

DEPARTMENT OF REAL ESTATE

320 W. 4TH STREET, SUITE 350
LOS ANGELES, CA 90013-1105
(213) 620-2072



January 03, 2024

JASON WADE HUGHES
1450 FRONT ST
SAN DIEGO, CA 92101

Re: JASON WADE HUGHES
Case No. H-05759 SD

Dear Mr. Jason Wade Hughes:

The Real Estate Commissioner has rejected the Proposed Decision of the Administrative Law Judge in your case. Enclosed are copies of the Commissioner's Notice of Rejection and the Proposed Decision.

California Government Code § 11415.60 gives the Department of Real Estate the authority to resolve this matter by Stipulation and Agreement ("Stipulation").

Please be advised that if we are unable to reach a mutual agreement on the terms of the Stipulation, or if the Commissioner, in his discretion, does not adopt the Stipulation, we will order the transcript of the hearing held on Wednesday, August 23, 2023, and provide time for all parties to submit written arguments. The Commissioner would then review the transcript, written arguments and the evidence in the case, and issue his Decision after Rejection in this matter.

If you have any questions, please feel free to contact me by phone at (213) 576-6907.

Sincerely,

A handwritten signature in black ink, appearing to read "Diane Lee", with a long horizontal flourish extending to the right.

For Diane Lee
Counsel

DL/AC

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)	DRE No. H-05759 SD
)	
JASON WADE HUGHES,)	OAH No. 2023060788
)	
Respondent.)	

NOTICE

TO: JASON WADE HUGHES, Respondent, and WILLIAM V. O'CONNOR , his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated December 1, 2023, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated December 1, 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 Wednesday, August 23, 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 Wednesday, August 23, 2023, at the Los

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1 Angeles office of the Department of Real Estate unless an extension of the time is granted for good
2 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: 12/21/23.

7 DOUGLAS R. McCAULEY
8 REAL ESTATE COMMISSIONER

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10 Stevie L
11 for Doug McCauley

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

In the Matter of the Accusation Against:

JASON WADE HUGHES, Respondent

Agency Case No. H-05759 SD

OAH No. 2023060788

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on August 23, 2023, in San Diego, California.

Diane Lee, Counsel, represented complainant, Veronica Kilpatrick, Supervising Special Investigator, Department of Real Estate (department), State of California.

William O'Connor and Chip Harrison, Attorneys, Cooley, LLP, represented respondent, Jason Wade Hughes, who was present.

Oral and documentary evidence was received. The record remained open to allow the parties to submit written closing and reply briefs, which were considered. The record closed, and the matter was submitted for decision on November 3, 2024.

SUMMARY

Mr. Hughes has been licensed by the department for over 35 years; first as a salesperson and then as a broker. He has no history of discipline. Beginning in 2013, he acted as an unpaid advisor to the City of San Diego (City), advising on numerous real estate transactions for several mayoral administrations. While serving in that role, Mr. Hughes received compensation from the other party to a 2014 transaction involving 1200 Third Avenue (Civic Center Plaza) and a 2017 transaction involving 101 Ash Street. Mr. Hughes did not have written authorization from the City to receive that compensation, although he communicated his intent to multiple City officials and the then-City's Director of Real Estate Assets agreed to that compensation.

In 2023, Mr. Hughes pleaded guilty to a misdemeanor violation of Government Code section 1090 for having a financial interest in a contract made by him in his official capacity (conflict of interest), for which he is on summary probation until 2024. Complainant seeks to revoke Mr. Hughes's license based on this conviction.

Although Mr. Hughes took great steps to advise all parties of his actions regarding the transactions at issue, received what he thought was City approval, and entered into agreements which clearly set forth his compensation for the transactions, he unknowingly violated the law. At this hearing, Mr. Hughes demonstrated appropriate remorse and rehabilitation and has enjoyed an otherwise lengthy, successful, discipline-free, career. On this record, a public reproof is sufficient discipline to adequately protect the public.

FACTUAL FINDINGS

Jurisdictional Matters

1. On June 5, 2023, complainant signed the accusation in her official capacity. Complainant alleged cause existed to discipline Mr. Hughes's license, and licensing rights, as a result of his substantially related 2023 conviction for conflict of interest. No other causes for discipline were alleged. Complainant also sought to recover the investigation and enforcement costs.

2. Mr. Hughes filed a notice of defense, and this hearing followed.

License Certification Document

3. The department originally issued a salesperson's license to Mr. Hughes on November 21, 1988. The department issued broker's license number B/01008564 to Mr. Hughes on October 4, 1994, which is set to expire on October 26, 2026. The license certification indicated Mr. Hughes has previously been licensed as an officer of several real estate companies throughout California. There is no history of discipline on any of his licenses.

March 23, 2023, Conviction

4. In Superior Court of California, County of San Diego, Case No. M095390, Mr. Hughes was charged with a single count of violating Government Code section 1090, conflict of interest, alleging: "On or about and between August 29, 2014, and January 3, 2017," while Mr. Hughes was "an appointed city advisor, and thus a person prohibited from being financially interested in contracts made by him in his official capacity, he participated in the making of a contract in which he personally profited."

The count was charged as a misdemeanor pursuant to Penal Code section 17, subdivision (b)(4). On March 23, 2023, Mr. Hughes, who was represented by counsel, pleaded guilty and was convicted.

5. On the "Plea of Guilty/No Contest - Misdemeanor" form requiring Mr. Hughes to describe the "facts as to each charge and allegation," he acknowledged:

While being a person prohibited by GC 1090, and acting in that capacity, I willfully participated in the making of a contract on/about January 3, 2017,¹ in which I had a financial interest, in violation of GC 1090.

Mr. Hughes signed the plea document under penalty of perjury on March 22, 2023, attesting that "everything on the form . . . is true and correct."

6. In exchange for his plea, the court suspended imposition of sentence for one year and placed Mr. Hughes on summary probation. The court ordered Mr. Hughes to violate no laws, pay a fine of \$400, and pay restitution of \$9,433,872.30.

7. Mr. Hughes's summary probation is set to end in March 2024.

¹ Although the plea agreement only referenced the January 3, 2017, contract, both contracts were alleged in Count 1 of the criminal complaint and the court found Mr. Hughes guilty of violating Count 1. Mr. Hughes was also required to return the proceeds he received from participating in both contracts.

Motion to Dismiss

8. At the close of complainant's case in chief, Mr. Hughes moved to have the matter dismissed, asserting complainant failed to meet her burden of proof. That motion was denied. Mr. Hughes again requests dismissal of the accusation in his closing brief.

This matter was heard under the formal hearing procedures of the Administrative Procedures Act found at Government Code section 1100, et seq. Government Code section 11513, subdivision (b), affords respondent the first opportunity to testify, and allows complainant to call and cross-examine respondent if respondent fails to testify. Complainant must rest her case temporarily to allow respondent to exercise this right before complainant may call him as her witness. Until complainant is given an opportunity to examine respondent, she has not concluded her case. (*O'Mara v. State Board of Accountancy* (1966) 246 Cal. App. 2d 8, 11-12.)

Further, an administrative law judge lacks the authority to dismiss an administrative action at the close of complainant's case in chief. (*Frost v. State Personnel Board* (1961) 190 Cal.App.2d 1, 5; *Kramer v. State Board of Accountancy* (1962) 200 Cal.App.2d 163, 165; *O'Mara, supra*, at pp. 10-11.) An administrative law judge may not entertain a motion for nonsuit, but must proceed with the taking of evidence until all of the testimony to be offered by all the parties has been received. (*O'Mara, supra*, at p. 11.) However, an administrative law judge, after hearing all the evidence, may write a proposed decision ordering the accusation to be dismissed. (*Duarte & Witting, Inc. v. New Motor Vehicle Board* (2002) 104 Cal.App.4th 626, 635.)

Neither *Daniels v. Department of Motor Vehicles* (1983) 33 Cal. 3d 532 nor *Furman v. Department of Motor Vehicles* (2002) 100 Cal. App. 4th 416, is controlling. In

each of those cases, complainant failed to make a prima facie showing with competent evidence to meet the burden of proof. Such was not the case here because complainant introduced competent evidence, Mr. Hughes's certified conviction documents, which were sufficient to meet her burden of proof. Nothing more was required to support her contention that the conviction was substantially related to the qualifications, functions, or duties of a licensed broker because whether a licensee's conviction is substantially related to his or her professional qualifications is a question of law. (*Donaldson v. Department of Real Estate* (2005) 134 Cal.App.4th 948, 954.)

Conviction Detail Report and Attorney's Letter

9. Mr. Hughes signed a Conviction Detail Report that was submitted to the department. Attached thereto was a five-page letter from his attorney explaining the facts surrounding the conviction, which the attorney referred to as a "technical violation" of Government Code section 1090.

10. The attorney's letter provided a history of Mr. Hughes's 35-year, discipline-free career in real estate, and how former Mayor Bob Filner asked Mr. Hughes to advise the City on real estate matters, ultimately naming him a volunteer "Special Assistant" in April 2013. Mr. Hughes served in this informal role without compensation, assisting and advising the City on "various new leases, lease amendments, lease extensions, and overall leasing strategies." Mr. Hughes's attorney claimed the "disclosure and conflict-of-interest rules concerning government advisors are complex," and although Mr. Hughes sought clarification as to his obligations "on multiple occasions," he did not receive a response and was never required to file a Statement of Economic Interest (Form 700) or any other disclosure documents. Mr. Hughes's attorney asserted that Mr. Hughes believed his role as an informal adviser did not qualify him as a government official.

The letter further noted that Mr. Hughes continued to serve as an informal, unpaid advisor to subsequent mayoral administrations after Mayor Filner left office. In late 2013, Mr. Hughes advised the City regarding the expiring lease at Civic Center Plaza. Given the extremely short timeframe before the lease expired, and the City's inability to issue revenue bonds necessary to acquire the property, Mr. Hughes, at then Mayor Kevin Faulconer's request, "creatively developed and suggested a complex 'lease to own' structure," which would "depend on an intermediary" purchasing the building and leasing it to the City. Mr. Hughes "ultimately identified Cisterra Partners" as that intermediary.

Because this deal was "substantially more complicated and time intensive" than Mr. Hughes's previous role advising the Mayor on traditional leases, Mr. Hughes informed multiple city officials, in writing, that the services fell outside the scope of his work, and he would be seeking compensation from other parties for his services. Between August and November 2014, Mr. Hughes disclosed to six separate senior officials, including the Mayor, his Chief of Staff, the City's Chief Financial Officer, the Chief Operating Officer, the Director of Real Estate Assets, and the Asset Manager, that he would be seeking this compensation. After Mr. Hughes received "the City's signed acknowledgment that he could seek compensation for these complex transactions," Mr. Hughes continued to assist the City and Cisterra to finalize the terms of the lease-to-own Civic Center Plaza. After that transaction closed, Cisterra paid Mr. Hughes's company \$5,023,872.30 for Mr. Hughes's work on the transaction.

In 2014 Mayor Faulconer "turned his attention toward acquiring additional office space in downtown San Diego." The City initially negotiated to lease 101 Ash Street, the recently vacated global headquarters for Sempra Energy. Those negotiations fell through, and the building's owners decided to sell. In 2016, a

subsidiary of Cisterra put the building into escrow, and Cisterra approached the City about a lease-to-own, which the City initially declined. However, the City and Cisterra later agreed to a lease-to-own transaction similar to the Civic Center Plaza deal with Mr. Hughes assisting "on the nearly identical transaction." Once completed, Cisterra paid Mr. Hughes \$4,410,000 for his role in this transaction.

Rather than immediately occupy 101 Ash Street, the City, instead, decided to remodel it, causing the disturbance of asbestos, rendering the building uninhabitable. In 2020, under the new administration of Mayor Todd Gloria, the City sued Cisterra and its lender seeking to rescind or amend the 101 Ash Street lease agreement. Over time, the City added additional defendants to its lawsuit, eventually naming Mr. Hughes and his company as defendants. In part, the City alleged that Mr. Hughes receiving compensation from Cisterra constituted an unlawful conflict of interest under Government Code section 1090.

Mr. Hughes's attorney asserted that the law has changed regarding who qualifies as a "government official" under Government Code section 1090, and as of 2017, it now includes certain independent contractors who impact government spending. Although Mr. Hughes did not qualify as a government official when the Civic Center Plaza and 101 Ash Street transactions occurred, the City alleged in its lawsuit that he now so qualified given the change in the law. Mr. Hughes's attorney also asserted that Government Code section 1090 is a strict liability statute, so it does not take an individual's good faith actions into account. Moreover, it does not consider Mr. Hughes's license when defining "government official," instead, it was Mr. Hughes's role with the City as an informal advisor "that implicated [Government Code] section 1090, not the manner in which he provided real estate advice."

Mr. Hughes's attorney further stated in his letter:

Although Mr. Hughes believed at the time that his disclosures were sufficient to comply with any legal or ethical obligations, he now acknowledges and appreciates that he should have sought a more detailed understanding of the applicability and scope of these conflict provisions. Despite receiving a signed approval letter from the City's Director of Real Estate Assets, with the benefit of hindsight, he likewise now recognizes that his disclosure to City officials should have been further enhanced to satisfy his reporting obligations under the relevant statutes, particularly given his role with the City.

In an effort to put this matter behind him and make the City of San Diego whole, Mr. Hughes agreed to settle the civil case with the City of San Diego while simultaneously resolving all investigations for a plea to a single technical misdemeanor. Specifically, on March 22, 2023, Mr. Hughes reached a settlement agreement with the City of San Diego by which he would return the \$9,433,872.30 he was paid by Cisterra in connection with both the [Civic Center Plaza] and 101 Ash [Street] lease-to-own transactions. Mr. Hughes made the full restitution payment on March 28, 2023, and the City dismissed its claims against Mr. Hughes on March 30, 2023.

Mr. Hughes's attorney's letter detailed the resolution of the criminal matter, as set forth above, noting the conviction is "subject to automatic expungement" no later

than one year from the plea date pursuant to Penal Code section 1203.4. (Section 1203.4 does not contain a provision for "automatic expungement"; counsel appears to be referencing Senate Bill 731 provisions.) The remainder of Mr. Hughes's attorney's letter stated that Mr. Hughes acted in good faith at all times while working with the City, and his work benefited the City. The letter described Mr. Hughes's many accomplishments, his numerous awards for his work in real estate, and his commitment to his community. The letter also acknowledged that Mr. Hughes takes this matter seriously, especially given his position as "an industry leader." Mr. Hughes stepped down as Chief Executive Officer (CEO) of his company as a way to take accountability for his actions, consistent with department regulations.

11. Attached to the attorney's letter was Mr. Hughes's November 19, 2014, letter to Cybele Thompson, then the City's Real Estate Assets Director, noting it had been "a pleasure helping the City of San Diego save millions of dollars on several lease transactions as a special assistant over the past few years." Mr. Hughes wrote that he would "continue to seek to assist the City with obtaining at or below market long term solutions while waiving the customary leasing fee that I would have otherwise received for my services." Mr. Hughes wrote further, how he had "previously made clear in correspondence to the City" that because the City's recent requests required him "to play a few different roles due to the increased complexity and time demand," he would "seek to be paid customary compensation from any other parties in the transaction." Mr. Hughes requested acknowledgment of this fact and wrote that he would continue to honor his "arrangement with the City" and "make clear with any eventual Landlord that there will not be any leasing fee whatsoever for me or on my behalf included in the rent structure."

12. Ms. Thompson, as the City's Director of Real Estate Assets, signed Mr. Hughes's letter in the space designated for her signature, acknowledging she read the letter, agreed with it, and accepted it.

Documents Offered by Complainant

13. On December 16, 2013, on his company's letterhead, Mr. Hughes sent a "Non-binding Letter of Intent to Purchase [Civic Center Plaza]" to Gary London of The London Group Realty Advisors. Mr. Hughes wrote, "As representative for the City of San Diego ("Buyer"), we are pleased to propose terms and conditions to [the seller] for potential sale and purchase of [Civic Center Plaza]." Mr. Hughes testified that his use of the term "representative for the City" was simply "boilerplate" language used when working "as a volunteer."

Mr. Hughes's letter then set forth information regarding the property, sale terms, opening of escrow, responsibilities of seller, contingency period, closing and closing costs, non-liability of buyer, assignment of leases, brokerage fee, and confidentiality. Of note, the brokerage fee was listed as "None." Mr. Hughes's letter further stated:

This letter is a good faith offer to purchase the above described property. This letter does not bind either party, except for the buyer and seller duty of confidentiality . . . until a Purchase and Sale Agreement is executed and delivered by both parties.

If this letter is acceptable and reflects the basic business terms relating to a proposed Purchase and Sale Agreement, please sign and return a copy to our office within ten (10)

business days of the date of this letter, and draft a Purchase and Sale Agreement for our review.

The letter was signed by Mr. Hughes as President of his company and identified his broker license number. Below Mr. Hughes's signature was written: "The foregoing is hereby agreed to and accepted:" and contained spaces for the buyer and seller to date and sign the agreement.

14. A "Confidentiality and Non-Disclosure Agreement" between Mr. Hughes's company and Cisterra was made and entered into on November 17, 2014, but "shall be effective as of August 1, 2014." The agreement was executed on Mr. Hughes's company's letterhead and signed by Mr. Hughes as President of his company and by the Manager of Cisterra. The agreement referenced the transaction, the parties' communications regarding the Civic Center Plaza property, and how the parties wished to keep these matters "strictly confidential." The parties further agreed not to disclose any information or communications regarding the Civic Center Plaza transaction.

Mr. Hughes testified this agreement came about because the City was concerned Cisterra "could end run the City and not go through with the deal and hold the City hostage so they wanted to ensure no one spoke regarding the deal to the City's detriment." Mr. Hughes also testified that Ron Villa, then the City's Acting Director of Real Estate, was aware of this agreement as evidenced by his emails, referenced below, asking Mr. Hughes to keep it "down low" and asking Mr. Hughes if he could get a signed nondisclosure agreement, which Mr. Hughes believed "is referenced somewhere" in his emails with the City. Mr. Hughes was questioned about his deposition testimony regarding this agreement and his discussions about a nondisclosure agreement with Mr. Villa, but his deposition answers did not fully refute

the testimony he gave at this hearing, and he provided credible explanations regarding his deposition responses.

Documents Introduced by Mr. Hughes

15. A 2009 newspaper article noted Mr. Hughes's concerns regarding the City's unrealistic rental projections, particularly regarding its Civic Center Plaza projections. Because of those concerns, the City's Independent Budget Analyst called for "a review" by the City's real estate department. The article also noted that Mr. Hughes's company unsuccessfully competed in 2008 to be the City's lease negotiator, but Mr. Hughes testified he was not involved with that attempt.

16. An April 10, 2013, letter from then Mayor Filner addressed to Mr. Hughes as President of his company stated:

Based upon your extensive experience in the San Diego commercial real estate market I am appointing you as a Special Assistant to the Mayor to advise on identifying and leasing downtown office space for the City.

[Mr. Hughes's company's] substantial experience in the San Diego region, specifically in the downtown, has resulted in sustained success in achieving favorable agreements on behalf of your clients. Further, I appreciate your commitment to public service by performing this advisory role without compensation from any party.

17. On September 11, 2013, Mr. Hughes emailed Scott Chadwick, then the City's Chief Operating Officer for Mayor Gloria² a copy of Mayor Filner's April 10, 2013, letter advising that it was "the only thing I've ever received from the City regarding my work relationship." Mr. Hughes referenced the meeting held that day where he hoped he was "informative to the Mayor" and asked if there was anything he needed to get updated with Mayor Gloria. Mr. Hughes wrote that the "only other topic that was ever discussed" with Mayor Filner was his request for Mr. Hughes's "help in having the City acquire [property in Point Loma]." Mr. Hughes noted he had "a few discussions with the Seller," but unless the City could come up with \$20 million cash, the seller had "no interest in exploring this further," and there were no further discussions.

18. Mr. Hughes introduced a memo he kept of his "Conversations with City of San Diego" dated August 4, 2014. In it Mr. Hughes noted a Friday, August 1, 2014, meeting with Brad Bennett, then the City's Asset Manager in the Real Estate Assets Department, "to discuss status of negotiations/proposal at 525 B Street and 1200 3rd Avenue. During the meeting, Brad suggested to [Mr. Hughes] that [Mr. Hughes] purchase 1200 3rd Avenue and lease it to the City." The memo contained the Monday, August 4, 2014, email Mr. Hughes sent Mr. Bennett which stated:

Attached is my draft counter for 525. Let me know if it's good to send.

² Mayor Gloria served as interim mayor after Mayor Filner resigned in 2013 until Mayor Faulconer was elected in a special election in 2014. Mayor Goria was elected in 2020 and currently serves in that position.

Also, I've been thinking a lot about our discussion Friday. I share your concern about the City's ability to perform - and I appreciate the inherent [tenant improvement] funding problem associated with the deal along with the other issues you mentioned the City faces Per your suggestion, I started thinking about how I could structure a deal similar to the Sempra type "lease-to-own" setup where I could get a third party to fund the needed [tenant improvements] for asbestos abatement and remodel (which I figure to be at least \$15 million given your assessment for demo'ing and re-doing at least the 8 floors with asbestos plus many of the other floors). This route is really like an investment banking type transaction - so I would need a separate way to get compensated - but regardless, I have some good ideas that I will start working on.

Let's talk soon!

Mr. Hughes's memo next documented an 18-minute telephone call he had with Mr. Villa, which took place 12 minutes after Mr. Hughes sent his email to Mr. Bennett. Mr. Hughes wrote that Mr. Bennett reports to Mr. Villa, who called shortly after Mr. Hughes sent his email to Mr. Bennett. Mr. Hughes documented that he and Mr. Villa discussed the many issues the City was facing regarding Civic Center Plaza. Mr. Hughes "expressed his concern about the current situation since somebody could buy the property and hold the City 'hostage.'" Mr. Hughes wrote that Mr. Villa "re-confirmed [Mr. Bennett's] message from Friday, fully supporting the idea that [Mr. Hughes] should either become, or help find, a 'white knight' to purchase [Civic Center

Plaza], Lease the Building to the City using a long-term, lease-to-own, triple-net lease, and provide the City with funding for the necessary tenant improvement work." Mr. Hughes confirmed he would "look into creating such a solution" and told Mr. Villa that "this would be stepping outside the scope of the current arrangement [Mr. Hughes's company] was providing the City since [Mr. Hughes] would be acting more like an investment banker, rather than a broker; [Mr. Villa] agreed."

Mr. Hughes next documented the August 5, 2014, email he received from Mr. Bennett regarding the 525 B Street property. Mr. Bennett wrote that, "yes, there needs to be a better model solution" and was aware that Mr. Hughes and Mr. Villa had spoken the day before. Mr. Bennett had questions regarding "the draft response" for 525 B Street and gave Mr. Hughes time frames of how long it would take the City to process and approve the purchase, suggesting "the Commencement Date of Jan 2015" was not realistic. Mr. Bennett would be "reviewing redline" with Mr. Villa and advise.

19. A series of emails between Mr. Hughes and Mr. Bennett from August 1 to August 4, 2014, regarding the 525 B Street property, detailed their attempts to meet and Mr. Hughes's advice to "stick with the January 1 date for now - and shift it as we get closer to an agreed upon deal." Mr. Bennett replied "[G]ot it. Thank you."

20. In August 28, 2014, email exchanges between Mr. Hughes and Mr. Villa, Mr. Hughes wrote:

I know I've now said this a half dozen times, but I'm getting very nervous about [Civic Center Plaza] and the City's inability to move fast enough on the purchase. Coupled with the City's recent bonding issue and lack of tenant improvement and asbestos removal money, shouldn't I get

exploring an investment banking/white knight solution to package this up for the benefit of the City? We could do a similar lease-to-own scenario like the Sempra Building but with \$15 mil of [tenant improvement] money factored in - and we can likely get the lease near \$1/sf. Total win-win. Can I proceed?

Mr. Villa responded:

Yes - go ahead and see what is available, but please keep it low down. [Mr. Bennett] and I are meeting with the Mayor and Ledford next week to discuss updates on the Shapery proposal. I indicated to [Mr. Bennett] that we are exploring options on the [Civic Center Plaza] building but I'm waiting to present a complete package to him hopefully tomorrow.

21. On October 21, 2014, Mr. Hughes emailed Mary Lewis, then the City's Chief Financial Officer, about his concept regarding an alternative way to purchase Civic Center Plaza "that might have gotten lost in translation." Mr. Hughes set forth how the purchase would be with a third-party and structured "similar to the Sempra 'lease-to-own' setup." Mr. Hughes noted that this route "is really like an investment banking type transaction, so I would seek compensation for this role (obviously not from the City) - but regardless, I have some good ideas that I began working on." Mr. Hughes then set forth the various aspects of his concept. On October 22, 2022, Ms. Lewis responded with her "Comments on this proposal," asking various questions. She ended her email with, "See you tomorrow at 9:30."

22. Mr. Hughes provided a copy of his letter to Ms. Thompson, that was attached to his attorney's letter and referenced above, which she signed acknowledging her agreement that Mr. Hughes would be seeking compensation from other parties given the complex nature of the transactions the City was requesting.

23. On January 14, 2015, Mr. Hughes's company and Cisterra entered into a Services and Fee Agreement regarding Civic Center Plaza and another property. The agreement noted that "Cisterra desires to engage [Mr. Hughes's company] to provide consulting and advisory services in connection with their pursuit" of the transaction involving Civic Center Plaza. The City was a tenant in the property and desired to acquire it, but "several present constraints . . . prevent it from directly acquiring" the property. Mr. Hughes's company "developed other potential solutions that would allow the City to continue utilizing and/or acquire" the property other than with a direct acquisition. One solution Mr. Hughes's company developed and proposed "was to identify and approach all necessary parties . . . and negotiate terms and conditions sufficiently acceptable to all of the necessary parties that would allow Cisterra . . . to acquire fee title or other interest in the Property . . . and then have Cisterra . . . reach an agreement with the City by which an interest in the property . . . is transferred to the City" The agreement set forth the compensation Mr. Hughes's company would receive for assisting with this transaction. Mr. Hughes, as President and CEO of his company, and the Cisterra Manager each signed the agreement.

24. Photographs taken on October 5, 2021, from Mr. Hughes's home security camera, show four San Diego police officers, with assault weapons drawn, entering Mr. Hughes's home. In one photograph, two officers are well within the home, both men with their weapons drawn. Mr. Hughes testified he and his family were not home at the time, but he was "watching live" as armed officers entered his home "as though he

had committed murder." He was on the phone with the district attorney asking, "What do you need?" as he watched the search be executed.

Mr. Hughes's Expert's Testimony

25. Jay Hibert is a licensed broker who has been in the real estate industry for over 30 years, originally starting in the banking industry. His curriculum vitae set forth his extensive education, training and experience. In addition to practicing, Mr. Hibert also teaches real estate courses, and is an expert in both disclosure and public interest requirements. Mr. Hibert reviewed the documents at issue in this matter, including documents that were part of the civil litigation, which included 12 deposition transcripts of individuals involved in these transactions.

Mr. Hibert described the complex nature of the Civic Center Plaza and 101 Ash Street transactions, explaining how "three transactions in one had to happen at the same time." He testified how the City benefited greatly from these two deals because at the end of the lease terms, the City would own the buildings. He also explained the complexity of the terms of the leases.

Having reviewed all the documents, Mr. Hibert opined that Mr. Hughes was not acting as a broker. Mr. Hughes was not handling any of the transactions that would require a real estate license, he was merely acting as an advisor. The City has a request for proposal process when it wants to retain outside real estate experts, and Mr. Hughes was not a part of that process. He was simply assisting the City with trying to keep the two properties (Civic Center Plaza and 101 Ash Street). Mr. Hughes was "just a finder, he found the parties, he found Cisterra and matched them with the City."

Mr. Hibert defined a "finder" as one who finds parties to a transaction, in other words, finds the deal. Here, Mr. Hughes found Cisterra and introduced it to the City.

Mr. Hibert distinguished between a finder, an advisor, and a licensee, opining that Mr. Hughes did not act as a licensee in these transactions because he did not negotiate the terms of the loans or the leases. Mr. Hughes just relayed information, acting as a go-between for the parties. Relaying information or advising on the transactions would not involve licensed activity. Giving advice, when one has expertise, is not licensed activity.

Mr. Hibert further opined that simply talking to a real estate licensee does not mean there is an agency relationship with the licensee. Mr. Hughes did not need a license for his advising work, he was not serving any function at the City that required a license. He was "merely finding parties for the deals and advising the parties on parts of the transactions to keep the ball rolling." The "more complex the deal becomes, the more you will see advisors on both sides." However, Mr. Hibert acknowledged that if one negotiates the transaction, that "crosses the line" and involves licensed activity. He also agreed that if an individual stated they "represented" one of the parties and was negotiating the terms of the transaction, that departs from an advisor role and becomes licensed activity.

Mr. Hibert discussed disclosure requirements, noting new disclosure laws were enacted in 2015. This was after the dates of these transactions, which were already in place. Mr. Hughes's relationship with the City also existed before 2015. Prior to 2015, there was no requirement that dual roles be disclosed. At that time, a broker would have to disclose compensation if the broker was negotiating on behalf of one of the principals to the transaction, but here Mr. Hughes was not, so he was not required to disclose his compensation. Further, it "was common knowledge" where his compensation came from because Cisterra was the only other party to the

transactions, and Mr. Hughes "made it very clear" he was going to seek compensation if the City pursued these complex transactions.

Mr. Hibert agreed licensees must put their clients' interests ahead of their own. He believed Mr. Hughes did so because he presented various plans to the City for purchasing the properties, and he would not make any money if the City could not secure the deals. Mr. Hughes was "not pushing one deal over another" and it was "quite clear" Mr. Hughes was "putting his needs below those of the City." The City had asked Mr. Hughes to find ways to keep properties the City wanted, and Mr. Hughes was presenting options to the City, some of which if the City had been able to secure, for example purchasing the properties by issuing bonds, Mr. Hughes would not receive any compensation.

Mr. Hibert testified that the City was "in over its head" regarding these transactions. The City has brokers on staff, who had probably never done transactions like these, which are very complicated and were very new at the time. It would have been "the broker fiduciary duty" of the City Real Estate Office to seek Mr. Hughes's advice because the City had never done such a deal before. Mr. Hibert said it is "common to have an advisor."

Mr. Hibert explained that a transaction advisor will typically be compensated. He has never seen a transaction advisor not be compensated. Moreover, the almost \$9.5 million Mr. Hughes received was "the customary fee" for these types of transactions, which involved hundreds of millions of dollars and 20-year lease terms. Mr. Hughes's fee was normal and "not even on the high side." As Mr. Hibert testified, "the sky's the limit when you have these kinds of deals." Further, the compensation received is typically not disclosed, but Mr. Hughes went "above and beyond" what was expected when he disclosed the compensation; it was not necessary for him to do so.

Mr. Hibert opined that there was no conflict of interest to have the seller pay the advisor. Compensation can come from other places but is more likely to come from the seller. He would not expect the advisor to disclose the compensation received and the compensation is typically not known because it will change based on the market and lease rates. The compensation is not known until the deal closes, and Mr. Hibert saw nothing unusual regarding what transpired here. He is aware Mr. Hughes pleaded guilty, but Government Code section 1090 "is not a real estate law," does not require fraud or dishonesty, and pertains to employees or individuals under contract with government agencies.

Mr. Hibert opined that because Mr. Hughes was not acting in his capacity as a licensee in the transactions, Mr. Hibert does not believe the conviction is substantially related, and he does not consider Mr. Hughes a threat to the public. Mr. Hibert is familiar with Mr. Hughes's history, testifying that "anyone licensed in the City knows Mr. Hughes." As he put it, "it is impossible to do real estate in San Diego and not know of Mr. Hughes and his business," although Mr. Hibert does not know Mr. Hughes personally nor has he had any business interactions with him. Mr. Hughes is known to be a tenant representative, and Mr. Hibert is aware of his negotiating tactics, stating that Mr. Hughes takes his representation of clients "very seriously." Mr. Hughes has "been so successful helping so many tenants for a number of years." Mr. Hibert has "no qualms hiring Mr. Hughes."

Mr. Hughes's Testimony

26. Mr. Hughes described his financially challenging upbringing and how, while a freshman in high school, he was introduced to a broker through a program at his school. That individual was very passionate about his job, something Mr. Hughes had never witnessed, and this led him to obtain his real estate salesperson license at

age 19. Mr. Hughes described his great love for his profession, and how he eventually came to own his own company, representing tenants in real estate transactions. Mr. Hughes's family members work with him at his company as he is "very passionate" about working with family members. Mr. Hughes also described how his company "looks out for the client" and how it is "instilled in the team" to do "what's right for the client." He believes it is important to be "really good stewards of our company and team." Mr. Hughes's deep devotion to his profession was evident in his testimony.

Mr. Hughes described how he became involved as a City advisor. In 2013 he hosted a fundraiser, and then Mayor Filner asked him what he thought about a recent City real estate transaction and if Mr. Hughes could have gotten a better deal for the City. Mr. Hughes told the Mayor that "just associating my name could have gotten a better deal." This conversation led to Mayor Filner asking Mr. Hughes to serve as a real estate consultant, appointing him as a "Special Assistant for Real Estate." Mr. Hughes began assisting the City with various real estate deals but never had a formal contract with the City. When Mayor Filner left office, interim Mayor Gloria asked Mr. Hughes to stay on with the City. Mr. Hughes testified, "I was really good at what I do and got stellar results" for the City.

Mr. Hughes never received any compensation for his work. No one at the City ever told him that he needed to fill out any financial disclosure agreements. He never heard of Form 700 or Government Code section 1090 before the City litigation. However, he took steps to clarify his role. He asked Mr. Chadwick if he needed to fill out any forms, get a contract, or confirm his status, but Mr. Chadwick "never got back to me." Mr. Hughes sent emails because he "wanted to make sure I was doing what was right." He asked for clarity but, "I never heard anything back from the City." Mr.

Hughes claimed the City kept asking for help, and he kept saying, "Wait, wait, wait, this is crazy," acknowledging that the "ambiguity" of his role made him "uneasy."

In 2014 Mayor Faulconer was elected by a special election. Mr. Hughes had discussions with Mayor Faulconer regarding his special advisor role. Mayor Faulconer asked Mr. Hughes to assist with the Civic Center Plaza transaction, which Mr. Hughes described as being an extremely complicated lease because of how soon it was expiring and the number of parties involved. Mayor Faulconer told Mr. Hughes that he did not want to lose that building and Mr. Hughes "helped negotiate the purchase price in the Fall of 2014." There were issues regarding the City's ability to fund the purchase of the building, which caused panic. Mayor Faulconer did not want to lose the building as it would be a "black eye" for him.

Because of what it would take to effectuate the deal, Mr. Hughes, who had been working for free, told the City he could not do it, they needed to find someone else, or he needed a contract. In response, Mayor Faulconer asked Mr. Hughes to help figure it out, and Mr. Hughes was "explicit" that he would seek compensation for doing this work. As he explained, this deal was going to be similar to investment banking, which was beyond the advising he had been doing for the City, so this is why he sought compensation for his work.

Mayor Faulconer told Mr. Hughes it was "great" if he got compensation from another party because that way the City did not have to pay him, and if he could pull off the deal, Mr. Hughes should get paid. Mr. Bennett also told Mr. Hughes it would be great if he could pull it off, and that Mr. Hughes did not work for the City and should get paid for his work on this project. Mr. Hughes also spoke with City employees, Mr. Pitts and Mr. Bell, who both agreed he should get paid if he could pull off the deal.

Although Mr. Hughes "insisted on getting something in writing," City officials said he did not need it. However, Mr. Hughes had a "compensation agreement drawn up" sometime in 2014 that he gave to City officials to review. He was told to have the signature line changed to Ms. Thompson's name and title, and then it could be signed. Mr. Hughes made the necessary changes, and Ms. Thompson signed the document which is the letter referenced above. Although Mr. Hughes testified he sent letters regarding his compensation that were "signed by the City," the only letter introduced at this hearing was the one signed by Ms. Thompson.

The City asked Mr. Hughes to help find a financial solution to purchase Civic Center Plaza and working on that deal "took me dropping everything and going into trying to get this to work." Mr. Hughes came up with the structure of the deal and found Cisterra. He was never told getting paid by Cisterra was a conflict of interest. He was never told he needed to fill out any type of disclosure. Mr. Hughes explained that the City has a number of licensed real estate professionals who were involved in the Civic Center Plaza transaction. Mr. Hughes was being asked to go in a "completely different direction" and being asked to do something he had never done before for the City. This is why he wanted it to be "crystal-clear" he was getting paid by a party to the transaction other than the City. As set out in the contract, Mr. Hughes was paid 45 percent of the net profit from Cisterra, explaining he would only be paid if there was a profit; if there was no deal he would not be paid. He would lose money if the transaction did not go through, having incurred costs. He admitted he was "financially incentivized for the deal to go through."

When the Civic Center Plaza deal was completed, there were no issues with Mr. Hughes getting paid. Everyone, including Mayor Falconer, and his Chief of Staff, "one hundred percent knew" Cisterra was paying Mr. Hughes for the transaction. They "all

knew what I was doing, I was going by the book, I wanted to do the right thing." Mr. Hughes was paid a fee for creating this opportunity; the City had already "done the deal with Cisterra." Everyone thought it was "a phenomenal deal." The City was "ecstatic, they thought I pulled a rabbit out of a hat." It was "a salvation" for them because the City paid less money than it would have with an outright purchase, and the City would own the property at the end of the lease.

Although Mr. Hughes initially testified he helped negotiate the purchase price of the Civic Center Plaza transaction in the fall 2014, he later testified he did not negotiate the terms of the deal between the City and Cisterra, claiming Cisterra negotiated directly with the City. Mr. Hughes "was not paid for a negotiating role," he was "very clear about that." He was "there to offer advice, help hold hands, answer questions when asked, and help when I was asked to" help. Mr. Hughes was "told over and over" he was not the City's real estate broker. Mr. Hughes was compensated for arranging the financing, which is also why he was paid for the 101 Ash Street deal.

Mr. Hughes explained how Cisterra approached the City about purchasing the 101 Ash Street property with a similar deal like Civic Center Plaza. Mr. Hughes had "no role" negotiating the transaction for 101 Ash Street. He used the same contract used for the Civic Center Plaza deal, he just changed the address and added in some terms regarding tenant improvement money. The same City officials knew he would be paid by Cisterra for the transaction. Although Mr. Hughes claimed the City was pleased with this deal at the time, the parties stipulated at hearing that the City's current administration does not believe the 101 Ash Street deal was a good deal for the City.

Mr. Hughes had "zero part" in the asbestos issues at 101 Ash Street. He claimed the City knew about the asbestos, it was "disclosed everywhere." Mr. Hughes had nothing to do with the remodel of the building, which caused the asbestos issues. As a

result of those issues, the “media went crazy,” and the entire transaction became “a dumpster fire.” The employees’ union sued the City, and everything “got out of control with lots of false narratives.”

The fallout from the 101 Ash Street purchase first resulted in civil litigation. The City initially claimed Mr. Hughes was a dual agent but ultimately claimed he violated Government Code section 1090. Mr. Hughes attended Mayor Faulconer’s deposition where the former mayor denied knowing about Mr. Hughes’s compensation. Mayor Faulconer “pled the fifth” amendment to questions posed to him, had “zero recall of any of [Mayor Faulconer’s and Mr. Hughes’s] hundreds of discussions,” and had “zero recall of the transactions in any capacity.” Mr. Hughes said it was “pretty ridiculous” testimony, but at the time Mayor Faulconer was running for governor and “wanted to stay far away from this” litigation.

There were multiple City offices involved in the Civic Center Plaza and 101 Ash Street transactions with “lots of documents” being submitted. Both lease-to-own contracts had to be ratified by the City Council. Mr. Hughes was not involved with any of those events; he was merely an advisor to the mayor. “For a long time,” Mr. Hughes did not want to settle the civil litigation. He was looking forward to the civil trial because he felt he had the evidence to support his position. “Curiously,” before the civil trial began, the district attorney,³ who had previously searched Mr. Hughes’s home with “guns drawn,” offered the following proposal: pay a \$400 fine, go on probation, and have “an expungable misdemeanor,” or refuse to settle and “they could

³ It was unclear from the superior court pleadings if the District Attorney or the City Attorney filed the criminal complaint; Mr. Hughes referred to both interchangeably in his testimony.

come in with criminal charges the next three years" and the civil case "would be put to the side." Mr. Hughes could not deal with "three more years of lies and injustice," so he chose to settle. He paid the City back all the money Cisterra paid him, and the district attorney accepted that as full restitution.

Mr. Hughes testified about "how unjust" and "how manipulative it has been." He believes all the facts support his position, and "the other side has no accountability." There are "flaws in the system" and it is an "uphill battle when attacked by a municipality." Mr. Hughes's "reputation has been disparaged, lies have been told about me." He explained that the civil litigation was brought by the new mayoral administration (Mayor Gloria) and "lots of people" with whom Mr. Hughes had dealt were no longer around. The new people in power were not ones with whom Mr. Hughes had interacted, and they were "rewriting history more than 10 years later." At the time of the Civic Center Plaza and 101 Ash Street transactions, City officials "thought I was a savior," but now it has been "twisted around by sources to the media when all I did was what I was told to do."

If he had it to do over, Mr. Hughes probably still would have helped the City, but he would not have taken compensation. He was busy with many clients so did not need to work with the City. This is his only conviction. He has never had his license disciplined. He has represented thousands of clients, a large percentage of which are law firms and sophisticated businesses, and none have ever claimed he was unethical.

Mr. Hughes has undertaken "lots of community involvement." He is proudest of the work he has done for San Diego Children's Museum. He was able to obtain the site for the museum by raising \$15 million and procuring \$10 million in debt from the bank Mr. Hughes founded, Torrey Pines Bank. Mr. Hughes volunteers with countless organizations and gives to charities. He believes in giving generously to others, which

is one of the core values of his company. He also served on the San Diego Chargers Task Force at the behest of Mayor Faulconer.

Mr. Hughes described the "injustice" of what happened. He knows the city attorneys have jobs to do but what happened was "so wrong and the media did such a misrepresentation of reality. I've been sucked into a vortex. I've been thrown to the wolves and I did not do anything, all I did I was told was appropriate." Mr. Hughes felt that he got bullied by the civil case and when he did not capitulate they "brought in a bigger hammer" and filed criminal charges. The entire thing was "a racket," and he was "scapegoated." Mr. Hughes had "a stellar reputation and there was an incredible outpouring of support" but it has been "an incredibly painful process."

Mr. Hughes did not believe he ever was a government official. He was not an employee of the city. He was not an elected official. He did not think Government Code section 1090 applied to him, and he still does not. However, as result of his conviction, he will not work with municipalities again without a clear-cut contract and having outside counsel review it to make it "bulletproof." He also stepped down as the CEO of his company and appointed a new designated officer. Although Mr. Hughes's testimony about his corporate structure differed from the documents shown to him at hearing, it did not establish he was dishonest, just not very involved in the structuring of his company.

While testifying, Mr. Hughes became extremely emotional, choking up several times. He explained how this entire process has been very hard on his whole family. He has been happily married for 34 years and has grown children. His family is very close, and he works with his children in his business, which is "an incredible experience" and he is very proud of them. Mr. Hughes spends "every minute possible with family." Mr. Hughes appeared boastful at times and seemed to be very impressed with himself for

his role as the City's advisor with access to several mayors. However, he has certainly been humbled by this experience and presented as a sincere witness, who has learned his lesson.

Costs

27. In support of the request for costs, complainant submitted two documents. The Certified Statement of Investigation Costs, signed under penalty of perjury, certified that complainant incurred investigations costs of \$980.15 for the work performed by the special and supervising investigators. The Cost Recovery Declaration Regarding Enforcement Costs certified that complainant incurred prosecution costs in the amount of \$5,316. Both certifications satisfied the requirements of California Code of Regulations, title 1, section 1042, subdivision (b). The total reasonable costs of investigation and enforcement were \$6,296.15.

LEGAL CONCLUSIONS

Purpose of Disciplinary Action

1. The object of an administrative proceeding aimed at revoking a real estate license is to protect the public. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.)
2. The purpose of discipline is not to punish, but to protect the public by eliminating practitioners who are dishonest, immoral, disreputable or incompetent. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.)
3. Business and Professions Code section 10050.1 states:

Protection of the public shall be the highest priority for the Department of Real Estate in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

Burden and Standard of Proof

4. In an action seeking to impose discipline against the holder of a real estate license, the burden of proof is on complainant to establish the charging allegations by clear and convincing evidence. (*The Grubb Co., Inc. v. Department of Real Estate* (2011) 194 Cal.App.4th 1494, 1505.)

Applicable Disciplinary Code Sections

5. Business and Professions Code section 490 authorizes the department to discipline a license if the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession of a real estate licensee.

6. Business and Professions Code section 10177, subdivision (b), authorizes the commissioner to discipline a licensee who has pleaded guilty or been convicted of a crime substantially related to the qualifications, functions, or duties of a real estate licensee and the time for appeal has elapsed or the judgment has been affirmed on appeal. Legislative changes have clarified that the question of moral turpitude is irrelevant, and the only question is whether a licensee's crimes were substantially related to the qualifications, functions or duties of a real estate licensee. (*Robbins v. Davi* (2009) 175 Cal. App. 4th 118, 123, fn. 5.)

Substantial Relationship

7. An agency may impose license discipline when a 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. A determination that a licensee's conviction justifies discipline does not rest on the moral reprehensibility of the underlying conduct, but, instead, requires a reasoned determination the conduct was substantially related to the licensee's fitness to engage in the profession. (*Gromis v. Medical Board* (1992) 8 Cal.App.4th 589, 598.)

8. Licensing authorities do not enjoy unfettered discretion to determine on a case-by-case basis whether a given conviction is substantially related to the relevant professional qualifications. Business and Professions Code section 481 requires each licensing agency to develop criteria to aid it to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates. In response to this directive, the department adopted California Code of Regulations, title 10, section 2910. (*Donaldson v. Department of Real Estate* (2005) 134 Cal.App.4th 948, 955-956.)

9. California Code of Regulations, title 10, section 2910, provides a list of conduct required before a "crime or act may be deemed to be substantially related." The accusation did not allege a specific subdivision of the regulation, but in closing argument, complainant asserted that subdivisions (a)(8) and (a)(10) applied.

Subdivision (a)(8) provides that the doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another is substantially

related. Subdivision (a)(10) provides that conduct which demonstrates a pattern of repeated and willful disregard of law is substantially related.

Subdivision (c) of the regulation states:

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. The Department's consideration of these factors in assessing the substantial relationship of an offense does not alter, or act in place of, consideration of these same factors in the Criteria for Rehabilitation.

10. Regardless of the motive for the guilty plea, "the conviction which was based thereon stands as conclusive evidence of [the licensee's] guilt of the offense charged." (*Arneson v. Fox* (1980) 28 Cal. 3d 440, 449.) Nonetheless, "[t]he licensee, of course, should be permitted to introduce evidence of extenuating circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation." (*Ibid.*)

11. However, an inquiry into the circumstances surrounding the offense "should not form the basis of impeaching a prior conviction." (*Matanky v. Board of Medical Examiners* (1978) 79 Cal.App.3d 293, 302.)

12. "Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee. If the licensee's

offense reflects unfavorably on his honesty, it may be said to be substantially related to his qualifications." (*Golde v. Fox* (1979) 98 Cal.App.3d 167, 176.)

Evaluation of Expert's Opinions

13. The fact finder may reject the testimony of a witness, even an expert, even though it is not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal. 3d 875, 890.) The persuasiveness of an expert's opinion depends on his ability to provide "a reasoned explanation connecting the factual predicates to the ultimate conclusion." (*Jennings v. Palomar Pomerado Health Systems, Inc.* (2003) 114 Cal.App.4th 1108, 1117.) An expert opinion based on disproven facts establishes nothing. (*Sears, Roebuck & Co. v. Walls* (1960) 178 Cal.App.2d 284, 289-290.)

14. Mr. Hibert was an extremely knowledgeable expert. However, his opinions regarding whether Mr. Hughes was acting as a licensee were unpersuasive and contrary to both the evidence and the clear language of Business and Professions Code section 10131, as discussed below. Mr. Hibert's opinions were also contrary to the plea agreement Mr. Hughes signed under penalty of perjury in which he admitted to having a financial interest in a contract he was making. Accordingly, Mr. Hibert's opinions were given little weight.

Cause Exists to Discipline Mr. Hughes's License

15. Cause exists pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), to discipline Mr. Hughes's broker's license. Mr. Hughes's conviction for unlawfully having a financial interest in contracts he was making was substantially related to the qualifications, functions, and/or duties of a licensee because he committed an unlawful act with the intent of conferring a financial or

economic benefit upon himself as set forth in California Code of Regulations, title 10, section 2910, subdivision (a)(8).

Cause does not exist to discipline Mr. Hughes's license under Section 2910, subdivision (a)(10). Complainant did not establish that Mr. Hughes's conviction demonstrated a pattern of repeated and willful⁴ disregard of law. To the contrary, the evidence showed he took great steps to inform City officials of his actions and no one ever advised him he could not seek compensation from Cisterra or other parties. On this record, Mr. Hughes's mistaken belief that he could seek compensation was understandable. Moreover, case law interpreting Government Code section 1090 changed in 2017 when the California Supreme Court held that liability under Government Code section 1090 extends to independent contractors who engage in or advise on public contracting. (*People v. Superior Court (Sahlolbei)* (2017) 3 Cal. 5th 230, 233.) Prior to that time, Mr. Hughes or the City reasonably would not have been on notice that the code section applied to independent contractors, especially as non-paid consultants are not specifically referenced in Section 1090.

Be that as it may, a licensee must put the interests of his client first, not the licensee's interest in receiving financial compensation. Mr. Hughes was an "informal adviser" for the City, advising it on the Civic Center Plaza and 101 Ash Street transactions, while at the same time having a financial interest in those transactions. Brokers serve as fiduciaries with duties owed to their client. Here, Mr. Hughes was

⁴ The term "willful" refers to intentional conduct undertaken with knowledge or consciousness of its probable results; it does not require a purpose or specific intent to bring about a result. (*Patarak v. Williams* (2001) 91 Cal. App. 4th 826, 829, citation omitted.)

convicted for having a conflict of interest substantially related to the duties he owed the City as its advisor.

Mr. Hughes's conviction was also directly related to his license because the contracts in which he had a financial interest involved lease-to-own real estate transactions for Civic Center Plaza and 101 Ash Street. Business and Professions Code section 10131 defines a broker as one who "for a compensation or in expectation of a compensation . . . (a) . . . solicits prospective sellers or buyers . . . of real property or a business opportunity . . . or negotiates the purchase, sale, or exchange of real property or a business opportunity . . . [or] (b) . . . solicits listings of places for rent or solicits for prospective tenants or negotiates the sale, purchase, or exchanges of leases on real property, or on a business opportunity"

As an advisor, Mr. Hughes agreed to use his real estate skills to effectuate transactions on the City's behalf. The documents introduced in evidence referenced Mr. Hughes's broker number, his company, and his opinions regarding real estate projects. He identified himself as a "representative for the City of San Diego" in a letter to a prospective seller. His testimony that his use of the word "representative" was merely "boilerplate" was not persuasive. In the body of that letter, which he titled "Non-binding Letter of Intent to Purchase [Civic Center Plaza]," Mr. Hughes was "pleased to propose terms and conditions [to the seller] for a potential sale and purchase" of Civic Center Plaza. In other communications with City officials, Mr. Hughes repeatedly referenced waiving the "customary leasing fee that I would have otherwise received for my services," clearly acknowledging his work as a licensee. In his emails, Mr. Hughes wrote that he was "structuring the deal," helping find "a white knight," "creating such a solution," and trying "to get a third party to fund the needed [tenant improvements]." Mr. Hughes solicited Cisterra and helped negotiate the

purchase price and the structure of the Civic Center Plaza and 101 Ash Street deals. He notified the City that because of the complexity and time demand of the Civic Center Plaza and 101 Ash Street deals he would be seeking "to be paid customary compensation," again acknowledging he was acting as a licensee since it is "customary" for licensees to be paid for their work.

Mr. Hughes was clearly performing acts of a broker as defined by Business and Professions Code section 10131. His actions required a license. (*Rees v. Department of Real Estate* (1977) 76 Cal. App. 3d 286, 294-295.) Even assuming, arguendo, Mr. Hughes was not acting as a licensee, he would still be subject to discipline because it is not necessary for the misconduct to have occurred in the actual practice of the profession. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 771-772.)

Mr. Hughes's arguments that his conviction was not substantially related or that he was not acting as a licensee were not persuasive. Owing to his expertise, the City entrusted Mr. Hughes to act as its advisor, and it was incumbent upon him to ensure his actions were legal, which he failed to do. Mr. Hughes's duty first and foremost was to the City, not trying to devise "a separate way to get compensated." Once he realized, as he clearly did, that he was being asked to perform duties beyond the scope of "informal adviser," he should have ceased his activities, or at least sought legal counsel, not executed an agreement with Cisterra to get paid. His letters and emails to City officials advising them he was seeking compensation "from any other parties in the transaction" were insufficient to meet his obligations.

Rehabilitation

16. Cause having been found to discipline Mr. Hughes's broker's license, the question is what discipline is appropriate. California Code of Regulations, title 10,

section 2912, sets forth the department's criteria for rehabilitation as required by Business and Professions Code section 482. Those criteria were considered.

17. A licensee bears the burden of showing that recommended administrative discipline is inappropriate. In arriving at an appropriate disciplinary order, courts balance all relevant factors, including mitigating circumstances, on a case-by-case basis. The discipline ultimately imposed must be consistent with the regulatory act's purpose, that of protecting the public and the profession from unfit practitioners. (*In re Young* (1989) 49 Cal.3d 257, 266.)

18. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.)

19. 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.)

20. Since persons under the direct supervision of judicial or correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that such an individual did not commit additional crimes or continue in appropriate behavior while under supervision. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) Thus, as Mr. Hughes remains on summary probation until March 2024, little weight is given to his present good behavior, although the entirety of his license history was considered.

Evaluation of Discipline

21. As Mr. Hughes learned the hard way, elected officials "could not recall" agreeing to let him seek compensation for his efforts on behalf of the City. Be that as it may, he stands convicted of violating Government Code section 1090, a substantially related conviction. His testimony that he did not know he could not seek compensation because he did not think he was a government official is given little weight because ignorance of the law is no excuse. (*People v. Snyder* (1982) 32 Cal. 3d 590, 592-593.) Courts have drawn distinctions between mistakes of fact and mistakes of law; while a mistake of fact usually is a defense, a mistake of law usually is not. (*People v. Meneses* (2008) 165 Cal.App.4th 1648, 1661-1665.) However, his belief that he was not a City employee was genuine and considered to the extent it demonstrated he did not intentionally violate any laws.

When acting on behalf of a government entity, even greater care must be taken to ensure there is no conflict of interest and no law is violated. Beyond sending letters and emails that he would seek compensation, Mr. Hughes took no steps to ensure he could seek that compensation. In mitigation, Mr. Hughes did notify City officials of his intention, and credibly testified about his numerous conversations with City officials regarding his intent. He did not hide his intention nor act before advising City officials about it. His claim that City officials told him he could seek compensation was unrefuted. Mr. Hughes returned all of the compensation he earned to the City. Mr. Hughes has enjoyed a long and distinguished career, was clearly respected by several City mayoral administrations, and has no history of discipline. It was evident his conviction shook him to his core as he emotionally demonstrated while testifying. There is little doubt Mr. Hughes's conduct will ever be repeated.

Business and Professions Code section 495 authorizes the department to publicly reprove a licensee for any act that would constitute grounds to revoke a license. On this record, nothing further is required to ensure public safety other than a public reproof. A public reproof is not a "free pass." It constitutes the department's formal criticism and censure of Mr. Hughes, who engaged in the conduct outlined above. It warns him that engaging in the same or similar conduct in the future will likely result in more serious consequences. A public reproof gives notice to the public and others of the nature and extent of Mr. Hughes's misconduct.

The Award of Reasonable Costs

22. Business and Professions Code section 10106 authorizes the department to seek the reasonable costs of its investigation and enforcement from a licensee who violates the real estate law. Complainant provided declarations and supporting documentation that the investigation and enforcement costs totaled \$6,296.15.

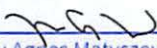
23. *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, a case which analyzed the award of costs under a similar code section, set forth five factors to be considered when evaluating costs: (1) Whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the licensee had a "subjective" good faith belief in the merits of his position; (3) whether the licensee raised a "colorable challenge" to the proposed discipline; (4) whether the licensee had the financial ability to make payments; and (5) whether the scope of the investigation was appropriate in light of the alleged misconduct.

24. Taking the *Zuckerman* factors in account, costs are reduced to \$4,000.

ORDER

Respondent Jason Wade Hughes is reprimanded for his substantially related conviction for violating Government Code section 1090, having a financial interest in a contract made by him in his official capacity. This decision shall serve as a public reproof. Mr. Hughes shall pay the department \$4,000 within sixty (60) days of the effective date of this decision.

DATE: December 1, 2023


Mary Agnes Matyszewski (Dec 1, 2023 09:11 PST)
MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

DECLARATION OF MAILING

**State of California
Department of Real Estate**

In the Matter of the Accusation of:

JASON WADE HUGHES,

H-05759 SD

State of California, County of Los Angeles

I am a citizen of the United States, over the age of eighteen years, and not a party to the within action; I am employed in the office of the Department of Real Estate of the State of California at 320 West Fourth St., Ste. 350 Los Angeles, CA 90013.

On January 03, 2024, I served the following documents:

- NOTICE OF REJECTION**
- PROPOSED DECISION**

in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

**JASON WADE HUGHES
1450 FRONT ST
SAN DIEGO, CA 92101**

**WILLIAM V. O'CONNOR
COOLEY LLP
10265 SCIENCE CTR DR
SAN DIEGO, CA 92121**

Respondent

Respondent's Attorney (BY REGULAR MAIL)

(By Mail) I served the above document(s) on behalf of the Department of Real Estate by placing for collection and mailing following ordinary business practices, true copies to the addressed as shown above, on this date and at the place shown, in envelope(s) in the ordinary course of business.

(By Certified Mail) I served the above document(s) on behalf of the Department of Real Estate by placing for collection and mailing following ordinary business practices, true copies to the addressed as shown above, on this date and at the place shown, in envelope(s) in the ordinary course of business.

(By Electronic Service) I caused the above document(s) to be transmitted electronically, on behalf of the Department of Real Estate, to the person(s) at the e-mail addresses listed, above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 03, 2024, at Los Angeles, California.



ALEJANDRA CANCHE