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FILED

JUN 13 2012

DEPARTMENT OF REAL ESTATE

By R. M. H.

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

JOHN STEPHEN LUCAS,
Respondent.

NO. H-5666 SAC
OAH NO. 2011091017

ORDER DENYING RECONSIDERATION

On April 26, 2012, a Decision was rendered in the above-entitled matter to become effective May 21, 2012 (herein "the Decision").

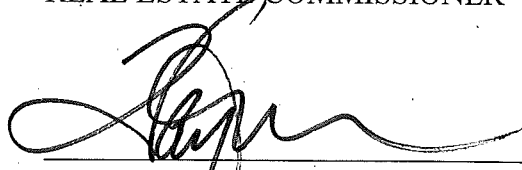
On May 3, 2012, Respondent requested a stay for the purpose of filing a petition for reconsideration of the Decision, and on May 4, 2012 the Real Estate Commissioner filed an "Order Staying Effective Date" which stayed the effective date of the Decision until 12:00 noon on June 20, 2012.

I have given due consideration to this matter, and I find no good cause to reconsider the Decision. Reconsideration is hereby denied.

IT IS HEREBY ORDERED

6/13/2012

REAL ESTATE COMMISSIONER



By WAYNE S. BELL
Chief Counsel

FILED

APR 30 2012

DEPARTMENT OF REAL ESTATE

By K. Mat

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
)	NO. H-5666 SAC
JOHN STEPHEN LUCAS,)	
)	OAH NO. 2011091017
Respondent.)	
_____)	

DECISION

The Proposed Decision dated March 23, 2012, 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.

The Decision suspends or revokes the real estate license and/or license rights on grounds of a conviction of a crime.

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.

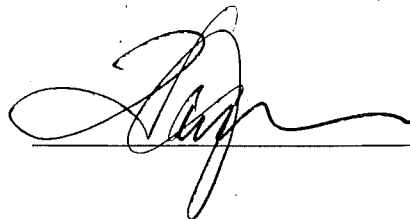
This Decision shall become effective at 12 o'clock noon on

MAY 21 2012

IT IS SO ORDERED

4/26/2012

REAL ESTATE COMMISSIONER



By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JOHN STEPHEN LUCAS,

Respondent.

Case No. H-5666 SAC

OAH No. 2011091017

PROPOSED DECISION

This matter was heard before Rebecca M. Westmore, Administrative Law Judge, Office of Administrative Hearings, State of California, on March 12, 2012, in Sacramento, California.

Rachel McCammon, Legal Intern, assisted by Annette E. Ferrante, Real Estate Counsel, represented complainant, Tricia D. Sommers, a Deputy Real Estate Commissioner with the Department of Real Estate (department).

There was no appearance by or on behalf of respondent, John Stephen Lucas.

Evidence was received, the record was closed, and the matter was submitted for decision on March 12, 2012.

FACTUAL FINDINGS

1. Respondent is currently licensed and has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) as a real estate salesperson (License Number S01408920). Respondent's license will expire on April 9, 2012, unless renewed.

2. On August 12, 2011, complainant filed the Accusation in her official capacity. Complainant seeks to revoke respondent's real estate salesperson license based upon his 2009 criminal conviction.

3. Respondent timely filed a Notice of Defense to the Accusation, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

4. The Notice of Hearing was properly served on respondent at the address listed on respondent's Notice of Defense. Despite proper service of the Notice of Hearing, respondent did not appear and was not otherwise represented at hearing. Upon proof of compliance with Government Code sections 11505 and 11509, the matter proceeded as a default hearing against respondent, pursuant to Government Code section 11520.

Criminal Conviction

5. On November 12, 2009, in Placer County Superior Court, Case No. 41-150037, respondent, upon a plea of nolo contendere, was convicted of violating Vehicle Code sections 4462.5, failure to display registration tags with intent to avoid compliance with vehicle registration requirements, a misdemeanor, and 4000, subdivision (a), failure to register a vehicle, an infraction. Imposition of sentence was suspended, and respondent was placed on three years conditional probation, and ordered to pay \$340 in fines and fees.

6. In his Conviction Detail Report dated June 5, 2011, respondent explained that "[t]he above crime was committed [sic] under financial duress. I was not practicing real estate at the time. Rather I was working as a laborer for a general contractor. The pay was low and hours were scarce. He offered the false tags which I accepted. Had I known the severity of this, I would have choose [sic] an alternative."

Factors in Aggravation, Mitigation and Rehabilitation

7. In his Conviction Detail Report, respondent stated "[i]n an effort to gain better employment I quit the labor job and received a MBA. Looking to better myself and become an upstanding individual among society."

LEGAL CONCLUSIONS

Applicable Statutes and Regulations

1. The burden of proof in this matter is on complainant to show by clear and convincing evidence to a reasonable certainty that respondent's license and licensing rights should be suspended or revoked. (See *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-6.)

2. Business and Professions Code section 490 provides, in pertinent part, that "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."

3. Business and Professions Code section 10177, subdivision (b), provides, in pertinent part, that the commissioner may suspend or revoke the license of a real estate

licensee who has “[e]ntered a plea of guilty or nolo contendere to ... a crime substantially related to the qualifications, functions, or duties of a real estate licensee”

4. In California Code of Regulations, title 10, section 2910, the department has set forth criteria for determining whether a conviction is substantially related to the qualifications, functions or duties of a licensee. Subdivision (a) of section 2910, in relevant part, provides that a conviction will be deemed to be substantially related if it evidences:

[¶] ... [¶]

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

[¶] ... [¶]

(7) Willfully violating or failing to comply with a statutory requirement that a license, permit or other entitlement be obtained from a duly constituted public authority before engaging in a business or course of conduct.

(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.

[¶] ... [¶]

Cause for Discipline

5. Respondent’s conduct in failing to display registration tags with intent to avoid compliance with vehicle registration requirements, and failing to register a vehicle, demonstrates dishonesty, and a violation of a statutory requirement, both with intent to confer a financial benefit on respondent. Therefore, they are substantially related to the qualifications, functions, and duties of a real estate salesperson pursuant to California Code of Regulations, title 10, section 2910, subdivisions (a)(4), (a)(7) and (a)(8). Consequently, cause exists to discipline respondent’s real estate salesperson license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), in conjunction with California Code of Regulations, title 10, section 2910, subdivision (a).

Fitness for Continued Licensure

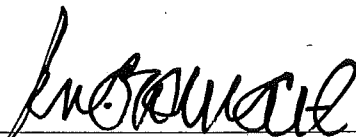
6. The determination whether a person is fit for continued licensure should be made only after consideration of the conduct of the licensee and consideration of any factors introduced in justification, aggravation or mitigation. “The licensee, of course, should be permitted to introduce evidence of extenuating circumstances by way of mitigation or

explanation, as well as any evidence of rehabilitation.” (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449; *Brandt v. Fox* (1979) 90 Cal.App.3d 737, 747). Respondent’s written statement was given no weight because he did not appear at hearing. In addition, because respondent did not appear at the hearing, there was no evidence presented to explain, justify or mitigate the established violations, or to evaluate his rehabilitation.

ORDER

All licenses and licensing rights of respondent John Stephen Lucas, under the Real Estate Law, are REVOKED.

DATED: March 23, 2012



REBECCA M. WESTMORE
Administrative Law Judge
Office of Administrative Hearings