

BEFORE THE DEPARTMENT OF REAL ESTATE

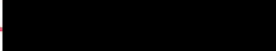
STATE OF CALIFORNIA

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FILED

JAN 3 1 2024

DEPT. OF REAL ESTATE

By 

In the Matter of the Accusation of:)	DRE No. H-42668 LA
)	
VICTOR A SALINAS,)	OAH No. 2023100067
)	
Respondent.)	

DECISION

The Proposed Decision dated January 3, 2024, 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:

Page 7, paragraph 17, "...Deputy Attorney General..." shall be amended to read "...Real Estate Counsel for the Department of Real Estate..."

The Decision suspends or revokes one or more real estate licenses.

Pursuant to Government Code Section 11521, the Department of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Department's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first.

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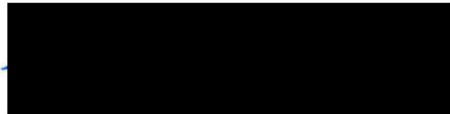
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The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on **FEB 21 2024**

IT IS SO ORDERED 1/24/24

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:

VICTOR A. SALINAS,

Respondent.

Agency Case No. H-42668 LA

OAH No. 2023100067

PROPOSED DECISION

Cindy F. Forman, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on December 4, 2023.

Kathy Yi, Counsel for the Department of Real Estate (Department), represented complainant Jason Parson, in his official capacity as a Supervising Special Investigator of the State of California.

Respondent Victor A. Salinas represented himself.

The Administrative Law Judge received testimony and documentary evidence and testimony. The record closed and the matter was submitted for decision on December 4, 2023.

SUMMARY

Complainant seeks to discipline respondent's real estate salesperson license on the grounds respondent was convicted of a crime substantially related to the qualifications, functions, and duties of a Department licensee and failed to timely disclose that criminal conviction to the Department. Complainant proved by clear and convincing evidence respondent was convicted of a substantially related crime and violated Department law by failing to disclose his criminal conviction. Although respondent demonstrated he met many of the rehabilitation criteria considered by the Department, respondent's felony conviction occurred less than two years ago, and respondent was only released from jail in August 2023. Considering the recency of his criminal conviction and ensuing incarceration, too little time has passed for respondent to demonstrate he is safe to engage in the practice of real estate. Accordingly, respondent's real estate salesperson license and accompanying licensing rights are revoked.

FACTUAL FINDINGS

Jurisdictional Matters

1. Respondent is licensed by the Department as a real estate salesperson. Respondent's license, number 01808894, was originally issued on May 24, 2007, and expired on July 30, 2023. (Exhibit 2.) Under Business and Professions Code section 10103, the Department may proceed with any investigation of or action or disciplinary proceeding against an expired license.

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2. Complainant, acting in his official capacity, made and filed the Accusation on September 11, 2023. The Accusation seeks to impose discipline against respondent's license and licensing rights based on respondent's 2022 felony conviction and his failure to timely report that criminal conviction.

3. Respondent filed a Notice of Defense dated September 22, 2023, which requested a hearing to allow respondent to present his defense or matters in mitigation or extenuation to the allegations in the Accusation.

Respondent's Criminal Conviction

4. On September 8, 2022, in the Superior Court of California, County of Los Angeles, case number KA129197, respondent was convicted on his plea of guilty for violating Penal Code section 261.5, subdivision (c), unlawful sexual intercourse with a minor more than three years younger, a felony. The court sentenced respondent to serve two years in Los Angeles County jail, with credit for six days in actual custody and six days for good time/work time, and ordered respondent to pay restitution, fines, and fees. The court also issued a protective order prohibiting respondent from having any contact with the named protected persons and not coming within 100 yards of the protected persons for 10 years.

5. The facts and circumstances underlying respondent's criminal conviction are contained in a West Covina Police Department police report admitted as Exhibit 4 and admitted under *Lake v. Reed* (1997) 16 Cal.4th 448 (*Lake*). (Under *Lake*, the police officer's personal observations in the report are admissible for all purposes, but all other statements are admitted as administrative hearsay unless they fall within a hearsay exception, such as party admissions. In this case, the officer's observations and respondent's admissions in the report were admitted for all purposes. However, any

witness statements constituted inadmissible hearsay, insufficient in themselves to establish any factual finding, and admitted only as administrative hearsay to explain or supplement other admitted evidence under Government Code section 11513, subdivision (d).).

6. According to the police report, on December 18, 2021, the police arrested respondent for engaging in a sexual relationship with his stepdaughter when she was a minor. The stepdaughter's mother, who was married to respondent at the time, learned about the relationship on December 17, 2021, and called the police. The stepdaughter told the police she had sex with respondent approximately 10 times starting when she was 15 years old until she was 18 years old. In his interview with the police after his arrest, respondent refused to answer whether he had sex with his stepdaughter.

Failure to Notify Department

7. Respondent did not notify the Department in writing or otherwise within 30 days of the filing of the felony complaint against him or his criminal conviction. (Exhibit 5.)

Respondent's Testimony

8. Respondent is 45 years old. Respondent had no criminal history until his 2021 arrest and 2022 criminal conviction. Respondent has never been disciplined by the Department since his licensure in 2007.

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9. Although respondent was sentenced to a two-year jail term, respondent was released in August 2023 for good conduct, after serving only nine months. Respondent is not on probation and has no further court commitments associated with his criminal conviction. The court did not require him to register as a sex offender.

10. Respondent admitted at hearing he was guilty of having sex with his stepdaughter starting when she was 15 years old. At the time respondent was 40 or 41 years old. He testified his stepdaughter first approached him, and their relationship lasted one and one-half years. He did not recall how many times he had sex with his stepdaughter but estimated it was less than 10 times. He also acknowledged he had sex with his stepdaughter when his biological daughter was in the house.

11. Respondent expressed genuine remorse for his conduct with his stepdaughter and took full responsibility for his actions. Respondent did not blame his stepdaughter for initiating the relationship. Respondent testified that "he was the adult and should have made a better decision." Respondent further testified that his poor judgment and the impact on his stepdaughter will "always stay with him the rest of his life." He expressed sorrow for his conduct. Respondent is no longer married to his stepdaughter's mother.

12. Respondent does not believe he poses a threat to anyone. Respondent's biological daughter currently lives with him. She attends the University of La Verne. He shares co-parenting responsibilities with his daughter's mother. According to respondent, the Department of Child and Family Services investigated the matter and dismissed it.

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13. After leaving prison, respondent resumed his work as a medical interpreter. Respondent works for several interpretation agencies that send him to hospitals or clinics to perform Spanish interpretation for patients and medical staff. The agencies know of respondent's criminal conviction. Although he believed he was a good real estate salesperson, respondent stopped doing real estate work full-time in 2016 when he began his medical interpreting work. Respondent would like to resume real estate work part-time because his past clients have sought his assistance and he always has referrals for new business.

14. Since respondent left prison, he has regularly attended services at Redeemed Life Church. He intends to seek psychological counseling once he obtains his health insurance. He testified he was psychologically traumatized by his time in prison.

15. Respondent testified he was unaware of the Department's rule requiring a licensee to notify the Department within 30 days of any filing of a criminal complaint or criminal conviction. According to respondent, he was too distraught after his arrest and conviction to talk to anyone. Respondent testified he contacted the Department regarding his criminal conviction after he was released from jail. He planned to submit the necessary information to the Department but received the Accusation before he had done so.

16. The court records regarding respondent's September 8, 2022 criminal conviction include two character reference letters. Both letter writers wrote of their surprise to learn of respondent's misconduct. John Bustamante, who wrote to the court on March 14, 2022, is respondent's long-time friend of over 20 years. Mr. Bustamante describes respondent as a person of "outstanding" character and a good father to his biological daughter. Mr. Bustamante also wrote of respondent's great

remorse and embarrassment for his actions. Mr. Bustamante believes respondent will never make the same mistake. (Exhibit A.) Savannah Leon, who submitted a letter dated February 1, 2022, and is currently 23 years old, described respondent as a second father to her over 15 years. Ms. Leon described respondent as “respectful and sensible” and generous in his time with her although he was not her biological father. Ms. Leon also noted she never felt unsafe with respondent. (Exhibit B.)

Cost Recovery

17. The Department incurred investigation costs of \$595.25 and enforcement costs of \$480, for a total amount of \$1,075.25. These costs are deemed reasonable, based on the certified statements of Kathy Yi, Deputy Attorney General, and Jason Parson, Department Supervising Special Investigator II. (Exhibit 6.)

18. At hearing, respondent asserted he was economically “starting from zero” since his release from jail. Respondent could not work during the time he was incarcerated. He has no savings because of his legal costs, which exceeded \$50,000, and has significant debt.

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.) This burden therefore 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.)

Applicable Law

2. Under Business and Professions Code section 10177, subdivision (b)(1), the Department may suspend or revoke the license of a real estate licensee who has:

Entered a plea of guilty . . . or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee, . . . irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw that licensee's plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

3. Similarly, Business and Professions Code section 490, subdivisions (a) and (b), authorize a board may suspend or revoke a license, or exercise any authority to discipline a licensee, for conviction of a crime that is substantially related to the qualifications, functions or duties of the business or profession for which the license was issued.

4. California Code of Regulations, title 10 (CCR), section 2910, subdivision (a), provides, in pertinent part:

When considering whether a license should be . . .
suspended or revoked on the basis of the conviction of a

crime, . . . the crime or act may be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of Sections 480 and 490 of the [Business and Professions] Code if it involves: [¶ . . . ¶] (5) Sexually related conduct affecting a person who is an observer or non-consenting participant in the conduct or convictions which require registration pursuant to the provisions of Section 290 of the Penal Code.

5. CCR section 2910, subdivision (c), states, in part: "The nature and gravity of the offense, the number of years that have elapsed since the date of the offense, and the nature and duties of a real estate licensee shall be taken into consideration when determining whether to deem an offense to be substantially related to the qualifications, functions or duties of a licensee."

6. Business and Professions Code section 10186.2, subdivision (a)(1)(B), requires a licensee to report in writing "the conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor" to the Department within 30 days of the conviction. Failure to do so constitutes a cause for license discipline. (Bus. & Prof. Code, § 10186.2, subd. (d).)

Cause for Discipline

7. Complainant proved by clear and convincing evidence respondent was convicted of having sex with a minor more than three years younger, a felony. Respondent's crime is substantially related to the qualifications, functions, and duties of a real estate salesperson license because it involves sexually related conduct

affecting a non-consenting participant in the conduct under CCR section 2910, subdivision (a)(5). (*People v. Miranda* (2021) 62 Cal.App.5th 162, 176 [minor cannot consent to a sex act in California].) The crime was serious and recent. Cause therefore exists to suspend or revoke respondent's real estate salesperson license under Business and Professions Code sections 490 and 10177, subdivision (b).

8. Complainant proved by clear and convincing evidence respondent failed to report in writing to the Department his criminal conviction within 30 days of the conviction date. Cause therefore exists to suspend or revoke respondent's real estate salesperson license under Business and Professions Code section 10186.2.

Disposition

9. As cause for discipline against respondent's real estate salesperson license has been established, respondent bears the burden of establishing sufficient rehabilitation to justify his continued licensure. (See *In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309.)

10. The Department's criteria of rehabilitation, contained in CCR section 2912, subdivisions (a) through (m), are to be considered in evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of a license has been initiated. The criteria relevant to this proceeding are summarized as follows: (a) the time elapsed since the commission of the act or offense; (b) restitution to any person who suffered monetary losses; (c) expungement of the conviction; (d) discontinuance of registration requirement pursuant to Penal Code section 290; (e) successful completion or early discharge from probation or parole; (f) payment of any court-ordered fine; (g) new and different business and social relationships from those existing at the time of the crime or acts;

(h) stability of family life and fulfillment of familial responsibilities; (i) completion of or sustained enrollment in formal educational or vocational training courses for economic self-improvement; (j) significant and conscientious involvement in community, church, or private programs designed to provide social benefits or ameliorate social problems; and (k) change in attitude from that which existed at the time of the commission of the criminal acts in question.

11. Respondent has met many of the Department's rehabilitation criteria. Respondent was not required to make restitution to the victim. He was not required to register under Penal Code section 290. He was not ordered on probation or parole. He paid the required court fees and costs. He has thus far complied with the terms of the court-ordered protective order. Respondent has fulfilled his parental and familial responsibilities and has been gainfully employed since his release from jail. Respondent also acknowledged responsibility for his criminal conduct resulting in his 2022 felony conviction and expressed genuine remorse for the harm his conduct caused.

12. However, the Department has deemed the passage of less than two years after a licensee's criminal conviction is inadequate to demonstrate rehabilitation. (CCR, § 2912, subd. (a)(1) ["The passage of less than two years after the most recent criminal conviction or act of the licensee that is a cause of action in the Bureau's Accusation against the licensee is inadequate to demonstrate rehabilitation"].) Moreover, the two-year period may be increased based on the nature and severity of the crime. (CCR, §2912, subd. (a)(2).) Here, respondent was convicted of a serious felony in September 2022, less than 16 months ago, sentenced to two years in county jail, and released from incarceration in August 2023, less than six months ago.

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13. 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) 50 Cal.3d 1061, 1070.) Mere remorse does not demonstrate rehabilitation but can be considered as a mitigating factor. (*In re Demergian* (1989) 48 Cal.3d 284, 296.) A truer indication of rehabilitation is sustained conduct over an extended period. (*In re Menna* (1995) 11 Cal.4th 975, 991.)

14. In this case, respondent has not demonstrated sustained good conduct over an extended period. A real estate agent is required to interact with the public and frequently meets privately with clients. There has been insufficient time for respondent to show he is safe to engage in such interactions. Respondent has been free from the close monitoring inherent in a jail sentence for less than six months. More time is needed for respondent to demonstrate he meets the Department's criteria for establishing rehabilitation from his felony conviction. Respondent's license therefore is revoked.

Cost Recovery

15. Pursuant to Business and Professions Code section 10106, subdivision (a), in any order issued to resolve a disciplinary proceeding before the Department, "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."

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16. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 10106. Those factors include (1) the licentiate's success in getting the charges dismissed or reduced; (2) the licentiate's subjective good faith belief in the merits of his or her position; (3) whether the licentiate raised a colorable challenge to the proposed discipline; (4) the licentiate's financial ability to pay; and (5) whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Zuckerman, supra*, 29 Cal.4th at p. 45.)

17. Cause exists to direct respondent to pay the reasonable costs of investigation and enforcement of this matter pursuant to Business and Professions Code section 10106, subdivision (a). The reasonable cost of the investigation and enforcement of this matter is \$1,075.25. (Factual Finding 17.) Respondent's testimony failed to establish that he is financially unable to pay the Department's costs. However, considering respondent will be unable to work as a real estate licensee due to the revocation of his license, respondent will be required to pay this cost recovery amount only as a condition precedent to obtaining reinstatement of his revoked license or issuance of a new license from the Department.

ORDER

1. All licenses and licensing rights of respondent Victor A. Salinas under the Real Estate Law are revoked.

2. Respondent Victor A. Salinas shall pay the Department the amount of \$1,075.25 for the reasonable costs of investigation and enforcement incurred in this

matter only as a condition precedent to reinstatement of his revoked license or issuance of a new license from the Department.

DATE: 01/03/2024

A handwritten signature in black ink, appearing to read 'Cindy F. Forman', with a stylized, cursive script.

CINDY F. FORMAN

Administrative Law Judge

Office of Administrative Hearings