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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

BY: *[Signature]*

In the Matter of the Accusation of)	DRE No. H-38201 LA
)	
RAPHAEL JAY MARGOLIN,)	OAH No. 2012070570
)	
)	
)	
Respondent.)	
_____)	

DECISION

The Proposed Decision dated February 13, 2013, 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 Proposed Decision:

Factual Findings, Page 3, Number 7, Line 6, "victiym's" is corrected to read "victim's."

Order, "Respondent Raphael Jay Margolin's license rights under the Real Estate Law are revoked." Is corrected to read "Respondent Raphael Jay Margolin's license and license rights under the Real Estate Law are revoked."

The Decision suspends or revokes one or more real estate licenses on grounds of the 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 April 8, 2013.

IT IS SO ORDERED 3/12/2013

Real Estate Commissioner

[Signature]

WAYNE S. BELL

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

Raphael Jay Margolin,

Respondent.

Case No. H-38201 LA

OAH No. 2012070570

PROPOSED DECISION

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on January 14, 2013.

Diane Lee, Staff Counsel, represented Complainant Maria Suarez, Deputy Real Estate Commissioner in the Department of Real Estate (Department).

Respondent Raphael Margolin represented himself.

At the hearing, the Accusation was amended to add paragraph 5, which alleges revocation of respondent's teaching credential. Oral and documentary evidence was received and the matter was submitted January 14, 2013.

The Department of Real Estate brings this Accusation to revoke Respondent's real estate salesperson license. For the reasons set out below, the license is revoked.

FACTUAL FINDINGS

Jurisdiction and Background

1. Complainant issued this Accusation in her official capacity.
2. Respondent was a licensed real estate salesperson from September 3, 2004, until his license expired September 2, 2012. On June 15, 2012, the Department brought this Accusation to revoke respondent's license, and he timely requested a hearing.

Criminal Conviction

3. On July 21, 2009, in Orange County Superior Court case number 08CM06951, respondent was convicted on his guilty plea of engaging in a lewd or dissolute act in public (Pen. Code §647, subd. (a)), a misdemeanor. While working as a substitute teacher, he took

pictures of a 17-year-old student. According to the police report, respondent admitted that he took about five pictures of her—all of them focused on her breasts—with his cell phone. Respondent was fined \$150 and placed on three years of formal probation, conditions of which included sex offender counseling, limitations on his contact with minors, and surrender of his teaching credential.

Revocation of Teaching Credential

4. During its meeting of December 9 and 10, 2009, the California Commission on Teacher Credentialing revoked respondent's teaching credential because of the conviction described in Factual Finding 3. Minutes of the meeting contain a section headed "Mandatory Actions," which listed 60 teachers whose credentials had been revoked or whose applications for credentials had been denied. The section was introduced with a sentence saying, "All certification documents held by and applications filed by the following individuals were mandatorily revoked or denied pursuant to Education Code sections 44346, 44346.1, 44424, 44425 and 44425.5, which require the California Commission on Teacher Credentialing to mandatorily revoke the credentials held by individuals convicted of specified crimes and to mandatorily deny applications submitted by individuals convicted of specified crimes." Respondent's name was on the list. There was no evidence that he, or any of the persons on the list, had been given notice or an opportunity for hearing before revocation. Respondent testified at hearing that his credential had been revoked.

Mitigation, Aggravation and Rehabilitation

5. Respondent completed probation, including the required sex offender counseling. His conviction was dismissed under Penal Code section 1203.4 on June 15, 2012, about a month before the three-year probation period would have ended.

6. The incident leading to the conviction took place February 11, 2008, when respondent was covering a class at El Modena High School in Orange. He was exchanging text messages with a friend who asked whether there were any attractive girls in the class. Respondent testified at hearing that he took several pictures of the victim, but his testimony was vague about the nature of the pictures, and respondent was evasive when asked about the pictures, or about whether the girl was uncomfortable or asked to leave the room. Respondent eventually testified that he let the girl leave the room because a teacher's aide told him the girl was uncomfortable with what was happening. Hearsay statements by the teacher's aide and the victim supplement this evidence in that they both said the teacher's aide intervened and told the victim she could leave the classroom. Respondent testified that when the school principal and assistant principal asked to see his phone a few hours later, he refused to allow them to look at it. At hearing, he testified that he thought he should talk to a lawyer first. He did not explain why he thought he should consult a lawyer, but his testimony may be explained by the police report's hearsay statement by the assistant principal relating that respondent said there was something compromising on the phone. Respondent told the police that he did not surrender the phone because he was concerned that he would not get it back. He testified at hearing that he smashed his phone with a hammer

within 24 hours of the incident. He told the police that he had driven to another high school—he did not recall which one—and thrown the phone in a trash can.

7. At hearing, respondent's testimony about the incident was difficult to understand. Although he said several times that he made a grave error in judgment when he took the pictures, he was not forthcoming about what exactly he did. His testimony paralleled the interview he had with police after the incident, in which he at first denied taking pictures at all, saying only "they accused me of trying to take a picture down somebody's top," but eventually admitted that he had repeatedly photographed the ^{victim's} ~~victim's~~ breasts. His testimony about the incident created doubts about his credibility.

8. Respondent's first marriage ended in 2005. His daughter from that marriage is now eight years old. He remarried in April 2011. He still associates with the friend with whom he was exchanging text messages during the incident that led to his conviction.

9. Respondent is 42 years old and does not work in real estate. During the eight years his sales license was in effect, he listed an employing broker with the Department for only about two years, from September 2007 to November 2009. He testified at hearing that he was involved in three transactions while a licensed salesperson, including the sale of his own house. He was a full-time elementary school teacher from 1998 to 2005, then a substitute teacher until 2008. He did bookkeeping work between 2007 and 2010, and now works 25 hours a week at an adult school teaching office administration skills.

10. Respondent volunteers with Integrated Recovery Network, an organization that helps homeless people. Respondent helps them develop job interview skills. He has taken a psychology course at Cypress College since his conviction.

11. Respondent testified at hearing that he suffers from attention deficit and hyperactivity disorder (for which he takes Adderall), bipolar disorder (for which he takes Depakote) and diabetes.

12. Respondent introduced no evidence other than his testimony and a copy of the court order of dismissal under Penal Code section 1203.4.

LEGAL CONCLUSIONS

1. Under Business and Professions Code section 118, subdivision (b), the Bureau retains jurisdiction to bring disciplinary action against expired licenses.

2. There is cause to revoke or suspend respondent's license under Business and Professions Code sections 490 and 10177, subdivision (b),¹ as paragraph 4 of the Accusation alleges. Section 490, subdivision (a) allows a board to revoke a license if the licensee "has been convicted of a crime, if the crime is substantially related to the qualifications, functions,

¹ Further references to the Business and Professions Code are cited as sections.

or duties of the business or profession for which the license was issued.” Section 10177, subdivision (b), which applies specifically to the Department, 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. Sexually victimizing a teenaged girl (Factual Findings 3 and 6) is a substantially related crime under California Code of Regulations title 10, section 2910, subdivision (a)(8),² because it is an “unlawful act with ... the intent or threat of doing substantial injury to the person or property of another.” A licensed salesperson’s job involves being inside residences, so it is a matter of particular concern if a salesperson has been convicted of a crime involving a sexually-motivated intrusion on someone’s person.

3. The revocation of respondent’s teaching credential (Factual Finding 4; Accusation, ¶5) does not create independent cause to discipline his real estate license under section 10177, subdivision (f), which provides that the Department may suspend or revoke a license if the licensee “had a license issued by another agency of this state ... revoked or suspended for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, if the action of denial, revocation, or suspension by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act ... and only upon an express finding of a violation of law by the agency or entity.” Assuming that a teaching credential is a “license” for present purposes, there is no showing that the Commission on Teacher Credentialing afforded respondent an opportunity for hearing or any other due process protections comparable to those of the Administrative Procedure Act when it revoked his credential. (Factual Finding 4.)

4. Respondent has the burden of showing rehabilitation. Respondent has failed to make a strong showing of rehabilitation. His evidence consists almost entirely of his own unsupported testimony, and his confused and evasive testimony about the crime itself (Factual Finding 7) calls his attitude into question and makes it difficult to give great weight to his testimony about other matters.

5. Respondent has met some of the criteria of rehabilitation. More than three years have passed since his conviction. (Factual Finding 3; CCR §2912, subd. (a).) He completed probation (Factual Finding 5; CCR §2912, subd. (e) and had his conviction dismissed under Penal Code section 1203.4 (Factual Finding 5; CCR §2912, subd. (c).) His volunteer work with Integrated Recovery Network volunteer teaching is entitled to some weight as involvement in community programs to provide social benefits (CCR §2912, subd. (l); Factual Finding 10).

6. Respondent’s one psychology course (Factual Finding 10) does not amount to “[c]ompletion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.” (CCR §2912, subd. (k).) Respondent has not shown different social relationships from those existing when he committed the crime (CCR §2912,

² Further references to title 10 of the California Code of Regulations are cited as “CCR.”

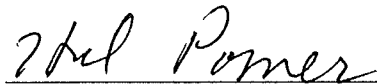
subd. (i)) or “[s]tability of family life and fulfillment of parental and familial responsibilities.” (CCR §2912, subd. (j).) The only evidence on his social relationships is his testimony that he is still friendly with the person he was texting while committing the crime (Factual Findings 6 and 8), and the only evidence on his family relationships is that he was married in 2011. (Factual Finding 8.) There was no evidence of his relationship, personal or financial, with his daughter.

6. Most significantly, respondent’s evasive testimony about the crime (Factual Findings 6 and 7) is inconsistent with a change in attitude from that which existed when he committed the crime. (CCR §2912, subd. (m).) He has not shown that it would be in the public interest to allow him to have a license.

ORDER

Respondent Raphael Jay Margolin’s ^{license and} license rights under the Real Estate Law are
revoked.

DATED: February 13, 2013



HOWARD POSNER
Administrative Law Judge
Office of Administrative Hearings