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FILED

DEC 29 2023

DEPT. OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of) No. H-42268 LA
XIAO LI,) OAH No. 2023010749
Respondent.)

STIPULATION AND AGREEMENT AND DECISION AFTER REJECTION

It is hereby stipulated by and between Respondent XIAO LI ("Respondent"), individually, represented by Frank M. Buda, and the Complainant, acting by and through Steve Chu, Counsel for the Department of Real Estate ("Department"), as follows for the purpose of settling and disposing of the Accusation filed on July 1, 2022, in this matter:

1. On June 1, 2023, a formal hearing was held on the Accusation in accordance with the provisions of the Administrative Procedure Act ("APA") before Administrative Law Judge Jennifer M. Russell ("ALJ Russell").

2. On June 2, 2023, ALJ Russell issued a Post-Hearing Order for the record to remain open for Respondent's submission of certified copies of Orders for Dismissal offered as Exhibit F and Exhibit G. Respondent submitted the documents timely.

3. On June 9, 2023, the record was closed and the matter was submitted for decision.

- 1 4. On June 29, 2023, ALJ Russell issued a Proposed Decision.
- 2 5. On August 11, 2023, the Commissioner rejected the Proposed Decision.
- 3 6. The parties wish to settle this matter without further proceedings.
- 4 7. Respondent, pursuant to the limitations set forth below, hereby admits
- 5 that the factual allegations in the Accusation filed in this proceeding are true and correct and
- 6 the Commissioner shall not be required to provide further evidence to prove such allegations.
- 7 8. It is understood by the parties that the Commissioner may adopt the
- 8 Stipulation and Agreement and Decision After Rejection (“Stipulation and Agreement”) as his
- 9 decision in this matter thereby imposing the penalty and sanctions on Respondent’s real estate
- 10 license and license rights as set forth in the below Order. In the event the Commissioner, in his
- 11 discretion, does not adopt the Stipulation and Agreement, the Stipulation and Agreement shall
- 12 be void and of no effect. If that occurs, the Commissioner will proceed pursuant to
- 13 Section 11517(c)(2)(E) of the California Government Code.
- 14 9. The Order or any subsequent Order of the Commissioner made pursuant
- 15 to this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further
- 16 administrative or civil proceedings by the Department with respect to any matters which were
- 17 not specifically alleged to be causes for the Accusation in this proceeding as admitted or
- 18 withdrawn.

19 DETERMINATION OF ISSUES

20 By reason of the foregoing stipulations, admissions, and waivers, and solely for

21 the purpose of settlement of the pending Accusation without further proceedings, it is stipulated

22 and agreed that the following Determination of Issues shall be made:

23 The conduct, acts, or omissions of Respondent XIAO LI, as described in the

24 Accusation, constitute cause for the suspension or revocation of all real estate licenses and

25 license rights of Respondent XIAO LI under California Business and Professions Code

26 (“Code”) sections 490, 10177(b)(1), and 10186.2.

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

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- 1 (a) That the employing broker has read the Decision of the
2 Commissioner which granted the right to a restricted license; and
3 (b) That the employing broker will exercise close supervision over
4 the performance by the restricted licensee relating to activities for
5 which a real estate license is required.

6 5. Respondent shall, within nine (9) months from the effective date of this
7 Decision and Order, present evidence satisfactory to the Commissioner that Respondent has,
8 since the most recent issuance of an original or renewal real estate license, taken and
9 successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the
10 Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this
11 condition, Respondent's real estate license shall automatically be suspended until Respondent
12 presents evidence satisfactory to the Commissioner of having taken and successfully completed
13 the continuing education requirements. Proof of completion of the continuing education
14 courses must be delivered to the Department of Real Estate, Flag Section at P.O. Box 137013,
15 Sacramento, CA 95813-7013.

16 6. Respondent shall notify the Commissioner in writing within 72 hours of
17 any arrest by sending a certified letter to the Commissioner at the Department of Real Estate,
18 Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013. The letter shall set forth the
19 date of Respondent's arrest, the crime for which Respondent was arrested and the name and
20 address of the arresting law enforcement agency. Respondent's failure to timely file written
21 notice shall constitute an independent violation of the terms of the restricted license and shall
22 be grounds for the suspension or revocation of that license.

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1 7. All licenses and licensing rights of Respondent are indefinitely
2 suspended unless or until Respondent pays the sum of \$1,301.95 for the Commissioner's
3 reasonable cost of the investigation and enforcement which led to this disciplinary action. Said
4 payment shall be in the form of a cashier's check made payable to the Department of Real
5 Estate. The investigative and enforcement costs must be delivered to the Department of Real
6 Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective
7 date of this Decision and Order.

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9 DATED: 9/19/2023



Steve Chu, Attorney
Department of Real Estate

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I have read the Stipulation and Agreement. I understand that I am waiving rights given to me by the California Administrative Procedure Act, (including but not limited to Sections 11521 and 11523 of the Government Code), and I willingly, intelligently, and voluntarily waive those rights, including the right to seek reconsideration and the right to seek judicial review of the Commissioner's Decision and Order by way of a writ of mandate.

I agree, acknowledge, and understand that I cannot rescind or amend this Stipulation and Agreement.

I can signify acceptance and approval of the terms and conditions of this Stipulation and Agreement by mailing the original signed Stipulation and Agreement to: Steve Chu, Department of Real Estate, 320 West 4th Street, Suite 350, Los Angeles, California 90013-1105. Steve Chu must receive the original signed Stipulation and Agreement or a copy faxed to (213) 576-6917 by September 29, 2023.

DATED: 9/10/2023

XIAO LI
Respondent

DATED: 9-18-23

Frank M. Buda
Counsel for Respondent
Approved as to Form

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2 The foregoing Stipulation and Agreement is hereby adopted by me as my
3 Decision in this matter as to Respondent XIAO LI, and shall become effective at 12 o'clock
4 noon on 1/18/2024.

5 IT IS SO ORDERED

12/27/23
6 DOUGLAS R. McCAULEY
7 REAL ESTATE COMMISSIONER



FILED

AUG 22 2023

DEPT. OF REAL ESTATE

By

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) DRE No. H-42268 LA
XIAO LI,)
Respondent.) OAH No. 2023010749

NOTICE

TO: XIAO LI, Respondent, and FRANK M. BUDA, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated June 29, 2023, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated June 29, 2023, 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, which may include the transcript of the proceedings held on Thursday, June 01, 2023, 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 Thursday, June 01, 2023, at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good

1 cause shown.

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

5 DATED: 8.11.23

6 DOUGLAS R. McCAULEY
7 REAL ESTATE COMMISSIONER



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

In the Matter of the Accusation Against:

XIAO LI,

Real Estate Salesperson License No. S/01385377,

Respondent.

Agency No. H-42268 LA

OAH No. 2023010749

PROPOSED DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by telephone/videoconference on June 1, 2023.

Steve Chu, Real Estate Counsel, represented complainant Veronica Kilpatrick, Supervising Investigator of the State of California. David A. Sawchak, Attorney at Law, represented respondent Xiao Li, who was present.

Complainant seeks to discipline respondent's real estate salesperson license based on allegations he has been convicted of crimes substantially related to the qualifications, functions, or duties of a real estate licensee, which he did not report to the Department. Testimony and documents were entered in evidence at the hearing.

Pursuant to a June 2, 2023 Post-Hearing Order, the record remained open after the hearing concluded for respondent's submission of certified copies of the Orders for Dismissal offered as Exhibit F (case number 9WC00458) and Exhibit G (case number 9AM02212). Respondent submitted the documents in a timely manner. The record closed and the matter was submitted for decision on June 9, 2023.

The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order revoking respondent's real estate salesperson license with the right to a restricted salesperson license with terms and conditions.

FACTUAL FINDINGS

Jurisdictional Matters

1. On June 5, 2003, the Department issued Real Estate Salesperson License S/01385377 to respondent. The license expires on May 23, 2025, unless renewed.
2. On July 1, 2022, complainant made the Accusation in her official capacity.
3. On July 11, 2022, respondent filed a *Notice of Defense on Accusation* acknowledging receipt of a copy of the Accusation, among other documents, and requesting a hearing to present a defense or matters in mitigation or extenuation to the allegations in the Accusation.
4. On January 27, 2023, the Department served respondent with a *Notice of Hearing on Accusation* containing information about the scheduled June 1, 2023, 1:30 p.m. telephone/videoconference hearing in this matter.

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5. Subsequently, after appointment of counsel, a *Notice of Defense-Objections* was filed on respondent's behalf on March 28, 2023.

6. All jurisdictional requirements are satisfied.

Cause Alleged to Discipline Respondent's Real Estate Salesperson License

7. According to an Azusa Police Department (APD) report, on November 8, 2018, APD officers were dispatched to Y.X.'s residence when she reported respondent brandished a knife causing her to be fearful for her safety. Y.X. informed the APD officers she broke up with respondent after three months of dating. In her absence, respondent entered her residence and hid in a walk-in closet in her bedroom until she returned. When she discovered respondent hiding in her bedroom closet, he held a knife to his own stomach, demanded they get back together, and told her he would rather be dead than live without her.

8. During the incident, respondent became upset when Y.X. told him they would not be getting back together. Respondent refused to leave Y.X.'s residence and grabbed Y.X.'s arms to prevent her from leaving her bedroom. He grabbed Y.X.'s phone from her hand. He covered her mouth with his hands to prevent her from yelling when she attempted to alert her roommates to what was occurring in her bedroom.

9. Consequently, on December 2, 2019, in the Superior Court of California, Los Angeles County, case number 9WC00458, respondent was convicted, on his nolo contendere plea, of battery on a spouse, cohabitant, fiancé, boyfriend, girlfriend, or child's parent, in violation of Penal Code section 243, subdivision (e)(1), a misdemeanor. The court found a factual basis for respondent's plea, suspended

imposition of sentence, and placed respondent on three years' summary probation with terms and conditions, including serving one day in Los Angeles County Jail (less credit for 1 day), performing five days of community labor, completing a 52-week domestic violence treatment program, and obeying a protective order to stay away from Y.X., which he signed and was served on him in court.

10. Respondent did not report his December 2, 2019 criminal conviction to the Department within 30 days of the December 2, 2019 date of conviction.

11. Approximately six months after the November 8, 2018 incident, on May 25, 2019, respondent was again involved in another altercation with Y.X. According to a San Marino Police Department (SMPD) report, SMPD officers were dispatched to Y.X. and respondent's location when a witness reported seeing respondent pull Y.X. to prevent her from leaving a vehicle he drove. The reporting party saw respondent hit Y.X. During their investigation of the incident, Y.X. told SMPD officers respondent choked her and she defended herself by scratching and pushing him away from her. The officers observed scratches and blood on respondent.

12. A SMPD officer contemporaneously obtained an Emergency Protective Order (EPO) on behalf of the Y.X., which was served on respondent on May 25, 2019.

13. On July 9, 2019, Y.X. obtained a Criminal Protective Order-Domestic Violence (CPO) prohibiting respondent from having any contact with her.

14. On January 8, 2020, in the Superior Court of California, Los Angeles County, case number 9AM02212, respondent was convicted, on his nolo contendere plea, of battery in violation of Penal Code section 242, a misdemeanor. The court found a factual basis for respondent's plea, suspended imposition of sentence, and placed respondent on 13 months' summary probation with terms and conditions,

including performing five days of community labor, completing a 52-week domestic violence treatment program, and obeying a protective order requiring him to stay away from Y.X., which was served on him in court. On January 21, 2020, the court heard a new case, number 0AM00165-1, regarding respondent's possible violation of probation. That matter remained on the court's calendar for an April 6, 2020 progress report on, among other matters, domestic violence counseling.

15. Respondent did not report his January 8, 2020 criminal conviction to the Department within 30 days of the January 8, 2020 date of conviction.

16. Respondent's December 2, 2019 and January 8, 2020 criminal convictions are substantially related to his qualifications, functions, or duties as a Department licensee because they involve unlawful acts done with the intent or threat of committing substantial injury to another person. (See Legal Conclusion 6.)

Respondent's Evidence

17. With respect to the November 8, 2018 incident, respondent maintained Y.X. invited him to her residence. When he arrived at Y.X.'s residence and she was not present there, he followed his usual practice of waiting for her in her bedroom. Respondent testified, "She was super mad. . . . I assume she was on some kind of drugs. . . . She got really aggressive. She told me to get out of the house which I did. I tried to get out and she grabbed on to my arm. I tried to get her arm off of my arm. That's what happened." No evidence offered at hearing corroborated respondent's assumption Y.X. "was on some kind of drugs" at the time of the November 8, 2018 incident.

18. Respondent testified his relationship with Y.X. was on and off. He and Y.X. lived together at the time of the May 25, 2019 incident. According to respondent, he

and Y.X. planned a whale watching trip. Tickets for that event were sold out. Alternatively, a decision was made to attend the Huntington Library. Respondent testified Y.X. was not satisfied and became "very mad." He and Y.X. argued as they drove to the Huntington Library. Respondent maintained Y.X. grabbed his arm as she attempted to take over the steering wheel. Respondent further maintained Y.X. threw things, scratched his arms, and hit his face. Respondent said nothing about choking Y.X. and her attempts to defend herself.

19. Respondent's representation of the circumstances resulting in his December 2, 2019 and January 8, 2020 convictions was not credible given that in each instance his conduct was the predicate for protective orders restraining him from further contact with Y.X. There is no evidence Y.X. conduct warranted any protective order to restrain her from further contact with respondent.

20. Respondent claimed he was "not aware" he had to report his December 2, 2019 and January 8, 2020 convictions. He explained, "It was my first time getting in trouble with the law. Second, I didn't have a stable place to stay back then. It was during the COVID period so I did not go to the office often. So, I was not aware I had to self-report."

21. None of respondent's proffered explanations excuses his failures to report his criminal convictions to the Department. As a licensed real estate professional, respondent is deemed to have actual and constructive knowledge of his statutory obligation to report each of his criminal convictions to the Department within 30 days of each occurrence.

22. Respondent offered several character reference letters. Respondent's responsible real estate broker, who is aware of his criminal record and failure to report

his December 2, 2019 and January 8, 2020 convictions, regards him as an "honest ethical individual." In part, the responsible real estate broker writes, "I have never seen [respondent] act unprofessional or dishonest from the 20 plus years that I have known him. He has never been aggressive toward anyone in the business or personal situation. He is a good agent and . . . hard working. People in our office and his clients praise him highly." (Exh. A.)

23. A letter from one of respondent's real estate client states, "He is honest person with high integrity. He is very professional with work, helped me so much in getting my dream home. He went past and beyond on what an agent needed to do." (Exh. D.)

24. Letters from respondent's current girlfriend and mother, who holds a salesperson real estate license, describe him as kind, honest, trustworthy, ethical, and professional. (Exhs. B and C.)

Mitigating Factors

25. In Mitigation, on April 6, 2023, pursuant to Penal Code section 1203.4, the court set aside and vacated respondent's nolo contendere plea, entered a plea of not guilty, and dismissed the complaint for the January 8, 2020 conviction.

26. In mitigation, on May 5, 2023, pursuant to Penal Code section 1203.4, the court set aside and vacated respondent's nolo contendere plea, entered a plea of not guilty, and dismissed the complaint for the December 2, 2019 conviction.

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Costs of Investigation and Enforcement

27. The Department incurred costs of investigation and enforcement totaling \$2,603.90. These costs are reasonable pursuant to Business and Professions Code section 10106.

28. Evidence of respondent's financial ability to pay a cost award was not offered at the administrative hearing.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant bears the burden of proving by clear and convincing evidence to a reasonable certainty respondent has engaged in conduct warranting discipline of respondent's real estate salesperson license. (See *The Grubb Co., Inc. v. Department of Real Estate* (2011) 194 Cal.App.4th 1494, 1505.)

2. Clear and convincing evidence means the evidence is "so clear as to leave no substantial doubt" and is "sufficiently strong to command the unhesitating assent of every reasonable mind." (*Mathieu v. Norrell Corp.* (2004) 115 Cal.App.4th 1174, 1190 [citing *Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 332-333].)

Cause Exists to Discipline Respondent's Real Estate Salesperson License

3. The purpose of this administrative proceeding is not to impose additional punishment on respondent. The court has already imposed appropriate and significant criminal punishment on respondent. Rather, the purpose of this

administrative proceeding is to protect the public. (*Camacho v. Youde* (1979) 95 Cal. App. 3d 161, 164.)

4. The Real Estate Law is intended, among other things, to ensure licensed real estate professionals are worthy of the fiduciary responsibilities they will bear. Integrity, trustworthiness, and honesty are essential qualifications to perform the fiduciary duties of a real estate professional. If conduct reflects unfavorably on the worthiness of a person to be a fiduciary, he or she lacks the necessary qualifications to be a licensed real estate professional. (See *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402; see also *Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513, 518.)

5. Thus, Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b), authorize the suspension or revocation of a real estate salesperson license on grounds the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license is issued.

6. California Code of Regulations, title 10, section 2910, subdivision (a)(8), provides when considering whether a license should be suspended or revoked on the basis of the conviction of a crime, the crime shall be deemed substantially related to the qualifications, functions or duties of a Department licensee within the meaning of section 490 if it involves doing any unlawful act with the intent or threat of doing substantial injury to another person.

7. In the case where a conviction for a crime is substantially related to the qualifications, functions or duties of a real estate licensee, the context in which the crime was committed goes only to the question of the weight to be accorded to the

crime when considering the action to be taken with respect to the licensee. (Cal. Code Regs., tit.10, § 2910, subd. (c).)

8. Respondent's conduct toward Y.X. on November 8, 2018, and on May 25, 2019, resulted in his December 2, 2019 domestic battery conviction and January 8, 2020 battery conviction, respectively. Those crimes are substantially related to the qualifications, functions, or duties of a real estate licensee. Respondent brandished a knife and used physical force to prevent Y.X. from leaving her bedroom during the November 8, 2018 incident. Respondent choked Y.X. during the May 25, 2019 incident. Given these contexts, substantial weight is accorded respondent's December 2, 2019 domestic battery conviction and January 8, 2020 battery conviction.

9. Cause exists pursuant to Code sections 480, subdivision (a)(1), and 10177, subdivision (b), and California Code of Regulations, title 10, section 2910, subdivision (a)(8), to revoke or suspend respondent's license and accompanying licensing rights. Complainant proved by clear and convincing evidence respondent was convicted of crimes substantially related to the qualifications, functions, or duties of a real estate licensee. (This conclusion is based on Factual Findings 9, 14, and 16 and Legal Conclusions 3 through 8.)

10. Business and Professions Code section 10186.2, in pertinent part provides, "(a)(1) A licensee shall report . . . [¶] (B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor. [¶] (2) The report required . . . shall be made in writing within 30 days of . . . the conviction. (b) Failure to make a report required by this section shall constitute a cause for discipline."

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11. Cause exists pursuant to Business and Professions Code section 1086.2 to discipline respondent's real estate salesperson license. Complainant proved by clear and convincing evidence respondent failed to discharge his obligation to report his December 2, 2019 domestic battery conviction and January 8, 2020 battery conviction within 30 days of their occurrence. (This conclusion is based on Factual Findings 10, 15, 20, and 21.)

Level of Discipline

12. Although cause exists to revoke or suspend respondent's real estate salesperson license and licensing rights, the Department, pursuant to Business and Professions Code section 482, has promulgated criteria for evaluating respondent's rehabilitation. The law recognizes people can and do reform and that in such circumstances they should not be barred from licensure. (See *Tardiff v. State Bar* (1980) 27 Cal.3d 395, 404.)

13. The Department's criteria for evaluating the rehabilitation of a licensee include the lapse of time since committing the act or offense (the passage of less than two years after the most recent criminal conviction or act is inadequate to demonstrate rehabilitation); expungement of criminal conviction that culminated in the administrative proceeding to take disciplinary action; successful completion or early discharge from probation; stability of family life subsequent to conviction; completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement; significant and conscientious involvement in community, church, or privately sponsored programs designed to provide social benefits or ameliorate social problems; and change in attitude from that which existed at the time of the criminal acts in question. (See Cal. Code Regs., tit.10, § 2912.)

14. Three years have elapsed since respondent's most recent criminal conviction on January 8, 2020. Both his December 2, 2019 domestic battery conviction and his January 8, 2020 battery conviction are expunged. Respondent is no longer on probation. Whether subsequent to his convictions respondent attained stability in his family life, enrolled in educational or vocational training courses for economic self-improvement, or has significant, conscientious community involvement was not established by the evidence offered at hearing.

15. At hearing, respondent's rendition of the November 8 2018 and May 25, 2019 incidents suggested his dishonesty and untruthfulness. He omitted aspects of his troubling misconduct, including brandishing a knife, threatening self-harm, restraining Y.X. against her will, and choking Y.X. Respondent deflected by casting aspersions on Y.X. In sum, respondent demonstrated a lack of personal integrity by failing to account and take responsibility for the entirety of his conduct on November 8 2018 and May 25, 2019. Honesty, truthfulness, and integrity are qualities bearing on one's fitness and qualification to be a real estate licensee. (See *Golde v. Fox* (1979) 98 Cal.App.3d 167, 176.)

16. Having considered the totality of the credible evidence, the facts and circumstances of this matter require a stayed revocation of respondent's real estate salesperson license and the issuance of a restricted real estate salesperson license to respondent to protect the public.

Cost Award

17. Business and Professions Code section 10106 authorizes the recovery of the Department's prehearing investigation and enforcement costs.

18. Under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the Department must exercise its discretion to reduce or eliminate costs so as to prevent cost award statutes from deterring licensees with potentially meritorious claims or defenses from exercising their right to a hearing. "Thus the [Department] must not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [licensee] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed." (*Ibid.*) The Department, in imposing costs in such situations, must consider the licensee's subjective good faith belief in the merits of his or her position and the Department must consider whether or not the licensee has raised a colorable defense. The Department must also consider the licensee's ability to make payment.

19. Respondent was successful using the hearing process to obtain a reduction in the severity of the discipline imposed in the form of a stayed revocation with the right to a restricted salesperson license with terms and conditions. Thus, the Department's costs of investigation and enforcement totaling \$2,603.90 shall be reduced by 50 percent.

20. Considering all *Zuckerman* factors, including the absence of evidence regarding respondent's ability to pay a cost award, respondent shall pay the costs totaling \$1,301.95 consistent with a plan approved by the Department.

ORDER

Real estate salesperson license number S/01385377, and accompanying licensing rights, issued to respondent Xiao Li is hereby revoked; provided, however, a

restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code section 10156.5 if respondent makes application therefor and pays to the Department the appropriate fee for the restricted license within ninety (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 the authority of Business and Professions Code section 10156.61:

1. The restricted license issued to respondent Xiao Li may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's further 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 Xiao Li 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 Xiao Li 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.
4. Respondent Xiao Li shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker,

a statement signed by the prospective employing real estate broker on a form approved by the Bureau which shall certify:

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

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

5. Respondent Xiao Li shall, within nine (9) months from the effective date of this Decision, present evidence satisfactory to the Bureau that he 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 the she presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

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6. Respondent shall pay to the Department costs associated with its investigation and enforcement pursuant to Business and Professions Code section 10106 in the amount of \$1,301.95. Respondent shall be permitted to pay these costs in a payment plan approved by the Department with payments to be completed no later than 18 months from the effective date of this Decision.

DATE: 06/29/2023



JENNIFER M. RUSSEL

Administrative Law Judge

Office of Administrative Hearings