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AUG - 9 2011

DEPARTMENT OF REAL ESTATE  
BY: D. Valeri

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )	NO. H-36949 LA
)	
ROBERT ELMER LIVINGSTON, )	L-2011010887
)	
Respondent. )	
_____ )	

DECISION

The Proposed Decision dated June 22, 2011, 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:

Factual Findings, Page 1, Paragraph 2, Line 3: "January 5, 2011" shall read: "December 2, 2010".

This Decision shall become effective at 12 o'clock noon on AUG 30 2011.

IT IS SO ORDERED 7/12/11

BARBARA J. BIGBY  
Acting Real Estate Commissioner

*Barbara J. Bigby*

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

ROBERT ELMER LIVINGSTON,

Respondent.

Case No. H-36949 LA

OAH No. 2011010887

**PROPOSED DECISION**

Michael R. Diliberto, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on June 2, 2011, in Los Angeles, California.

James A. Demus, Real Estate Counsel, represented Maria Suarez (Complainant) Department of Real Estate (Department).

Daryl B. Thompson, Esq. represented Robert Elmer Livingston (Respondent), who appeared at the hearing.

Oral and documentary evidence was received and the matter was submitted for decision on June 2, 2011. The Administrative Law Judge makes his factual findings, legal conclusions and orders as follows.

**FACTUAL FINDINGS**

1. Complainant Maria Suarez, Deputy Real Estate Commissioner of the State of California, filed the Accusation in her official capacity.
2. Respondent has been licensed as a real estate salesperson since July 27, 2004. Respondent's license will expire on July 26, 2012, unless renewed. The Accusation was filed on ~~January 5, 2011~~ *December 9, 2010*. Respondent requested a hearing, and this hearing ensued.  
Criminal Conviction
3. On November 9, 2009, in the United States District Court, District of Nevada, in Case No. 2:09-cr-0046-KJD-LRL, Respondent was convicted, after his plea of guilty, of violating Title 18, United States Code, section 4 (misprision of a felony), a felony. The court

placed Respondent on probation for a term of four years with various terms and conditions, including an order to not consummate any financial contracts without the approval of the probation officer and to have no contact with the co-defendants involved in the crime. He was ordered to pay a fine and assessment in the sum of \$5,100, to make restitution (joint and several) in the sum of \$779,642.70, and to forfeit the sum of \$250,000, representing Respondent's commission for his part of the conspiracy.

4. The facts and circumstances underlying the conviction are that in or about November 2005 through approximately December 2007, a conspiracy to commit bank fraud and mail fraud was committed by using "straw" buyers to purchase real estate with falsely inflated purchase prices to obtain money from financial institutions. Respondent knew about the conspiracy, failed to notify the authorities, and took steps to conceal the crime. After his conviction, Respondent signed a plea agreement in which he agreed, among other terms, that he was guilty of misprision of a felony and that the United States could prove facts sufficient to establish his guilt beyond a reasonable doubt. He also agreed, under penalty of perjury, that the specific facts of the conspiracy and his affirmative steps to conceal the scheme, as identified in the plea agreement, were true and correct. At hearing, Respondent denied having knowledge of the scheme, taking affirmative steps to conceal the scheme and earning a commission from the scheme, all of which contradicts his guilty plea and the facts that he stated were true and correct under penalty of perjury in his plea agreement. Respondent was engaged in the real estate business as a real estate salesperson representing the seller of the properties when he committed this crime.

#### Rehabilitation

5. Respondent's conviction occurred less than two years ago and he is still on probation for his crime, with just less than two and one-half years of probation remaining. His current employing broker is Robert M. Fitch. Respondent pays ten percent of his salary per month to the court towards his court-ordered restitution, and has paid approximately \$20,000 to date. He has paid no monies under the forfeiture order. Respondent is 46 years old with a bachelor degree in business management and earned credits towards a masters degree in special education. He graduated from the Riverside Sheriff's Academy and worked for the San Fernando Police Department for almost 12 years. He retired from law enforcement and formed a cable television installation company in 1996, which he sold in 2001. He worked as a substitute teacher from 2001 to 2004. This is the first disciplinary action against his real estate license since receiving his license in July 2004. He has resided in Corona for 34 years and has participated in activities for charities and community events.

## LEGAL CONCLUSIONS

### Applicable Law

1. Business and Professions Code section 10177, subdivision (b), in conjunction with Business and Professions Code section 490, subdivision (a), allows the Commissioner of Real Estate to suspend or revoke a license when the licensee has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee.

### Substantial Relationship

2. California Code of Regulations, title 10, section 2910, defines acts or instances that shall be deemed substantially related to the qualifications, functions, or duties of a licensee, to be considered in determining whether to suspend or revoke a real estate salesperson's license. Under California Code of Regulations, title 10, section 2910, the following conduct, among other conduct, is substantially related to the qualifications, functions, or duties of a real estate salesperson: employing fraud, deceit, falsehood or misrepresentation to achieve an end (Cal. Code Reg., tit. 10, § 2910, subd. (a)(4)), and doing any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator (Cal. Code Reg., tit. 10, § 2910, subd. (a)(8)).

### Cause for Denial

3. Cause exists to suspend or revoke Respondent's license pursuant to Business and Professions Code section 10177, subdivision (b), in conjunction with Business and Professions Code section 490, subdivision (a), in that he was convicted of a crime substantially related to the qualifications, functions, or duties of a licensee. (Factual Findings 3-4 and Legal Conclusion 2.)

### Criteria for Rehabilitation

4. Having found that Respondent's criminal conduct is substantially related to the qualifications, functions, or duties of a real estate salesperson, it must be determined whether Respondent has been rehabilitated from his criminal conduct that is the basis to suspend or revoke the license. California Code of Regulations, title 10, section 2912, provides the criteria to evaluate the rehabilitation of a licensee, in considering whether or not to suspend or revoke the license based on a crime committed by the licensee.

5. Respondent has not satisfied the Department's applicable criteria for rehabilitation. Less than two years have passed since the date of Respondent's conviction (Cal. Code of Regs., tit. 10, § 2912, subd. (a)), and the court-ordered restitution and order of

forfeiture has not been paid in full (Cal. Code of Regs., tit. 10, § 2912, subd. (b)). The conviction is not expunged (Cal. Code of Regs., tit. 10, § 2912, subd. (c)), and Respondent remains on probation for another two years and five months for his crime (Cal. Code of Regs., tit. 10, § 2912, subd. (e)). Respondent's denial of his conduct at hearing shows a reluctance to acknowledge his criminal conduct and indicates lack of a significant change in attitude from when he committed his offense. The fact that Respondent was willing to admit his crime under penalty of perjury in the federal action and then deny his crime in this hearing shows a lack of credibility. In addition, Respondent's background of almost 12 years in law enforcement leads to the conclusion that he should have known better and that he purposely committed the crime. These facts also indicate that he has not taken full responsibility for his conduct. (Cal. Code of Regs., tit. 10, § 2912, subd. (m.) (Factual Findings 3-5.)

6. Fundamental character traits for a real estate licensee include honesty, integrity and trustworthiness. Licensees have access to the homes, finances and property of others and are entrusted by the public to provide advice for what may be the most financially complex investment in a person's lifetime. Taking into consideration the totality of the evidence, and the absence of sufficient evidence of rehabilitation, Respondent's real estate salesperson license must be revoked. Respondent is encouraged to complete the rehabilitative process, and in the event of a new application, document such progress and provide full disclosure to the Department.

ORDER

The real estate salesperson license of Respondent Robert Elmer Livingston is revoked.

DATED: June 22, 2011



MICHAEL R. DILIBERTO

Administrative Law Judge

Office of Administrative Hearings

**FILED**

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DEC -2 2010

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DEPARTMENT OF REAL ESTATE  
BY: Jama B. Dion

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )	No. H-36949 LA
)	
ROBERT ELMER LIVINGSTON, )	<u>A C C U S A T I O N</u>
)	
Respondent. )	
_____ )	

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against ROBERT ELMER LIVINGSTON, a.k.a. Robert E. Livingston ("Respondent") alleges as follows:

1.

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in her official capacity.

2.

Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code ("Code"), as a real estate salesperson.

1 3.

2 On or about November 9, 2009, in the United States  
3 District Court, District of Nevada, in case no. 2:09-cr-0046-  
4 KJD-LRL, Respondent was convicted of violating 18 USC § 4  
5 (misprision of a felony). Said crime bears a substantial  
6 relationship under Section 2910, Title 10, Chapter 6, California  
7 Code of Regulations to the qualifications, functions or duties  
8 of a real estate licensee.

9 4.

10 The crime of which Respondent was convicted, as  
11 described in Paragraph 3 above, constitutes cause under Sections  
12 490 and 10177(b) of the Code for the suspension or revocation of  
13 the license and license rights of Respondent under the Real  
14 Estate Law.

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1           WHEREFORE, Complainant prays that a hearing be  
2 conducted on the allegations of this Accusation and that upon  
3 proof thereof, a decision be rendered imposing disciplinary  
4 action against all the licenses and license rights of  
5 Respondent, ROBERT ELMER LIVINGSTON, under the Real Estate Law  
6 (Part 1 of Division 4 of the Business and Professions Code) and  
7 for such other and further relief as may be proper under other  
8 applicable provisions of law.

9 Dated at Los Angeles, California

10 this 2nd day of December, 2010.

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13 Maria Suarez  
14 Deputy Real Estate Commissioner  
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25 cc: ROBERT ELMER LIVINGSTON  
26 Robert M. Fitch  
27 Maria Suarez  
Sacto.