

FILED

JUN 22 2022

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPT. OF REAL ESTATE
By *al Selaw*

* * *

In the Matter of the Accusation of:)	DRE No. H-42127 LA
)	
CHIN THOMAS YUE,)	OAH No. 2022020280
)	
Respondent.)	

DECISION

The Proposed Decision dated May 10, 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.

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

Jurisdictional Matters, Page 2, Paragraph 1, Line 2, reads as, "...broker license..." corrected as, "...salesperson license..."

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 JUL 12 2022.

IT IS SO ORDERED 6.17.22.

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:

CHIN THOMAS YUE, Respondent.

Agency Case No. H-42127 LA

OAH No. 2022020280

PROPOSED DECISION

Ji-Lan Zang, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on April 13, 2022, by videoconference.

Andrea Bentler, Staff Counsel, represented Maria Suarez (complainant), Supervising Special Investigator, Department of Real Estate (Department).

Chin Thomas Yue (respondent) appeared at the hearing and represented himself.

Oral and documentary evidence was received and argument heard. The record was closed, and the matter was submitted for decision on April 13, 2022.

FACTUAL FINDINGS

Jurisdictional Matters

1. On May 21, 2014, the Department issued a real estate salesperson license (License ID 01874271) to respondent. This real estate broker license is scheduled to expire on May 20, 2022, unless renewed. Respondent currently holds licensing rights under the Real Estate Law, Part 1 of Division 4, of the Business and Professions Code.

2. On January 12, 2022, complainant filed the Accusation in her official capacity. Respondent timely filed a Notice of Defense. This hearing ensued.

Criminal Conviction

3. On November 16, 2020, respondent was convicted on his guilty plea to violating Penal Code section 273.5, subdivision (a), inflicting corporal injury on a spouse or cohabitant, a misdemeanor. (Superior Court of California, County of Orange, case number 20CM03018.)

4. For this conviction, imposition of sentence was suspended, and respondent was placed on informal probation for three years on certain terms and conditions, including incarceration for 30 days, with credit for two days served and two conduct days, or completion of 10 days Cal Trans/physical labor in lieu of the 30-day incarceration; completion of a batterer's treatment programs; no contact with the victim pursuant to a protective order; and payment of fines, fees, and restitution.

5. Respondent completed physical labor in lieu of the 30-day incarceration. He stayed away from his wife when the protective order was in effect, but the protective has since been modified to allow contact between respondent and his wife.

Respondent completed a batterer's treatment program, and he paid all fines, fees, and restitution. Respondent is currently on criminal probation, which is scheduled to expire in November 2023.

6. No arrest report was submitted at the hearing. However, the facts and circumstances surrounding this criminal conviction were established by respondent's testimony, as follows: On March 1, 2020, respondent was making breakfast when his wife, Nan Han, began an argument with him. Ms. Han, who was eight-months pregnant with the couple's first child, was upset because she encountered some difficulties at work. She yelled and insulted respondent. As the argument escalated, Ms. Han became increasingly upset and began to jump up and down. Respondent was concerned about his wife harming herself and the baby. He grabbed Ms. Han's arms to calm her down, but his efforts to restrain Ms. Han left bruises on her arms. The argument ended without further incident. Later than night, Ms. Han experienced contractions and went to hospital. At the hospital, the nurse who assisted her saw bruises on her arms and called the police. Respondent was subsequently arrested for domestic violence.

7. Respondent's testimony regarding the facts and circumstances surrounding his conviction is credible for several reasons. First, he testified at the hearing in an open, sincere manner. Second, respondent's testimony was consistent with his prior written statement, dated April 29, 2021, to the Department regarding the March 1, 2020 incident. (Ex. 4, pp. A69-70.) Third, respondent's testimony was corroborated by Ms. Han. At the hearing, Ms. Han testified that on March 1, 2020, she was feeling stressed from work because she also works as a realtor and she lost a client to another broker. Eight-months pregnant, Ms. Han suffered from gestational diabetes, but she had not eaten that day and had low blood sugar. According to Ms.

Han, she "picked a fight" with respondent on the morning of March 1, 2020. She became upset during the argument with respondent and jumped up and down in agitation. Respondent told her to stop jumping and grabbed her by the arms. Later that night, Ms. Han had contractions and went to the hospital, where a nurse called the police after seeing bruises on Ms. Han's arms.

Respondent's Failure to Report His Criminal Conviction

8. On March 26, 2020, respondent notified the Department of his arrest for inflicting corporal injury on a spouse. On a form entitled Indictment, Conviction, and Disciplinary Action Notification (Form RE 238), respondent disclosed that he had been charged with violating Penal Code section 273.5, subdivision (a), in case number 20CM03018, and he listed the status of the case as "Pending." (Ex. 6.) However, respondent did not submit any further notices to the Department. Specifically, respondent did not report to the Department of his November 16, 2020 conviction for the same crime within 30 days of its occurrence, as required by Business and Professions Code section 10186.2, subdivision (a).

9. At the hearing, respondent conceded that he had made an honest mistake in failing to report his conviction. Respondent believed that his disclosure of the pending criminal charges on his Form RE 238 on March 26, 2020, had satisfied the Department's reporting requirement and did not realize that he had to make a second report of his criminal conviction after his guilty plea on November 16, 2020. Respondent also noted that Form RE 238 did not provide any instructions for a second disclosure upon conviction of the same crime. Respondent's testimony on this issue was honest and credible. It should be noted that there are no explicit instructions to licensees on the Form RE 238 that they must disclose their arrest as well as any subsequent conviction for the same crime. Additionally, given that respondent had

previously disclosed the pending criminal charges against him after his initial arrest, it can be reasonably inferred that respondent did not intend to conceal his criminal conviction from the Department nor did he intend to deceive the Department about his criminal history.

Mitigation/Rehabilitation

10. Respondent is 42 years old. He has not suffered any other arrest or conviction. Respondent graduated from the University of California at Berkeley in 2008 with a Bachelor of Arts degree in economics. For the past five years, respondent has worked in the real estate field. He was a salesperson at Realty One Group West from 2015 to 2018 and McSen Realty from 2019 to 2021. In 2021, respondent returned to work as a salesperson at Realty One Group West.

11. Pursuant to the protective order issued in the criminal case, respondent stayed away from his wife for six to eight months after his conviction. However, the protective order has been modified to allow contact between respondent and his wife, and the couple has since reconciled. Respondent has been living with his wife and their two-year-old son for over a year. Respondent averred that he wants to keep his real estate license because it is his career. He plans to build up a client base and succeed in real estate to create a better future for his son.

12. Ms. Han, respondent's wife, testified at the hearing as a character witness for respondent. Ms. Han has been married to respondent for approximately 10 years. She described respondent as a "nice, honorable, and trustworthy" man who goes out of his way to help others. With the benefit of hindsight, Ms. Han believes that she was depressed during her pregnancy and had put too much pressure on herself, resulting in the argument she had with respondent on March 1, 2020. After this incident, she

has sought the help of a therapist, Eric Godel, MFT, to address her mental health issues. Mr. Godel wrote a letter confirming his treatment of Ms. Han. (Ex. 4, p. A64.) At the hearing, Ms. Han also confirmed that before the March 1, 2020 incident, respondent has never physically abused her. Moreover, since Ms. Han and respondent reconciled after the modification of the criminal protective order, there has been no other incidence of physical abuse.

Recovery Costs

13. Complainant submitted evidence of the costs of investigation and enforcement of this matter, summarized as follows: 23.45 hours in investigation activities by two Department employees at rates ranging from \$79 to \$97 per hour (subtotal \$1,858.85); and 6.1 hours of legal services at the rate of \$96 per hour (subtotal \$585.60). The total costs of investigation and enforcement are \$2,444.45.

14. Respondent is currently experiencing difficulties making real estate sales, and most of his income comes from doing side jobs as a handy man and a mover. He provides financial support for his wife and their two-year-old son.

LEGAL CONCLUSIONS

Standard and Burden of Proof

1. The standard of proof for complainant to prevail on the Accusation is "clear and convincing" evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) Clear and convincing evidence requires proof that is so clear as to leave no substantial doubt and that is sufficiently strong to command the unhesitating

assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487.)

Causes for Discipline

2. Under Business and Professions Code section 10177, subdivision (b), a real estate licensee may have his 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 Business and Professions 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 misdemeanor conviction for inflicting corporal injury on a spouse bears a substantial relationship to the qualifications, functions, or duties of a real estate licensee under California Code of Regulations, title 10 (10 CCR), section 2910, subdivision (a)(8), in that his conviction involved unlawful acts done with the threat of substantial injury to the person or property of another.

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

5. A licensee must notify the Department of the "conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor." (Bus. & Prof. Code, § 10186.2, subd. (a)(1).) The notification must be made "in writing within 30 days of the date of the conviction" (Bus. & Prof. Code, §

10186.2, subd. (a)(2).) "Failure to make a report required by this section shall constitute a cause for discipline." (Bus. & Prof. Code, § 10186.2, subd. (b).)

6. Based on Factual Finding 8 and Legal Conclusion 5, cause exists to suspend or revoke respondent's real estate salesperson license pursuant to Business and Professions Code section 10186.2, in that respondent failed to notify the Department of his guilty plea for inflicting corporal injury on a spouse within 30 days of its occurrence.

Rehabilitation

7. 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 10 CCR, 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.

8. Applying the rehabilitation criteria to this case, although less than two years have elapsed since respondent's conviction in November 2020, more than two years have elapsed since the March 2020 incident that underlies the conviction. The two-year period should not be extended given the absence of any other arrests or convictions on respondent's criminal record and the extenuating circumstances surrounding respondent's conviction for domestic violence against his wife.

Specifically, although respondent admitted to grabbing his wife by her arms to stop her from jumping up and down during the March 1, 2020 incident, his actions were motivated by a desire to prevent his eight-month pregnant from harming herself and their unborn child. Ms. Han, respondent's wife, also conceded that she bore some responsibility for this incident as she was suffering from depression and took her anxieties out on her husband. Ms. Han also testified that during their 10-year marriage, other than the incident that underlies respondent's criminal conviction, her husband had never physically abused her. Thus, the March 1, 2020 incident was an isolated incident that is highly unlikely to re-occur.

9. Respondent is currently on criminal probation until November 2023. However, he has complied with all conditions of his probation, including completion of a batterer's treatment program, performance of physical labor, and payment of fines and fees. Respondent also stayed away from his wife while the criminal protective order was in effect. After the protective order was lifted, respondent has reconciled with his wife, and they are currently raising their two-year-old son together. Ms. Han has reported no incident of physical abuse by respondent after her reconciliation with respondent. Additionally, Ms. Han corroborated and supported respondent's testimony and described her husband as honorable and trustworthy.

10. With respect to the allegations of failure to disclose, respondent reported his initial arrest for domestic violence to the Department in March 2020, but he did not make a second report of his guilty plea after his conviction in November 2020. Although Respondent's failure to comply with Business and Professions Code section 10186.2 can be explained, it cannot be excused. Nevertheless, respondent's disclosure of the pending criminal charges against him to the Department in March 2020

demonstrates the absence of any intent to deceive. Respondent also displayed candor and sincerity in his testimony at the hearing.

11. 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 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 suspended for a period of 15 days.

Recovery Costs

12. Under Business and Professions Code section 10106, the Department may recover costs "not to exceed the reasonable costs of the investigation and enforcement" of this matter. As set forth in Factual Finding 13, complainant seeks costs of investigation and enforcement in the amount of \$2,444.45.

13. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court rejected a constitutional challenge to a cost provision similar to Business and Professions Code section 10106. In so doing, however, the Court directed the administrative law judge and the agency to evaluate several factors to ensure that the cost provision did not deter individuals from exercising their right to a hearing. Thus, an agency 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 agency 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 agency must consider a respondent's ability to pay; and the agency 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. (*Id.* at p. 45.)

14. In this case, complainant was assessed a disproportionately large amount in investigation and prosecution costs, given that this matter involved allegations of a single criminal conviction and failure to disclose that conviction. Moreover, complainant presented only documentary evidence and no witness testimony at the hearing. Additionally, although respondent has committed the misconduct alleged in the Accusation, he has used the hearing process to obtain a reduction in the severity of the penalty. Respondent also has limited ability to pay, as he is currently working as handyman and a mover, and he financially supports his wife and their two-year-old son. These circumstances warrant a reduction in the costs of investigation and enforcement to one half of the claimed amount of \$2,444.45. Consequently, the reasonable costs of investigation and enforcement are \$1,222.22.

ORDER

1. All licenses and licensing rights of respondent Yue Thomas Chin under the Real Estate Law are suspended for a period of fifteen (15) days from the effective date of this Decision.

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2. Respondent shall pay costs of \$1,222.22 to the Real Estate Commissioner in the form of a cashier's check or certified check within 30 days of the effective date of this Decision, or on a payment plan by agreement with the Commissioner

DATE: 05/10/2022

Ji-Lan Zang

JI-LAN ZANG

Administrative Law Judge

Office of Administrative Hearings