jason T. jointly hired an attorney to negotiate with the property owner. To resolve the unlawful detainer lawsuit, Dr. K. agreed to vacate the premises by January 18, 2020; the pharmacy agreed to retake possession of the premises; and the pharmacy agreed to find a tenant to sublet the premises and seek approval of the property owner in compliance with the lease. The property owner later dismissed the unlawful detainer action after Dr. K. and the pharmacy performed as they agreed. (Ex. 14, pp. A342-343.)

31. Jason T. refunded to Dr. K. the \$2,500 Dr. K. had paid the pharmacy when the sublease was executed. (Ex. 16.)

32. In the aftermath of these events, Dr. K. contacted respondent and asked him to refund his \$2,500 commission. Respondent told Dr. K., "I do not owe you a damn dime because I did my job." To date, respondent has not returned any part of his commission. (Test. of Dr. K.; Ex. 4.)

33. Dr. K. spent all of the ministry's money on the sublease. He can no longer afford to rent space. Dr. K. now operates his ministry in a public park. Dr. K. estimates he lost two-thirds of his ministry's members due to these events. (Test. of Dr. K.)

### **Complaint to the Department**

34. On February 20, 2020, Dr. K. filed a complaint against respondent with the Department. Dr. K. requested the Department help him get a refund of the \$2,500 commission payment to respondent. (Ex. 4.) The complaint was assigned for investigation to Department Special Investigator (SI) Lizzette Castro. (Exs. 5, 8, 9.)

## INFORMATION FROM RESPONDENT

35. On a date not established in 2020, SI Castro requested respondent to provide documents related to the sublease and answer specific questions about the transaction. (Ex. 5.)

36. On July 20, 2020, respondent submitted to SI Castro copies of relevant documents and written responses to SI Castro's questions. (Ex. 5.)

37. In his written response to SI Castro's questions, respondent conceded the \$2,500 check payable to him from Dr. K. was respondent's broker commission. (Ex. 5, p. A163.)

38. In his written response to SI Castro's questions, respondent explained he leased the unit next door to the premises; he met Jason T. after the pharmacy's prior prospective sublessee "backed out" of a sublease for the premises; and Dr. K. contacted him after seeing a sign promoting his brokerage. (Ex. 5, p. A163.)

39. In his written response to SI Castro's questions, respondent stated he met with Mohamad P. before Dr. K. took possession of the premises, to review with Mohamad P. the sublease and transition that was about to occur. Respondent also stated he provided Mohamad P. copies of an application, credit report, and other documents related to the sublease. Respondent further stated Mohamad P.'s only question at the time was who would pay the commission; respondent informed Mohamad P. that Dr. K. would pay it. (Ex. 5, p. A163.)

40. In his written response to SI Castro's questions, respondent wrote, "At that time, he [Mohamad P.] did not deny the lessor [the pharmacy] his right to sublease [sic] the Owner [Mohamad P.] stated he would give the agreement and

documents to his assistant to have his partner sign as he had done with other Tenants." Respondent asserted, "As I have been working with Mohamad (the Owner) for over thirty (30) years, I accepted his word and understood that he had returned the Agreement to the Sub-Lessor." (Ex. 5, p. A163.)

41. In his written response to SI Castro's questions, respondent advised the \$5,000 paid by Dr. K. was for the "1st Month Lease and Security Deposit that was paid to the Owner." According to respondent, "My leasing commission is one month rent that I receive on signing the lease agreement in which the sub-lessor paid from his proceeds." (Ex. 5, p. A164.)

#### **INFORMATION FROM THE PROPERTY OWNER**

42. On September 30, 2020, SI Castro emailed Mohamad P. regarding the sublease. SI Castro asked Mohamad P. three specific questions. (Ex. 8.) SI Castro never received a response to her email.

43. On January 13, 2021, SI Castro mailed a letter containing similar questions to Mohamad P. SI Castro never received a response to her letter. (Ex. 9.)

44. In 2021, SI Castro emailed the attorney who filed the unlawful detainer action, Lorraine Anderson. Although the two communicated by email, the contents of that communication are not in the record. Ms. Anderson sent SI Castro a copy of her eviction file pertaining to the premises lease. (Exs. 13-14.)

#### **INFORMATION FROM THE PHARMACY**

45. On December 15, 2020, SI Castro contacted Jason T. for information regarding the sublease and requested he answer several specific questions. Jason T. returned a Declaration dated December 22, 2020. (Ex. 16.) Jason T. did not testify at

the hearing. Jason T.'s declaration (Ex. 16) is the sole source of information from him concerning the situation. Overall, the declaration is consistent with other evidence in the record and is credible.

### **Findings Based on Respondent's Testimony**

46. Respondent testified he had heard the property owner became upset over Dr. K.'s members using too much of the parking attached to the premises during services, which respondent surmised was the reason the property owner issued the NTQ. Respondent submitted no corroboration for his assertion, and the NTQ does not reference parking issues. Moreover, respondent conceded on cross-examination that Mohamad P. never told him why he wanted Dr. K. to vacate the premises.

47. Respondent testified Dr. K. and Jason T. never asked him whether the property owner consented to the sublease. Respondent's testimony in this regard is consistent with information provided by Dr. K. and Jason T. and is credible.

48. After Dr. K. vacated the premises, Mohamad P. retained respondent to find a suitable subleasee for the pharmacy. Respondent did so. Mohamad P. gave his written consent to the new sublease. (Test. of respondent; Ex. 5.)

### **Costs**

49. The Department incurred reasonable costs in the investigation and enforcement of this matter totaling \$5,224.30. (Exs. 17, 18.)

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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.)

2. 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.)

### Governing Provisions of the Real Estate Law

3. Pursuant to section 10176:

The commissioner may . . . temporarily suspend or permanently revoke a real estate licensee at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following:

(a) Making any substantial misrepresentation.

(b) Making any false promises of a character likely to influence, persuade, or induce.

[¶] . . . [¶]

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(i) Any other conduct, whether of the same or of a different character than specified in this section, which constitutes fraud or dishonest dealing.

4. Pursuant to section 10177, subdivision (g), the commissioner may suspend or revoke the license of a real estate licensee who has demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.

### **Broker Negligence**

5. Under the Real Estate Law, a broker must demonstrate familiarity with basic principles of contract law, as well as the provisions of various types of contracts and conveyance documents. (§ 11503.) The broker must be aware of the extent of legal obligations under contract law, and must not mislead a party concerning obligations under a contract. (*Earp v. Nobmann* (1981) 122 Cal.App.3d 270, 292 [*Earp*], disapproved of on other grounds by *Silberg v. Anderson* (1990) 50 Cal.3d 205.)

6. When a broker affirmatively undertakes an action in a real estate transaction, he has a duty to act with reasonable care and to take appropriate actions to advise a party against suffering a reasonably foreseeable injury. (*Merrill v. Buck* (1962) 58 Cal.2d 552, 562 [*Merrill*].) In *Merrill*, the court held a broker, having affirmatively undertaken the task of showing premises for lease to prospective tenants, in the regular course of business and with the purpose of earning a commission if the premises were leased, was under a duty of care to warn the prospective tenants of a concealed danger in the premises of which the broker was aware and from which injury might be reasonably foreseen. (*Ibid.*)

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7. The duty of care owed by a broker is not dependent on the existence of a contractual relationship. (*Earp, supra*, 122 Cal.App.3d at p. 290.) It simply must be clear the transaction in question was directly intended to affect a party and that harm was foreseeable as the result of the broker's negligence. (*Ibid.*)

8. In *Earp*, the court found a broker had a duty of care toward the owner of ranch property, who the broker was helping to sell the ranch, even though the broker did not have a written listing agreement with the owner/seller. The broker was actively communicating with a prospective buyer. The broker understood the real value of the prospective buyer's offer to buy the ranch was less than what the owner would accept, but the broker failed to advise either party of that fact. The broker also knew another party was interested in buying the ranch at the price the owner wanted. Instead of trying to resolve the parties' differences, the broker continued to push the transaction forward, knowing the parties did not have a meeting of the minds. Litigation resulted after the prospective buyer believed a sales contract had been agreed upon by the owner, but the owner believed it had rejected the prospective buyer's offer and had accepted an offer from the other interested party.

9. In finding the broker breached his duty of care toward the owner, the court in *Earp* observed:

It is quite probable that had [the broker] at any time concerned himself with the rights of the others involved in the transaction rather than pursuing without pause his own personal profit the matter could have been resolved without resort to litigation and the injury to [the owner] could have been avoided or minimized. [The broker] was aware that under the [prospective buyer's] offer [the owner]

would receive far less for the property than it had continuously demanded yet he used everything in his power to force the deal upon [the owner]. He was further aware of the damages being suffered by [the owner] due to its inability to complete the transactions with [the other interested party], yet he continued in his harmful course of conduct. Moreover, due to the unique role he played as a real estate broker [he] was the one person that might have been able to resolve the dispute between [the parties], yet in utter disregard of their interests he chose the course which would result in personal profit.

*(Earp, supra, 122 Cal.App.3d at pp. 291-292.)*

## **Cause for Discipline**

### **FIRST CAUSE – SUBSTANTIAL MISREPRESENTATION**

10. Respondent's license is not subject to discipline pursuant to section 10176, subdivision (a), for making a substantial misrepresentation. Complainant failed to clearly and convincingly establish, as alleged, that respondent substantially misrepresented to the parties the property owner of the premises consented to the sublease, both at the outset of the sublease and after the issuance of the NTQ. There is no evidence in the record indicating respondent made any such representation to Dr. K. or Jason T. (Factual Findings 11-48.)

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## **SECOND CAUSE – FALSE PROMISE**

11. Respondent's license is not subject to discipline pursuant to section 10176, subdivision (b), for making a false promise. Complainant failed to clearly and convincingly establish, as alleged, that respondent made a false promise to the parties that the property owner of the premises consented to the sublease, both at the outset of the sublease and after the issuance of the NTQ. There is no evidence in the record indicating respondent made any such promise to Dr. K. or Jason T. (Factual Findings 11-48.)

## **THIRD CAUSE – DISHONEST DEALING**

12. Respondent's license is not subject to discipline pursuant to section 10176, subdivision (i), for dishonest dealing. Complainant failed to clearly and convincingly establish, as alleged, that respondent engaged in dishonest dealing by substantially misrepresenting to the parties that the property owner of the premises consented to the sublease, both at the outset of the sublease and after the issuance of the NTQ. There is no evidence in the record indicating respondent made such a representation to Dr. K. or Jason T. (Factual Findings 11-48.)

## **FOURTH CAUSE – NEGLIGENCE OR INCOMPETENCE**

13. Respondent's license is subject to discipline pursuant to section 10177, subdivision (g), in that complainant clearly and convincingly established respondent acted negligently with regard to the sublease. (Factual Findings 11-48.)

14. As a licensed broker, respondent was responsible for knowing the basic concepts of contract law, including subleases. Respondent has been a licensed broker for over 40 years, and has specialized in commercial transactions. Respondent also

testified he has been asked to offer expert real estate opinions in civil litigation. Respondent had a copy of the lease between the property owner and the pharmacy. Respondent therefore knew, or reasonably should have known, the lease required written consent from the property owner before the premises could be sublet.

15. Respondent initiated the pursuit of a sublease for the premises. He approached the pharmacy about a sublease; he later shepherded Dr. K. to the pharmacy and ultimately recommended the pharmacy accept Dr. K. as a subtenant. Thereafter, respondent assured the parties he would create the required documents for the sublease, and he told Dr. K. he would confirm if the premises were zoned for church activity. Pursuant to *Merrill*, having affirmatively undertaken to broker the sublease for the premises, respondent had a duty to act with reasonable care and take appropriate actions to protect the parties against reasonably foreseeable harm. Respondent had such a duty regardless of the fact he did not have a written contract with either Dr. K. or the pharmacy to broker the sublease.

16. Respondent breached his duty of care by not advising the parties the sublease required the property owner's written consent. Respondent had a duty to not mislead the parties concerning their obligations under the sublease (*Earp*), but he never told Dr. K. or Jason T. the sublease required the property owner's written consent to be valid. He failed to so advise the parties, despite giving Jason T. assurances that the sublease was legally valid. This is similar to *Merrill*, in which the broker, having undertaken the task of showing the premises to prospective tenants, failed to warn them about a concealed dangerous condition. Respondent, having undertaken to broker the sublease, failed to advise the parties to the sublease it was invalid without the property owner's written consent.

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17. Respondent also breached his duty of care by failing to request the property owner for written consent to the sublease. Respondent seemingly acknowledged this duty of care by taking the step of advising the property owner of the sublease during a meeting and purportedly obtaining the property owner's verbal consent. Respondent even went so far as to give the property owner a copy of the sublease to sign. However, those efforts meant nothing in the absence of the property owner's written consent. Respondent also acted carelessly by failing to advise the parties to not go forward with the lease until the property owner's written consent was in hand.

18. This case is similar to *Earp*. Due to the unique role respondent played as the broker of the sublease, where he had contact with Dr. K., the pharmacy, and the property owner, respondent was the one person who could have avoided the eviction of Dr. K. by simply asking the property owner for his written consent of the sublease, and advising the parties to not proceed until it was in hand. Instead of taking those simple steps, respondent went forward with the sublease, knowing that without the property owner's written consent, the sublease was not valid and could be disregarded by the property owner, which is what ultimately happened. As in *Earp*, respondent disregarded the rights of the parties to the sublease and forced the deal forward to receive a commission.

19. Respondent was well aware of the foreseeable damages to the parties if they went forward with the sublease without the property owner's written consent. Without a legally valid sublease, Dr. K. was at the mercy of the property owner's objection to his ministry occupying the premises and the subsequent eviction action. Dr. K. lost the commission he paid to respondent, his first month of rent, and his renovation costs, all reasonably foreseeable losses at the outset of the transaction. The

pharmacy also lost a few months of rent after vacating the premises but still being required to pay rent under the lease. Both parties incurred legal fees responding to the eviction action, an event not only foreseeable, but guaranteed after respondent's disastrous advice that Dr. K. disregard the NTQ and remain on the premises.

20. On the other hand, respondent's license is not subject to discipline pursuant to section 10177, subdivision (g), for incompetence.

21. The Accusation does not allege facts explaining how respondent acted incompetently. It appears the cause for incompetence was meant as an alternative theory to negligence, should that theory not be proven. However, incompetence is not synonymous with negligence. (*Pollak v. Kinder* (1978) 85 Cal.App.3d 833, 838.) "[A] licensee may be competent or capable of performing a given duty but negligent in performing that duty." (*Ibid.*) "The technical term 'incompetency' is a relative one generally used in a variety of factual contexts to indicate an absence of qualification, ability or fitness to perform a prescribed duty or function." (*Ibid.*)

22. In this case, it was not established respondent lacked qualifications or expertise to competently perform his duties as a broker. He knew, or should have known, the property owner's written consent was needed for the sublease to be legal, and he even took half-hearted attempts to obtain the property owner's consent. Instead, and as concluded above, respondent negligently failed to perform his duties in that regard, which is not the same as being incompetent. (Factual Findings 11-48.)

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## Disposition

23. In *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402, the court observed "the Legislature intended to ensure that real estate brokers and salespersons will be honest, truthful and worthy of the fiduciary responsibilities which they will bear."

24. An administrative proceeding such as this is not meant to punish a licensee, but rather to protect the public. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.)

25. Revocation of respondent's license is not warranted and would be unduly punitive. The most serious allegations of fraud and intentional misconduct were not proven. The only established cause for discipline was respondent's negligence in brokering the sublease, which led to both parties suffering reasonably foreseeable damages. That misconduct was the result of respondent's sloppy pursuit of a commission, as opposed to intentional malfeasance. Respondent's longstanding record as a licensee with only one prior disciplinary matter, as well as his candid cooperation with the Department's investigation, are mitigating facts.

26. On the other hand, there are aggravating facts indicating more than minor discipline is warranted. It is concerning respondent was previously disciplined for negligence, and the suspension-only discipline in that prior case (which discipline itself was suspended) did not make enough of an impression on respondent for him to avoid further misconduct. Moreover, respondent's callous indifference to the plight of the parties to the sublease, before and after the NTQ was issued, calls into question respondent's judgment and good faith.

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27. Based on the above, moderate discipline in the form of a restricted broker license for two years is warranted in the interests of public protection. The notion of progressive discipline supports an actual suspension, rather than another suspended suspension. Respondent also shall be required to make reports to the Department concerning his activities, and pay restitution to Dr. K. in the form of refunding his commission. (Factual Findings 1-48.)

28. Section 10106 provides, in part, that in any order issued in resolution of a disciplinary proceeding, the Real Estate Commissioner (Commissioner) may request the administrative law judge to direct a licensee found to have violated the Real Estate Law to pay the reasonable costs of the investigation and enforcement of the action. In this case, respondent violated the Real Estate Law. He therefore is liable for the reasonable costs of the investigation and enforcement of this action in the amount of \$5,224.30. (Factual Finding 49.)

### **ORDER**

All licenses and licensing rights of respondent Junius Johnson, Jr. 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. Prehearing Suspension**

The restricted license issued to respondent may be suspended prior to hearing by Order of the 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.

The restricted license issued to respondent may be suspended prior to hearing by Order of the Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the Real Estate Law, the Subdivided Lands Law, Regulations of the Commissioner, or conditions attaching to the restricted license.

### **2. Term of Restriction**

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.

### **3. Continuing Education**

Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the 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 respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

**4. Suspension**

Any restricted real estate license issued to respondent pursuant to this Decision shall be suspended for seven (7) days from the date of issuance of said restricted license.

**5. Restitution**

Respondent shall, prior to the issuance of the restricted license and as a condition of the issuance of said restricted license, submit proof satisfactory to the Commissioner of payment of restitution in the amount of \$2,500 to Dr. K.

**6. Reporting**

Respondent shall report in writing to the Department of Real Estate as the Commissioner shall direct by this Decision herein or by separate written order issued while the restricted license is in effect such information concerning respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of respondent and periodic summaries of salient information concerning each real estate transaction in which respondent engaged during the period covered by the report.

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**7. Costs**

Pursuant to Business and Professions Code section 10106, respondent shall pay the Department of Real Estate reasonable investigation and enforcement costs of \$5,224.30 no later than one year after the issuance of the restricted broker license and according to a payment plan approved by the Commissioner.

DATE: 01/10/2023

  
Eric C. Sawyer (2011-2012) (S4 PST)

ERIC SAWYER  
Administrative Law Judge  
Office of Administrative Hearings