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BUREAU OF REAL ESTATE

By *A. Deloris*

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of VINCINA G MORINEAU Respondent.	}	CalBRE No. H-04783 SD OAH No. 2016070420
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DECISION

The Proposed Decision dated December 12, 2016, 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 correction is made:

Findings, Page 2, Paragraph 4, Line 9, after July 29, 2005, a sentence is added "and approximately February 2003".

The Decision suspends or revokes one or more real estate licenses, but the right to a restricted salesperson license is granted to Respondent.

Pursuant to Government Code section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The Bureau's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first. The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on FEB 21 2017.

IT IS SO ORDERED 1/25/2017

WAYNE S. BELL
REAL ESTATE COMMISSIONER



A handwritten signature in black ink, appearing to read 'Wayne S. Bell', is written over a horizontal line.

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

In the Matter of the Accusation Against:

VINCINA G. MORINEAU,

Respondent.

Case No. H 04783 SD

OAH No. 2016070420

PROPOSED DECISION

Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on November 10, 2016.

James R. Peel, Counsel, Bureau of Real Estate, State of California, represented complainant, Veronica Kilpatrick, Supervising Special Investigator, Bureau of Real Estate, Department of Consumer Affairs, State of California.

Vincina G. Morineau, respondent, represented herself.

The matter was submitted on November 10, 2016.

FACTUAL FINDINGS

Jurisdictional Matters

1. On April 8, 2003, the bureau issued a real estate salesperson license to respondent. The license terminated on February 8, 2007. On February 2, 2007, the bureau issued a real estate broker license to respondent. Respondent's broker license expired on March 10, 2015, and she did not renew it. She has a two year renewal right.

2. On March 11, 2016, complainant signed the accusation in her official capacity. The accusation sought disciplinary action against all of respondent's "licenses and license rights." Complainant also sought recovery of the costs incurred for the investigation and prosecution of the case.

3. Respondent timely filed a Notice of Defense, and this hearing followed.

2012 Conviction for Wire Fraud

4. On August 9, 2011, the July 2010 Federal Grand Jury signed a fifteen count Indictment against respondent and 25 others in Case No. 11 CR 3486 JAH. Count 1 of the Indictment alleged that respondent engaged with others in a conspiracy to commit wire fraud in order "to obtain money by means of materially false and fraudulent pretenses and representations, and omissions of material facts, and for the purpose of executing this fraudulent scheme, to knowingly use, and cause to be used, interstate wire communication." The Indictment alleged that respondent's principal goal in the alleged conspiracy was to deceive lenders into lending her money by overstating her income so that she appeared to qualify for loans for seven properties she purchased between July 29, 2005, when, in fact, she was not qualified for the loans.

The Indictment alleged the following:

- 1) On July 29, 2005, respondent signed a Uniform Residential Loan Application (URLA) falsely stating her monthly income was \$17,646;
- 2) On August 25, 2005, respondent signed a Uniform Residential Loan Application (URLA) falsely stating her monthly income was \$17,500;
- 3) On December 24, 2005, respondent signed a Uniform Residential Loan Application (URLA) falsely stating her monthly income was \$30,000;
- 4) On April 14, 2006, respondent signed a Uniform Residential Loan Application (URLA) falsely stating her monthly income was \$24,906;
- 5) On June 3, 2006, respondent signed a Uniform Residential Loan Application (URLA) falsely stating her monthly income was \$57,000 and that she was purchasing the home as her primary residence;
- 6) On July 13, 2006, respondent signed a Uniform Residential Loan Application (URLA) falsely stating she was employed by Terra Group and that she was purchasing the home as her primary residence; and
- 7) On February 1, 2007, respondent signed a Uniform Residential Loan Application (URLA) falsely stating she was employed by Terra Group and that her monthly income was \$65,000.

5. Counts 2, 4, 9, and 10 of the Indictment alleged respondent engaged in wire fraud with respect to specific wire communications between First American Title Company and Heritage Escrow. The communications consisted of wire transfers of money in amounts between \$292,365.06 and \$1,555,044.34.

6. Count 12 of the Indictment alleged respondent engaged in wire fraud with respect to a specific wire communication between Washington Mutual Bank and New Century Title. The communication consisted of a wire transfer of money of \$217,915.

7. On November 23, 2012, respondent, while represented by counsel, signed a plea agreement in which she "waived indictment" and pled guilty to Count 12 of the Indictment charging wire fraud, in violation of Title 18, United States Code, Section 1343. In the plea agreement, respondent admitted she committed each of the elements of wire fraud - that she "devised a scheme or plan for obtaining money or property by making false promises or statements;" "knew the promises or statements were false;" made material statements that would "reasonably influence a person to part with money or property;" "acted with intent to defraud;" and used wire communications to "carry out an essential part of the scheme."

In the plea agreement, respondent admitted the factual basis for the plea, which included the admission that she agreed with others "to use false statements of income to fraudulently obtain . . . a \$1.42 [million] first mortgage loan" for the purchase of a property in San Diego, California. Respondent also admitted that, in furtherance of the agreement, she signed a loan application in which she represented her monthly income was \$65,000 per month, and she knew she did not earn that monthly income. She further admitted she obtained a loan based in part on her misrepresentations and that the loan was funded via an interstate wire transmission. In addition, respondent admitted she defaulted on the loan; the property was foreclosed upon; and the default caused a loss to the lender of \$646,488.53.

As part of the plea agreement, respondent agreed that the amount of restitution the court could order at sentencing could be based on respondent's "total offense conduct, and [was] not limited to the count of conviction."

8. In exchange for her plea,¹ Counts 1, 2, 4, 9, and 10 were dismissed without prejudice. Respondent was sentenced to three months in custody, and she was ordered to pay a \$100 special assessment and \$646,488.53 in restitution. Upon her release from custody, respondent served two years' of supervised probation, which included a drug testing requirement, a requirement to provide complete financial records as requested, a prohibition from opening checking accounts or incurring new credit charges without her probation officer's approval, and other standard terms and conditions. Respondent's probation was terminated in late 2015.

9. Respondent testified that she served two months in custody at Victorville Federal Prison and one month at a half-way house. At the half-way house, respondent completed several classes about reentry into the work force. She submitted to drug testing,

¹ Respondent's husband, David Morineau, a licensed real estate salesperson, was also named in the Indictment and charged under Counts 2, 4, 9, 10, and 12. The Plea Agreement required that respondent's husband also plead guilty at the same time.

and all the tests were negative for illegal drugs. Respondent worked full-time as a nanny while she was in the half-way house.

Evidence in Mitigation and of Rehabilitation

RESPONDENT'S TESTIMONY

10. Respondent testified she began selling real estate when she received her salesperson license in 2003. In 2007, she received her broker's license. Her husband David was a licensed real estate salesperson, and they were active together in assisting clients in real estate transactions. Respondent and David regularly employed a particular loan officer (BP) to obtain loans and prepare the paperwork necessary to process the loans.

11. Respondent and David became "excited" about real estate and wanted to become investors. They purchased seven properties between 2005 and 2007. Respondent believed her income was sufficient to support the purchase of the properties, but the loan officer wrote inflated income information in the loan applications. In an Explanation of Conviction dated January 15, 2016, respondent stated that she hired BP to process the loans needed for her purchase of the seven properties that were the subject of the Indictment. She said the real estate market was so "hot" that it "was common and customary for a buyer to sign loan documents – first and second loans - and loan applications usually over 100+pages several hours before a purchase would be funded." In her Explanation of Conviction and testimony at the hearing, respondent stated she did not carefully read all of the loan documents and did not verify the income amounts reported by BP on the loan applications.² Nonetheless, she admitted she signed the documents, and she accepted responsibility for the false information contained in those applications.

12. According to respondent, she began to question the loan processes and began to feel that something was not right after a few loans were made, but she allowed "bad judgments to take over." In retrospect, respondent understood what was happening and asked herself, "What was I doing?"

13. The false applications were related only to loans obtained on properties respondent and her husband purchased. She has no record of improprieties with regard to sales and financing of any clients' real estate transaction.

14. Respondent and her husband also got caught in the 2008 recession and decline in real estate values. The market and her business went down. She lost everything, including her car, residence, and the properties she purchased. She declared bankruptcy in 2009.

² Respondent did not clarify how BP arrived at the figures he used in the loan application – whether respondent gave him correct figures and he inflated them, or respondent relied on BP to calculate her income and he inflated his calculations.

15. Respondent and her husband were, and are, devout Christians. When the market dropped, they began to have problems in their marriage. In 2010, they realized they needed to change their ways and get back to God. They both enrolled in a one-year, full-time Rock Church Impact 195 School of Ministry program. From June to September 2010, respondent and her husband were on a mission trip in Haiti. They helped build playgrounds, removed garbage from the street, built wells for fresh water, and participated in other ministry work in the area. The Impact 195 program continues to provide ministry and economic support to Haiti, including support for an orphanage.

From 2010 to 2012 respondent and her husband worked in the Rock Church office and mentored others in the Impact 195 program. They also joined a marriage ministry and became marriage "coaches." Marriage coaches provide services for couples who cannot afford counseling. They look to the teaching in the bible to help couples work through their problems. Respondent continues to serve part time in the marriage ministry; her husband is involved on a full-time basis.

After her conviction and serving two months in Victorville Federal Prison, respondent went to a half-way house where she worked full time as a nanny. Respondent, now 60 years old, continues to be a full-time nanny for the children she began to nanny when she was in the half-way house.

16. Respondent's broker license expired in 2015. She has a two year period in which she can renew her license; that period expires in March 2017. Respondent stated she has taken numerous steps towards rehabilitation so that she will not be defined by her past errors. She continues to attend church regularly and to be involved in church ministries.

17. Each month, respondent pays \$200 towards her restitution order of \$646,488.53. To date she has paid approximately \$5,000. She does not earn much money as a nanny. She and her husband take in foreign exchange students to help pay expenses. Respondent would like to regain her broker's license to improve her financial situation and be able to pay more of the restitution. At a rate of \$200 per month, it would take respondent almost 270 years to pay off the restitution.

18. Respondent's employer, past clients, and other brokers have expressed faith in respondent and offered her a position working with them if she regains her license.

19. Respondent testified that, but for her 2013 conviction and the bureau's accusation, her license has not been disciplined or threatened with discipline, and none of her clients have complained about her services or reported her to the bureau with ethical or professional competence complaints. No evidence contradicted respondent's assertions.

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CHARACTER EVIDENCE

TESTIMONY OF DAVID MORINEAU

20. Mr. Morineau, respondent's husband, has known respondent for 30 years; they have been married for 18 years. When they met, respondent had owned and operated several women's boutiques for 27 years. Mr. Morineau observed that respondent's clients became her friends and continued to shop with her because respondent genuinely cares about people and her clients knew it.

21. In the real estate business, Mr. Morineau and respondent had times when it was difficult to keep the business operating because the expenses of doing business were high. The business was ultimately able to stay afloat because, based on respondent's excellent reputation; respondent was able to sell real estate. Their family and friends all became clients.

22. Mr. Morineau and respondent wanted to be investors in real estate. They took education classes with the bureau and thought they were well trained. Unfortunately they were not educated sufficiently and they "got in over [their] heads."

23. Mr. Morineau also took responsibility for the position in which he and respondent wound up. He said he was more motivated than respondent to get involved in the purchase of multiple properties. He attributed many of their mistakes to his greed and his desire to "get more and have more." Respondent told Mr. Morineau that things with BP were "starting to smell fishy" but Mr. Morineau would defend BP's practices and justify them by saying BP was an expert and should know what he is talking about.

24. Mr. Morineau testified that 62 others were indicted at the same time as he and respondent. One was a Navy Seal who was a first time buyer. Mr. Morineau stated that he "never in a million years" would have thought BP would do something to hurt and damage them. Mr. Morineau expressed a sense of guilt because he worked in prisons for 10 years and felt he should have realized something bad was happening.

Even before the Indictment, respondent and Mr. Morineau's marriage was in trouble. They lost everything in the economic downturn including their home, car and retirement investments. He said they were left without a dime. They stopped their real estate business even before the Indictment was filed. Respondent and Mr. Morineau have learned a hard lesson. They have paid financially, psychologically, and professionally, and have to rebuild.

25. Respondent and Mr. Morineau were dedicated to reinventing themselves. He stated that respondent's integrity and moral standards are unquestionable. She works hard for people and, even now, people come to her for her knowledge and guidance. Respondent and Mr. Morineau have helped to protect others from predatory real estate licensees.

26. Mr. Morineau acknowledged they have a high amount of restitution to repay and asserted that he and respondent want to do the right thing. However, they are finding it difficult to obtain a decent paying job with felony convictions. He noted that respondent, at age 60, is caring for three small children under the age of five. He said she works very hard.

27. Mr. Morineau emphasized that he and respondent will never find themselves in a position such as the one they were in. He stated it "will never happen again." They will always follow the letter of the law and only advise others to do the same. They are "very cognizant of the right and wrong way to do things." He regretted that they got sucked into something that did not reflect them as the person they want to be. Mr. Morineau's testimony was heartfelt and credible.

REFERENCE LETTERS

28. In a letter dated November 8, 2016, Colleen L. Moore, a licensed broker with Moore & Sons Realty, advised the board that she had been meeting with respondent, was fully aware of respondent's criminal conviction, and would welcome respondent into her company if she is able to renew her broker's license. Ms. Moore described respondent as "an exceptional woman and knowledgeable professional." Ms. Moore stated that, as a former lender, she is aware that "it is truly a potential hazard for folks in the hands of lenders that just try and get deals done." She commended respondent for her "willingness to take responsibility and really learn from this experience, she is truly remarkable in her attitude." Ms. Moore opined that respondent "will be an even more intuitive and helpful member of the real estate community for clients and other professionals in San Diego." Moore & Sons is "a family and faith based firm," and Ms. Moore believed respondent "will be a tremendous addition to our family."

29. In a letter dated October 31, 2016, Pete Sanchez, III, stated he has known respondent for six years. He described her as "a person of good moral character" and holds this belief despite being aware of the circumstances of her criminal conviction. According to Mr. Sanchez, respondent made mistakes, but she was "incredibly remorseful and is willing to do whatever it takes to make reparations, financially and emotionally, if possible." Mr. Sanchez has offered respondent a position in a real estate team at Big Block Realty if she is able to renew her license.

30. Respondent represented Raymond and Natividad Fernandez when they wanted to buy a house. In a letter dated November 6, 2016, Mr. and Mrs. Fernandez stated that they had not known how to go about looking for, and purchasing, a home and needed help. They were referred to respondent. Mr. and Mrs. Fernandez were very satisfied with the services provided by respondent. They said she listened to them express their fears and concerns, and she reassured them that she would help them find a home that fulfilled their needs. Mr. and Mrs. Fernandez observed that respondent loved what she did. They found her very understanding and she made herself available whenever she was needed. Respondent "is a hard worker and always went above and beyond to help." According to Mr. and Mrs.

Fernandez, she was "honest and sincere" during the real estate transactions. They respected her advice.

31. Brandon Jordan has been a police officer for nine years. In a letter of support for respondent, Mr. Jordan stated he has known respondent and Mr. Morineau since 2010. Mr. Jordan noted that, as a police officer, part of his job is to judge character and truthfulness. He is aware of respondent's criminal conviction. He stated, "I can attest to the high quality of [respondent's] character; were it not so I would not be writing this letter. . . . I have full confidence in her trustworthiness going forward and offer my humble recommendation for reinstatement."

32. Dr. Dina Wessell authored a letter commending respondent. Respondent is a full-time nanny to Dr. Wessell's three children. She defined respondent as "a woman of impeccable character, integrity and high morals and standards. She is held in high regard by my family and is someone that we fully trust to do the right thing in all circumstances.

33. Respondent submitted 11 additional letters of reference from individuals who are active in Rock Church in San Diego and/or involved in a Christian discipleship class. Darren Carrington is the Marriage Pastor; Margarita Robinson is the Ministry Support Coordinator; Jeff Doria is the Assistant Director of Impact 195; Sarah Doria is the Global Outreach Coordinator; Scott Wessell is the Impact 195 Pastor and Director; Edward and Ashely Verduzco are church members; William Padilla and Darlene Valdez are involved in Rock Church Couples Coaching ministry; Sarena Lorona mentored respondent at a Christian discipleship school; and Jennifer C. Matauic was mentored by respondent at Impact 195. The letters written by these individuals uniformly express their respect and support for, and faith in, respondent. They described her as having "integrity," and "compassion;" taking "responsibility;" and being "reliable," moral and trustworthy, candid and honest. Several spoke of their gratitude towards respondent for the work she does as a marriage counselor and confidant. Ms. Doria described respondent as having displayed "kindness, compassion, wisdom, and faithfulness in relationships and responsibilities." Ms. Doria said respondent has shown "nothing but excellent character and integrity"

Costs

34. The bureau filed a Cost Recovery Declaration of Enforcement Costs pursuant to Business and Professions Code section 10106 seeking recovery of \$178 as costs incurred by counsel for the bureau and a Certified Statement of Investigation Costs seeking recovery of \$1,180.30 for costs incurred for the investigation of the case. The amounts sought are reasonable.

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LEGAL CONCLUSIONS

Applicable Statutory and Regulatory Provisions

1. The suspension or revocation of a professional license must be based upon conduct proven by clear and convincing evidence. (*Grubb Co., Inc. v. Department of Real Estate*, (2011) 194 Cal.App.4th 1494.)

2. Business and Professions Code section 482 requires the department to “develop criteria to evaluate the rehabilitation of a person when . . . (b) considering suspension or revocation of a license under Section 490.” Section 482 also requires the Department to “take into account all competent evidence of rehabilitation furnished by the applicant or licensee.”

3. Business and Professions Code section 490 provides in part:

(b) . . . a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

[¶] . . . [¶]

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere

4. Business and Professions Code section 493 provides, in relevant part, that in a proceeding to revoke or suspend a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

5. Business and Professions Code section 10177, subdivision (b), provides in relevant part, that the department can suspend or revoke the license of a real estate licensee who has entered a plea of guilty to a felony or a crime that is “substantially related to the qualifications, functions, or duties of a real estate licensee”

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6. Business and Professions Code section 10106 states in pertinent part:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before the department, the commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

[¶] . . . [¶]

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the commissioner or the commissioner's designated representative, shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the commissioner to increase the cost award. The commissioner may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

7. Business and Professions Code section 10156.5 provides:

The commissioner may issue a restricted license to a person:

(a) Who is or has been licensed under this chapter and who has been found by the commissioner after a hearing to have violated provisions of Division 4 of this code where such violation would justify the suspension or revocation of the license.

(b) Who is applying for a license under this chapter, who has met the examination and experience requirements, but who has been found by the commissioner after a hearing to have failed to have made a satisfactory showing that he meets all of the other requirements for the license applied for, where such failure would justify the denial of the license applied for.

8. California Code of Regulations, title 10, section 2910, in relevant part, provides:

(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in Section 480(a)(2) or 480(a)(3) of the Code, the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the department within the meaning of Sections 480 and 490 of the Code if it involves:

(1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person.

(2) the uttering of a false statement.

[¶] . . . [¶]

(4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end.

[¶] . . . [¶]

(8) 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.

[¶] . . . [¶]

(c) If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or acts were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee.

9. California Code of Regulations, title 10, section 2912, provides:

The following criteria have been developed by the department pursuant to Section 482(b) of the Business and Professions Code for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee.

- (a) The passage of not less than two years from the most recent criminal conviction that is "substantially related" to the qualifications, functions or duties of a licensee of the department. (A longer period will be required if there is a history of criminal convictions or acts substantially related to the qualifications, functions or duties of a licensee of the department.)
- (b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee.
- (c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action.
- (d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.
- (e) Successful completion or early discharge from probation or parole.
- (f) Abstinence from the use of controlled substances or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance or alcohol.
- (g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.
- (h) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.
- (i) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.
- (j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.
- (k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

(l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by any or all of the following:

(1) Testimony of applicant.

(2) Evidence from family members, friends or other persons familiar with the licensee's previous conduct and with subsequent attitudes and behavioral patterns.

(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.

(4) Evidence from psychiatrists, clinical psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

Evaluation

10. Cause exists to impose discipline on respondent's broker's license because she was convicted of a crime that is substantially related to the qualifications, functions, and duties of a real estate licensee. (Bus. & Prof. Code, §§ 490; 10177, subd. (b).) In pleading guilty, respondent admitted that she committed wire fraud by knowingly signing an application for a real estate loan that contained false statements of income to fraudulently obtain a \$1.42 million first mortgage loan. The loan was funded via an interstate wire transmission. Respondent defaulted on the loan; the property was foreclosed upon; and the default causes a loss to the lender of \$646,488.53.

Real estate salespersons and brokers deal in complicated business and financial transactions and are often entrusted with financial, personal and confidential information about clients. They are required to complete complicated and extensive applications and other legal documents, to follow the rules and regulations governing real estate licensees, and to deal honestly in real estate transactions. They are required to comply with complex legal requirements in those transactions. Real estate licensees must be clear-headed and law-abiding, have integrity, and use good judgment in completing real estate transactions, including their own. Real estate licensees must deal openly and honestly in all transactions,

and they must constantly be aware of others in the industry who may not be operating honestly or lawfully.

Respondent's conviction is substantially related to the qualifications, functions, and duties of a real estate licensee in that she executed and allowed false loan applications to be submitted to a lender. Lenders relied on the false applications to determine that respondent was eligible for real estate loans that she was not, in fact, eligible to receive.

Appropriate Level of Discipline

11. The determination as to whether respondent's real estate broker's license should be subject to revocation, suspension or restriction includes the evaluation of the circumstances of her conviction and the rehabilitation criteria enumerated in California Code of Regulations, title 10, section 2912, set forth above.

Respondent was convicted in 2013. She served two months in Victorville Federal Prison and one month in a half-way house, during which time she was a full-time nanny. Respondent successfully completed probation in 2015. She has paid the special assessment ordered by the court, but has paid only \$5,000 of her restitution order that exceeds \$600,000. It has been more than two years from respondent's conviction. There was no evidence that respondent has had any other involvement with the criminal justice system, either before or after the criminal complaint at issue here.

Prior to being indicted, respondent and her husband realized that they had lost their way and needed to rebuild their lives. They attended a one year program in ministry and discipleship and began to work towards repairing their reputations and their lives. They participated, and assist others, in marriage counseling and have a strong marriage. Respondent has worked as a nanny for the same family she began working for in 2013. The family holds respondent in high regard.

12. Character references submitted at the hearing were highly complimentary of respondent and spoke earnestly of her and the many activities in which she is engaged. The authors of the letters lauded respondent's professionalism and trustworthiness as a real estate licensee. But for the 2013 conviction, respondent's performance of her duties as a real estate licensee in the nine years she worked as a real estate salesperson or broker have been free from question or criticism.

13. Respondent's testimony was sincere and credible. Her remorse and commitment to making positive changes in her life was shown in her testimony and conduct and deeds since 2010. Her commitment, along with her husband's extends not only to carefully following the law but also to revealing other professionals who are operating in a dishonest manner. Respondent was forthright and candid in her testimony. She answered questions in a straightforward manner. She accepted full responsibility for her conduct. She did not attempt to deflect blame for her actions or conduct and admitted her wrongdoing. It

is unlikely that respondent will re-engage in the conduct that resulted in her criminal conviction.

14. The conduct that led to respondent's indictment and conviction are very troubling. Her explanation, that she did not carefully review the applications she signed, casts significant doubt on her ability to devote the time and attention required in completing and reviewing complex purchase and sale documents. The fact that her conduct was based partly on misplaced trust of someone she worked with and trusted, does not excuse her significant failures. In mitigation, no disciplinary charges have been filed relating to respondent's competence as related to transactions she completed for clients. An additional mitigating factor is the complete trust placed in her by two real estate licensees who are aware of respondent's criminal conviction and have offered her positions in their real estate offices if her broker's license is renewed.

15. One rehabilitation criteria to be considered is whether respondent has paid restitution for the monetary losses she causes others to suffer. The bureau's counsel noted correctly that this criterion was not met, and, at \$200 per month, would never be met. On this record, denial of respondent's ability to renew her broker's license should not be based on the fact that she has not paid restitution in full. If respondent can renew her license, it is more likely she would be in a financial position to repay more of the restitution than if she were denied that opportunity.

16. The purpose of an administrative proceeding seeking the revocation or suspension of a professional license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

17. Respondent's misconduct and conviction reflects a serious breach of her professional and ethical responsibilities as a real estate licensee. Although she expressed deep remorse and has made good progress towards rehabilitation, the severity of her conduct and their consequences to others is insufficient to support a renewal of her broker's license. A broker is held to a higher standard for honesty and competence and operates with little or no oversight. Given the severity of respondent's conduct and that it involved engaging in fraud directly related to her obligations as a real estate licensee, she has not achieved a level of rehabilitation sufficient to allow respondent to apply for a restricted or non-restricted broker's license.

However, on this record, including evidence of mitigation and rehabilitation, an appropriate level of discipline is to revoke all of respondent's licenses and licensing rights, but permit respondent to apply for a restricted real estate salesperson license where she will be subject to oversight by a licensed real estate broker during a period of probation. This discipline, including appropriate terms and conditions of probation, will serve to protect the interests of the public.

The Reasonable Costs of Investigation and Prosecution

18. Under Business and Professions Code section 10106, complainant may request that an administrative law judge “direct a licentiate found to have committed a violation . . . to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.” “A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the commissioner or the commissioner’s designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case.” (Bus. & Prof. Code, § 10106, subd. (a) and (c).)

19. The Office of Administrative Hearings has enacted regulations for use when evaluating the bureau’s request for costs. (Cal. Code Regs., tit. 1, § 1042.) Under the regulations, a cost request must be accompanied by a declaration or certification of costs that “contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs . . .” (Cal. Code Regs., tit. 1, § 1042, subd. (b).) For services provided by a person who is a regular agency employee, the declaration must be executed by the agency or its designee and describe the general tasks performed, the time spent on each task, and the method of calculating the cost. (Cal. Code Regs., tit. 1, § 1042, subd. (b)(1).)

The bureau sought \$178 in attorney costs. This amount is reasonable.

The bureau sought \$1,180.30 for the costs of the investigation by Special Investigator Kathryn Stanbra. Although some of the descriptions of tasks performed were vague, i.e., “Deputy Review,” the Certified Statement of Investigation Costs signed by Ms. Kilpatrick and the attached billing records contained sufficient descriptions of the general tasks performed, the time spent on each task on each day and the method used to calculate the costs. The costs claimed for investigative tasks are reasonable

20. Another consideration in determining costs is *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32. In *Zuckerman*, the California Supreme Court decided, in part, that in order to determine whether the reasonable costs of investigation and enforcement should be awarded or reduced, the Administrative Law Judge must decide: (a) whether the licensee has been successful at hearing in getting charges dismissed or reduced; (b) the licensee’s subjective good faith belief in the merits of his or her position; (c) whether the licensee has raised a colorable challenge to the proposed discipline; (d) the financial ability of the licensee to pay; and (e) whether the scope of the investigation was appropriate to the alleged misconduct.

The reasonable and sufficiently supported costs are \$1,358.30. In this case, the scope of the investigation was appropriate to the alleged misconduct and the 2013 conviction was established. Respondent maintained a good faith belief in the merits of her position, and she presented evidence justifying the issuance of a restricted license, which, while serious, was a lesser disciplinary order than that sought by complainant. Respondent presented evidence of financial challenges that will affect her ability to pay the full amount of reasonable costs.

After an appropriate consideration of *Zuckerman*, it is determined that the costs should be reduced by 25 percent, and respondent should pay investigation and enforcement costs in the amount of \$1,018.74.

ORDER

1. All licenses and licensing rights of Respondent Vincina G. Morineau under the Real Estate Laws are revoked; provided, however, that respondent may apply for, and be issued, a restricted real estate salesperson license pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 60 days from the effective date of this Decision. If a restricted license is issued to respondent it shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.

3. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

4. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until three years have elapsed from the effective date of this Decision.

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

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

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

6. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the

most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

7. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of respondent's license until respondent passes the examination.

8. Respondent shall, prior to the issuance of the restricted license and as a condition of the issuance of said restricted license, make payment to the Commissioner the amount of \$1,018.74 as reimbursement for reasonable costs of investigation and prosecution of the Accusation.

9. Respondent shall obey all federal, state, local laws, including all real estate laws and regulations. Respondent shall comply with all court orders, including the order of restitution in United States of America v. Vincina Morineau, Case No. 11CR3486 – JAH. Failure to obey to obey all laws, other than minor traffic infractions, and failure to comply with any court order shall be grounds for suspension or revocation of respondent's restricted license.

10. Respondent shall provide a copy of this Decision to the United States Attorney's Office located in San Diego, California, or other agency overseeing the restitution order referred to in condition 8, above. Within 30 days after the issuance of a restricted license, and at least every six months thereafter, respondent shall file with the Commissioner or his designee, evidence of the required restitution payments. On a yearly basis commencing January 30, 2018, respondent shall provide evidence of income for the prior year to the United States Attorney's Office located in San Diego, California, for a determination of whether the required monthly payment of restitution should be increased. Respondent shall notify the Commissioner if there are any changes in the order of restitution, including any change in the amount of the required monthly restitution payments.

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11. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of respondent's arrest, the crime for which respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

DATED: December 12, 2016

DocuSigned by:
Susan J. Boyle
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SUSAN J. BOYLE
Administrative Law Judge
Office of Administrative Hearings