

1 Department of Real Estate
2 320 W. 4th Street, Suite 350
3 Los Angeles, CA 90013-1105

4 Telephone: (213) 576-6982

FILED

JAN 31 2023

DEPT. OF REAL ESTATE

By: Andrea Bentler

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12) NO. H-42119 LA
13 ANA CLAUDIA VALENCIA,)
14 Respondent.) STIPULATION AND AGREEMENT
) AND DECISION AFTER REJECTION

15 It is hereby stipulated by and between Respondent ANA CLAUDIA VALENCIA
16 (“Respondent”), and Complainant, acting by and through Andrea Bentler, Counsel for the
17 Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation
18 (“Accusation”) filed on February 22, 2022 in this matter:

20 I hereby admit that the allegations contained in the Accusation filed against me
21 are true and correct and constitute a basis for the discipline of my real estate salesperson license.

22 I further acknowledge that the Real Estate Commissioner held a hearing on this
23 Accusation on September 14, 2022, before the Office of Administrative Hearings for the purpose
24 of proving the allegations therein. I was present at the hearing in which I was represented by
25 counsel and participated therein. Further, I have had an opportunity to read and review the
26

1 Proposed Decision of the Administrative Law Judge.

2 I understand that pursuant to Government Code Section 11517(c), the Real Estate
3 Commissioner has rejected the Proposed Decision of the Administrative Law Judge. I further
4 understand that pursuant to the same Section 11517(c), the Real Estate Commissioner may
5 decide this case upon the record, including the transcript, without taking any additional evidence,
6 after affording me the opportunity to present written argument to the Real Estate Commissioner.
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8 I further understand that by signing this Stipulation and Agreement, I am waiving
9 my right to obtain a dismissal of the Accusation through proceedings under Government Code
10 Section 11517(c) if this Stipulation and Agreement is accepted by the Real Estate Commissioner.
11 However, I also understand that I am not waiving my rights to further proceedings to obtain a
12 dismissal of the Accusation if this Stipulation and Agreement is not accepted by the Real Estate
13 Commissioner.
14

15 I hereby request that the Real Estate Commissioner in his discretion revoke my
16 real estate salesperson license and issue to me a restricted real estate salesperson license under
17 the authority of Section 10156.5 of the Business and Professions Code if I make application
18 therefor and pay to the Department of Real Estate the appropriate fee for said license within
19 ninety (90) days from the effective date of the Decision herein.
20

21 I further understand that the restricted license shall be subject to the provisions of
22 Section 10156.7 of the Business and Professions Code and the following conditions, limitations
23 and restrictions will attach to the restricted license issued by the Department of Real Estate
24 pursuant hereto:

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

5 2. The restricted license may be suspended prior to hearing by Order of the Real
6 Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated
7 provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real
8 Estate Commissioner, or the conditions attaching to the restricted license.

9 3. Respondent shall not be eligible to petition for the issuance of any unrestricted
10 real estate license nor for removal of any of the conditions, limitations or restrictions of a
11 restricted license until three (3) years have elapsed from the effective date of this Decision and
12 Order. Respondent shall not be eligible to apply for any unrestricted licenses until all restrictions
13 attaching to the license have been removed.

14 4. Respondent shall submit with any application for license under an employing
15 broker, or any application for transfer to a new employing broker, a statement signed by the
16 prospective employing real estate broker, on a form approved by the Department of Real Estate,
17 which shall certify:

18 (a) That the employing broker has read the Decision of the Commissioner
19 which granted the right to a restricted license; and

20 (b) That the employing broker will exercise close supervision over the
21 performance by the restricted licensee relating to activities for which a real estate license is
22 required.

1 5. All licenses and licensing rights of Respondent are indefinitely suspended
2 unless or until Respondent pays the sum of \$1,600.00 for the Commissioner's reasonable cost of
3 the investigation and enforcement which led to this disciplinary action. Said payment shall be in
4 the form of a cashier's check made payable to the Department of Real Estate. **The investigative**
5 **and enforcement costs must be delivered to the Department of Real Estate, Flag Section at**
6 **P.O. Box 137007, Sacramento, CA 95813-7007, prior to the effective date of this Order.**
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8 6. Respondent shall, **within nine (9) months from the effective date of this**
9 **Order**, present evidence satisfactory to the Commissioner that Respondent has, since the most
10 recent issuance of an original or renewal real estate license, taken and successfully completed the
11 continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal
12 of a real estate license. If Respondent fails to satisfy this condition, Respondents' real estate
13 license shall automatically be suspended until Respondent presents evidence satisfactory to the
14 Commissioner of having taken and successfully completed the continuing education
15 requirements. **Proof of completion of the continuing education courses must be delivered to**
16 **the Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-**
17 **7013.**
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19 7. Respondent shall, **within six (6) months from the effective date of this**
20 **Order**, take and pass the Professional Responsibility Examination administered by the
21 Department including the payment of the appropriate examination fee. If Respondent fails to
22 satisfy this condition, Respondent real estate license shall automatically be suspended until
23 Respondent passes the examination.
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25 8. Respondent shall notify the Commissioner in writing within seventy-two (72)
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of Respondent's arrest, the crime for which Respondent was arrested, and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

DATED: NOV. 18, 2022

Ana Claudia Valencia
ANA CLAUDIA VALENCIA, Respondent

* * *

I have read the Accusation filed herein, the Proposed Decision of the Administrative Law Judge dated October 6, 2022, and the foregoing Stipulation and Agreement signed by Respondent. I am satisfied that it will not be inimical to the public interest to issue a restricted salesperson license to Respondent.

Therefore, IT IS HEREBY ORDERED that the real estate salesperson license of Respondent be revoked and a restricted real estate salesperson license be issued to Respondent if Respondent has otherwise fulfilled all of the statutory requirements for licensure. The restricted license shall be limited, conditioned and restricted as specified in the foregoing Stipulation and Agreement.

This Order shall become effective at 12 o'clock noon
on _____.

IT IS SO ORDERED _____.

DOUGLAS R. McCAULEY
Real Estate Commissioner

1 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real
2 Estate, Post Office Box 137013, Sacramento, CA 95813-7013. The letter shall set forth the date
3 of Respondent's arrest, the crime for which Respondent was arrested, and the name and address
4 of the arresting law enforcement agency. Respondent's failure to timely file written notice shall
5 constitute an independent violation of the terms of the restricted license and shall be grounds for
6 the suspension or revocation of that license.

7
8 DATED: _____

ANA CLAUDIA VALENCIA, Respondent

* * *

9
10 I have read the Accusation filed herein, the Proposed Decision of the
11 Administrative Law Judge dated October 6, 2022, and the foregoing Stipulation and Agreement
12 signed by Respondent. I am satisfied that it will not be inimical to the public interest to issue a
13 restricted salesperson license to Respondent.

14
15 Therefore, IT IS HEREBY ORDERED that the real estate salesperson license of
16 Respondent be revoked and a restricted real estate salesperson license be issued to Respondent if
17 Respondent has otherwise fulfilled all of the statutory requirements for licensure. The restricted
18 license shall be limited, conditioned and restricted as specified in the foregoing Stipulation and
19 Agreement.

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21 This Order shall become effective at 12 o'clock noon
22 on FEB 20 2023.

23 IT IS SO ORDERED

1.24.23

24 DOUGLAS R. McCAULEY
25 Real Estate Commissioner

26 Douglas R. McCauley
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FILED

OCT 28 2022

DEPT. OF REAL ESTATE
By AC Selous

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	DRE No. H-42119 LA
)	
ANA CLAUDIA VALENCIA,)	OAH No. 2022070520
)	
Respondent.)	

NOTICE

TO: ANA CLAUDIA VALENCIA, Respondent, and CHARLES M FARANO, her Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated October 6, 2022, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated October 6, 2022, is attached hereto for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on Wednesday, September 14, 2022, and any written argument hereafter submitted on behalf of respondent and complainant.

Written argument of respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of Wednesday, September 14, 2022, at the

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1 Los Angeles office of the Department of Real Estate unless an extension of the time is granted for
2 good cause shown.

3 Written argument of complainant to be considered by me must be submitted within
4 15 days after receipt of the argument of respondent at the Los Angeles Office of the Department of
5 Real Estate unless an extension of the time is granted for good cause shown.

6 DATED: 10.24.22

7 DOUGLAS R. McCAULEY
8 REAL ESTATE COMMISSIONER

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10 Douglas R. McCauley
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**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Accusation against:

ANA CLAUDIA VALENCIA, Respondent

Agency Case No. H-42119 LA

OAH No. 2022070520

PROPOSED DECISION

Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on September 14, 2022 by videoconference.

Andrea Bentler, Real Estate Counsel, appeared on behalf of Complainant, Veronica Kilpatrick, Supervising Special Investigator II, Department of Real Estate, who makes this Accusation in her official capacity (Complainant).

Respondent Ana Claudia Valencia (Respondent) represented herself.

A protective order was issued for the names of Respondent's minor children and all exhibits were redacted to remove any information containing the names of the children.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on September 14, 2022.

FACTUAL FINDINGS

Jurisdictional Matters

1. Real Estate Salesperson license number 02063707 was issued to Respondent on August 24, 2018. The license will expire on August 23, 2026, unless renewed or revoked.

2. On February 17, 2022, Complainant signed and filed the Accusation in this matter. The Accusation was served on February 22, 2022. Respondent filed a timely Notice of Defense requesting a hearing. All jurisdictional requirements were met for this matter to proceed to hearing.

Conviction

3. On or about September 10, 2019, in the Superior Court of California, County of Orange, Case No. 18NF2178, Respondent was convicted on a plea of guilty, of violation of Penal Code section 273a(a) (child abuse), and violation of Penal Code section 273d(a) (corporal injury on a child), both felonies. The imposition of the sentence was suspended. Respondent was placed on formal probation for four (4) years, on certain terms and conditions, including, serving 26 days in County Jail, with credit for time served of 13 actual days and 13 conduct days, completion of a child abuser's treatment program, completion of 100 hours of community service, and payment of fees and a fine.

4. The facts and circumstances of Respondent's conviction are that on August 1, 2018, she spanked her 12 year old son, hit him with a shoe and a plastic hanger, pushed him and sprayed water on him after he refused to complete a

chore, crushing cans for recycling. After her son claimed there were spiders on him, she sprayed water on him. She admit that she was frustrated with his defiant behavior. The child left the home and went to his aunt's house across the street. The aunt, a child care provider and mandated reporter, contacted the police department. Respondent was arrested at her home.

5. Respondent explained that she was under a lot of stress, living in a home that needed substantial repair and attempting to care for her four children who ranged from ages two to 14 at the time. According to Respondent, she was raised in Mexico, in a family more accustomed to a physical style of discipline than is permissible in California. Respondent has complied with all requirements imposed by the court. Her convictions have been reduced from felonies to misdemeanors and her children have been returned to her home after a three month stint in foster care at their aunt's home. There was no evidence of serious or permanent injury to Respondent's child.

6. Respondent's convictions bear a substantial relationship to the qualifications, functions or duties of a real estate licensee pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(8) as an unlawful act causing substantial injury to another.

7. Respondent expressed regret and remorse for her actions and has learned new coping strategies. She hopes to use her real estate license to supplement the family income and raise their standard of living. Respondent is active in the Parent Teacher Association (PTA), the school sports Booster club, and her church. She spends most of her time attending to her children's school and sporting events. Her husband works long hours as a welder to provide for the family. Respondent and her family are

receiving therapy and she has received parenting training. Since the incident which gave rise to her conviction, Respondent has learned to communicate better, to ask for help, to negotiate with her children and to know when to walk away and take a break. Respondent does not have prior or subsequent convictions.

Costs

8. Complainant provided documentary evidence in the form of a Declaration attesting to \$2,455.65 in investigative costs consisting of 30.9 hours of Special Investigator time charged at \$40 per hour and .15 hour of Supervising Special Investigator time charged at \$97 per hour. (Ex. 6.) Complainant also provided a declaration of Andrea Bentler, Real Estate Counsel, attesting to \$662.40 consisting of 6.9 hours of attorney time charged for this matter at the rate of \$96 per hour. The total costs incurred are \$3,118.05 and are deemed reasonable.

9. Respondent's husband is the main financial support for Respondent's family which includes four minor children. Respondent hopes to use her real estate license to supplement the family income. Currently, the family of 6 has an income of approximately \$100,000 which is consumed to house, clothes, feed the family, and pay for the care, maintenance and gasoline on two vehicles and assorted accumulated bills. Respondent expressed that she would need to make payments on any costs based upon her financial situation.

LEGAL CONCLUSIONS

1. The standard of proof for Complainant to prevail on the First Amended Accusation is clear and convincing evidence to a reasonable certainty. (See *Borror v.*

Dept. of Real Estate (1971) 15 Cal.App.3d 531; *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.)

2. Under Business and Professions Code (Code) section 10177, subdivision (b), a real estate licensee may have her license suspended or revoked for conviction of a crime if it is substantially related to the qualifications, functions, or duties of a real estate licensee. Similarly, under Code section 490, the Department may "suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued."

3. Respondent's felony convictions for violations of Penal Code section 273a(a) (child abuse), and violation of Penal Code section 273d(a) (corporal injury on a child), bear a substantial relationship to the qualifications, functions, or duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivision (a)(8), in that her convictions involve unlawful acts done with the threat of substantial injury to the person or property of another.

4. Based on Factual Findings 1-6 and Legal Conclusions 1-3, cause exists to suspend or revoke Respondent's real estate salesperson license pursuant to Code sections 490 and 10177, subdivision (b), because Respondent was convicted of crimes substantially related to the qualifications, functions, or duties of a real estate license.

5. The Department's rehabilitation criteria have been developed by the Department to evaluate the rehabilitation of a licensee who is subject to discipline on account of a crime. These criteria, found at California Code of Regulations, title 10, section 2912, are summarized as follows:

Subdivision (a), passage of at least two years since the conviction or the act of the licensee that is the cause for the Accusation; the two-year period may be increased based upon consideration of the nature and severity of the crime(s) and/or act(s) and the licensee's history of "substantially related" criminal convictions and/or license discipline.

Subdivision (b), restitution;

Subdivision (c), expungement of the conviction;

Subdivision (d), expungement of the requirement to register as a sex offender;

Subdivision (e), completion of, or early discharge from the criminal probation;

Subdivision (f), abstinence of at least two years from drugs or alcohol that contributed to the crime;

Subdivision (g), payment of any criminal fines or penalties;

Subdivision (h), correction of business practices causing injury;

Subdivision (i), new and different social and business relationships;

Subdivision (j), stability of family life;

Subdivision (k), enrollment in or completion of educational or training courses;

Subdivision (l), significant involvement in community, church or private programs for social betterment; and

Subdivision (m), change in attitude from the time of conviction to the present, evidenced by: testimony of the licensee and others, including family members, friends

or others familiar with his previous conduct and subsequent attitudes and behavior patterns, or probation or parole officers or law enforcement officials, psychiatric or therapeutic evidence, and absence of subsequent convictions.

6. Applying the applicable rehabilitation criteria to this case, four years have passed since Respondent's conduct occurred and three years have elapsed since Respondent's September 2019 conviction. Respondent's criminal probation will end this month. She has complied with all conditions of her probation including attending parenting classes. Respondent has learned new coping strategies and has had a change in attitude. In addition to her testimony about her change in attitude, there have not been any similar incidents. Respondent's children have been returned to her care and she has made changes to provide a safe and stable environment for them. Respondent is in a long term stable marriage and is actively involved in her children's school and sports communities.

7. Respondent must present evidence both of a state of mind and a state of facts showing she has been rehabilitated. (*Resner v. State Bar* (1967) 67 Cal.2d 799, 811; *In re Adreani* (1939) 14 Cal.2d 736, 749.) Remorse for one's conduct and the acceptance of responsibility are the cornerstones of rehabilitation. 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.) However, 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) Cal.3d 1061, 1070; *In re Trebilcock* (1981) 30

Cal.3d 312.) The absence of a prior disciplinary record is a mitigating factor. (*Chefsky v. State Bar* (1984) 36 Cal.3d 116, 132, fn. 10.)

8. The purpose of a disciplinary matter is to protect the public and not to punish the licensee. (*Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513, 518; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) Respondent has accepted responsibility for her conduct, learned from it, and shown sufficient progress toward rehabilitation such that outright revocation of all licensing rights would be unduly harsh. The public will be adequately protected if Respondent's real estate salesperson license is restricted for a period of three years.

Costs

9. Code section 10106, provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Department of Real Estate, 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.

10. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 (*Zuckerman*), the Supreme Court directed the administrative law judge and the licensing agency to evaluate several factors to ensure that the cost recovery provision did not deter individuals from exercising their right to a hearing. Accordingly, the Department must not assess the full costs where it would unfairly penalize the Respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the Department must consider a Respondent's subjective good faith belief in the merits of his or her position and whether the Respondent has raised a colorable

challenge; the Department must consider a Respondent's ability to pay; and the Department may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a Respondent engaged in relatively innocuous misconduct. (See *Zuckerman, supra*, at p. 45.) Respondent has demonstrated a willingness, but not an ability, to pay the costs in this case. Based upon Respondent's financial situation and her success in reducing the severity of the discipline imposed, a reduction in costs and the provision of a payment plan are appropriate. A reduction of the costs to \$1600 will allow the Department recovery of some of the funds expended to investigate and prosecute this case, without imposing an unreasonable or punitive burden on Respondent.

ORDER

All licenses and licensing rights of Respondent Ana Claudia Valencia under the Real Estate Law, including salesperson license number 02063707, are revoked; provided, however, a restricted salesperson license shall be issued to respondent pursuant to Business and Professions Code section 10156.5 if Respondent makes application therefor and pays 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 Business and Professions Code section 10156.7 and to the following limitations, conditions, and restrictions imposed under authority of Business and Professions Code section 10156.6:

1. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's

conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.

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

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations, or restrictions of a restricted license until three years have elapsed from the effective date of this Decision.

4. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until Respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

5. Respondent shall pay the Commissioner a total of \$1,600 in reimbursement of enforcement and investigation costs. Respondent shall pay such reimbursement in installments and on such terms as the Commissioner may determine, with due regard for respondent's financial resources.

6. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his 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 the respondent engaged during the period covered by the report.

7. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of respondent's arrest, the crime for which respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

DATE: 10/06/2022

Glynda Gomez

GLYNDA B. GOMEZ

Administrative Law Judge

Office of Administrative Hearings