

FILED

JAN 21 2015

BUREAU OF REAL ESTATE

By John C. Smith

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)	
)	BRE No. H-04550 SD
PHILLIP SOTELO,)	OAH No. 2014040163
)	
Respondent.)	
)	

ORDER STAYING EFFECTIVE DATE

On December 30, 2014, a Decision was rendered in the above-entitled matter to become effective January 26, 2015.

IT IS HEREBY ORDERED that the effective date of the Decision is stayed for a period of 30 days to allow Respondent 10 days to file a petition for reconsideration.

The Decision of December 30, 2014, shall become effective at 12 o'clock noon on February 25, 2015.

DATED: January 21, 2015.

Real Estate Commissioner

By: Phillip Sotelo
Regional Manager

FILED

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BEFORE THE BUREAU OF REAL ESTATE

BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

By 

* * * *

In the Matter of the Accusation of

PHILLIP SOTELO,

Respondent.

) CalBRE No. H-4550 SD

) OAH No. 2014040163

DECISION

The Corrected Proposed Decision dated December 15, 2014, 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 Corrected Proposed Decision:

Legal Conclusions, Page 5, Paragraph No. 4, Line 2, "enforcement costs of." is amended to read "enforcement costs."

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

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 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

JAN 26 2015

IT IS SO ORDERED

12/30/2015

REAL ESTATE COMMISSIONER


WAYNE S. BEIL

**BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation of:

PHILLIP SOTELO,

Respondent.

Case No. H-04550 SD

OAH No. 2014040163

CORRECTED PROPOSED DECISION

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on September 29, 2014.

Diane Lee, Staff Counsel, represented Complainant Veronica Kilpatrick, Deputy Real Estate Commissioner of the Bureau of Real Estate (Bureau).

Respondent Phillip Sotelo appeared, represented by attorney Frank M. Buda.

Oral and documentary evidence was received at the hearing, and the matter was submitted September 29, 2014.

The proposed decision was sent to the Bureau on October 28, 2014. On November 25, 2014, the Bureau filed an "Application to Correct Minor or Technical Mistake" under California Code of Regulations, title 1, section 1048. On review of the Application and the proposed decision, the administrative law judge determines that a mistake was made in the 10th line of paragraph 5 of the proposed decision, which said Respondent's testimony "showed willingness to take responsibility for his actions" instead of the intended "showed unwillingness to take responsibility for his actions." This corrected proposed decision is issued to rectify that mistake. There is no other change to the proposed decision.

Complainant brings this Accusation to impose discipline on Respondent's real estate salesperson license. For the reasons set forth below, the license is revoked.

FACTUAL FINDINGS

1. Complainant issued this Accusation solely in her official capacity.

2. Respondent obtained a real estate salesperson license on December 12, 1997. It bears an expiration date of April 20, 2018. On December 20, 2013, Complainant brought this Accusation to discipline his license, and Respondent timely requested a hearing.

Criminal Conviction

3. On June 9, 2013, in the Superior Court of California, County of Stanislaus, case number 1434317, Respondent was convicted on his no contest plea of forgery (Pen. Code, § 470, subd. (d)), a felony. He was sentenced to 180 days in jail, assessed fines and fees of \$350, and placed on formal probation for three years. Including a \$50 monthly probation fee, Respondent's financial obligation to the court was \$2,136.

Mitigation, Aggravation and Rehabilitation

4. Respondent's conviction arose out of a scheme to prevent foreclosure on his house, or eviction from it, by recording fraudulent documents in 2011. He and his wife had bought a large house in Modesto for \$1.6 million in 2005. The monthly payments on the purchase loan were more than \$10,000. When the real estate market collapsed, their income dropped, and in 2010 they stopped making the monthly payments. By 2011, they owed about \$1.4 million to the lender, IndyMac Bank.¹ Respondent found two businesses on the Internet that purported to provide ways to prevent trustee sales, based on the notion that since lenders had packaged loans into mortgage-backed securities, the lenders did not own the notes secured by the trust deeds and therefore could not legally foreclose. Respondent followed their advice and recorded a series of documents intended to sow confusion in the chain of title and call into question the trustee's authority to enforce the trust deed, and thus delay a trustee's sale. Respondent himself introduced into evidence copies of several such recorded documents (exhibit E),² but the actual document underlying the conviction is not in the record. In a plea bargain in which five counts against Respondent, and all the counts against his wife, were dismissed, Respondent was convicted only of the Information's sixth count (exhibit 3), which contains boilerplate allegations that Respondent did something with

¹ There was no evidence at hearing about the effect of IndyMac Bank's failure and takeover, which had already occurred by 2011. Respondent's house was eventually sold at a trustee's sale.

² These include a "Notice of Default" which Respondent signed and recorded, in which the trust deed beneficiary, IndyMac Bank, gives notice to itself or the trustee "that a breach of the obligation for which such transfer in trust as security has occurred, the nature of said breach being your failure to provide a valid claim to Note [sic], and that the Beneficiary [sic] is no longer obligated to repay the Note, because of your administrative default." Respondent admitted at hearing that he had no authority to sign on behalf of IndyMac Bank. In a "Substitution of Trustee," he purported to substitute the deacon of his church as the trust deed trustee.

respect to a grant deed on June, 20, 2011.³ No such grant deed was introduced at hearing. All the documents Respondent introduced were dated January or February 2011.

5. There was testimony and argument about another grant deed that is included in exhibit E. Respondent and his wife signed it in their own names and notarized it January 13, 2011, and recorded it the following day. Respondent's testimony was unclear about whether he believed that the January 2011 grant deed in exhibit E was the June 2011 grant deed alleged in the Information's sixth count, but the thrust of his testimony was that he once believed that he did something wrong to warrant being convicted of forgery, but now understands that he did nothing wrong, but was convicted for "forging" his own name on a document. Respondent's felony conviction for forgery stands as conclusive evidence of his guilt of the charged offense (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449), and his testimony showed unwillingness to take responsibility for his actions. Respondent maintained that he was a victim of bad advice from unscrupulous persons, whose instructions he followed in the belief that he was doing nothing illegal, and the lesson he has learned is to avoid buying online programs. He did not acknowledge that there was something inherently wrong with attempts to cheat a lender so as to stay in an expensive home without paying for it, and he did not explain why an experienced realtor, who was successful enough to afford a \$10,000 monthly mortgage payment for years, would have relied on the advice of Internet hucksters.

6. Respondent served 90 days in electronically monitored home confinement, which he completed April 4, 2014. He remains on supervised probation until April 2017. A probation officer has not been assigned to him yet. He is paying the fines and fees in monthly payments, and still owed \$1,796 as of September 9, 2014. The conviction has not been expunged. He has no other convictions.

7. Respondent is 45 years old. He estimates that he has closed 700 real estate transactions in the 17 years he has been a licensed salesperson. He has no previous license discipline.

8. Warren O'Blennis, a real estate broker who has supervised Respondent, testified that he has never heard a complaint about Respondent, who is an honest person who has never told him anything that was not correct. Marianne Houlahan, also a real estate broker who has supervised Respondent, wrote in a letter (exhibit B) that Respondent is professional and honest, and sorry for having "mistakenly turned to a company that assured him they could save his home legally." A letter from Vicky Cummings, a real estate salesperson who has known Respondent nine years, expressed similar sentiments. Silvia

³ It alleges that "on or about the 20th day of June, 2011," Respondent "did willfully, unlawfully, fraudulently and feloniously make, alter, forge, counterfeit, utter, publish, pass, or attempt to offer to pass, a check, bull [*sic*], money order, or other writing, to wit, **grant deed**, knowing that said check, bill, money order, or other writing, were [*sic*] false, altered, forged and counterfeited, with intent then and there to cheat and defraud said victim(s) and corporation(s)." (Bold type in original.) No victims or corporations are mentioned anywhere in the Information.

Sotelo-Alvarran, a real estate salesperson and Respondent's first cousin, wrote that Respondent was a mentor who has always given her ethical advice, and has "learned a very hard lesson" from his conviction. But the only lesson mentioned in the letter confirms the lack of appropriate perspective evident in Respondent's testimony: "He has told me and family members not to buy internet programs because of this." The witnesses thus echo Respondent's view that his felony conviction was a mistake caused by relying on bad advice and trusting the Internet.

9. Respondent and his wife have been married 24 years and have two children, aged 22 and 20, whom they support. Respondent is active in the Holy Family Catholic Church in Modesto, and the Knights of Columbus. He made a large contribution toward the building of a community center some years before his conviction, when he was more prosperous. He introduced a letter (exhibit C) from Juan P. Vallejo, the church's deacon, who described himself as Respondent's "spiritual counselor" and described Respondent as generous, widely respected, and a valuable member of the congregation. Vallejo's letter does not mention Respondent's conviction or his efforts to prevent foreclosure, even though Respondent recorded a "Substitution of Trustee" that purported to make Vallejo the trustee under the deed of trust, as part of Respondent's scheme to prevent foreclosure.

10. There was no evidence that Respondent has been enrolled in education or vocational training since his conviction.

11. Complainant introduced evidence that her costs of enforcement were \$511.75, consisting of 5.75 hours of attorney time at \$89 per hour. She also introduced evidence that her investigation costs were \$1,710.90, consisting principally of 25.45 hours of investigator time at \$62 per hour (\$1,577.90), with about two hours of supervisory and support time at various hourly rates. These costs, totaling \$2,089.65, are reasonable, but Respondent credibly testified that he is suffering financial hardship, and had only \$900 in the bank at the time of the hearing, making a reduction in costs appropriate.

LEGAL CONCLUSIONS

1. As paragraph 4 of the Accusation alleges, Respondent's conviction is cause to revoke or suspend his license under Business and Professions Code sections 490 and 10177, subdivision (b).⁴ Section 490, subdivision (a) allows a board to revoke a license if the licensee "has been convicted of a crime [that] is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued." Section 10177, subdivision (b), which applies specifically to the Bureau, similarly allows it to revoke a license if the licensee has been convicted of "a crime substantially related to the qualifications, functions, or duties" of a real estate licensee. Respondent's conviction for forgery (Factual Finding 3) is substantially related under CCR section 2910, subdivision

⁴ Further references to section or "§" are to the Business and Professions Code, unless preceded by "CCR," which refers to title 10 of the California Code of Regulations.

(a)(2), because it involved "forging or altering of an instrument or the uttering of a false statement." It was also substantially related because it involved "fraud, deceit, falsehood or misrepresentation to achieve an end" (CCR § 2910, subd. (a)(4)), and because it was an unlawful act "with the intent of conferring a financial or economic benefit upon the perpetrator." (CCR § 2910, subd (a)(8).)

2. Respondent has the burden of showing rehabilitation. He does not meet that burden, although he meets some relevant rehabilitation criteria set out in CCR section 2912:

a. He does not meet the criteria of passage of at least two years from the conviction. (CCR §2912, subd. (a); Factual Finding 3.)

b. He has not paid the fine (CCR §2912, subd. (g); Factual Finding 6), completed probation (CCR §2912, subd. (e); Factual Finding 6), or had his conviction expunged. (CCR §2912, subd. (c); Factual Finding 6.)

c. Respondent has not shown that he has enrolled in education or vocational training since his conviction. (CCR §2912, subd. (k), Factual Finding 10.) There was no evidence that he has new and different social relationships since his conviction. (CCR §2912, subd. (i).)

d. His family life is stable. (CCR §2912, subd. (j); Factual Finding 9.) Respondent is involved in programs designed to provide social benefits or to ameliorate social problems. (CCR §2912, subd. (l); Factual Finding 9.)

e. Respondent's testimony that he did nothing illegal, despite his felony conviction (Factual Finding 3) shows that Respondent has not changed his attitude since committing the crime. (CCR §2912, subd. (m).) Indeed, his testimony that he used to think he had done something illegal, but now believes he did not, shows movement in the wrong direction. 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.)


3. Respondent was convicted of forgery in an attempt to defraud a real estate lender, a particularly severe offense for a real estate salesperson, in that it erodes the integrity of the credit system that makes it possible for most people to buy homes. Respondent therefore has a substantial burden of showing rehabilitation, which is impossible to meet if he denies wrongdoing. Respondent has shown that in times of financial difficulty, he will break the law to maintain a high standard of living, and place the blame elsewhere when he is caught. This makes him a danger to the public.

4. Paragraph 5 of the Accusation requests \$2,089.65 in investigation and enforcement costs of. Those costs are reasonable (Factual Finding 11), but the Bureau must also determine that respondent is able to pay them. (*Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.) Respondent's financial hardship makes it appropriate to reduce the award to \$900.

ORDER

1. Respondent Phillip Sotelo's real estate salesperson license is revoked.
2. Respondent shall pay Complainant's investigative and enforcement costs of \$900 within one year of this decision's effective date.

DATED: December 15, 2014



HOWARD POSNER
Administrative Law Judge
Office of Administrative Hearings