

**FILED**

SEP 12 2013

BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE  
BY: 

\*\*\*\*\*

In the Matter of the Accusation of	)	BRE No. H-38739 LA
	)	
MICHAEL CAPIZZI,	)	OAH No. 2013040523
	)	
	)	
	)	
Respondent.	)	
_____	)	

DECISION

The Proposed Decision dated August 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.

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  
October 2, 2013

IT IS SO ORDERED 9/12/2013  
REAL ESTATE COMMISSIONER

  
WAYNE BELL

BEFORE THE  
BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

MICHAEL CAPIZZI,

Respondent.

Case No.: H-38739 LA

OAH No.: 2013040523

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on July 16, 2013.

Amelia V. Vetrone, Real Estate Counsel, represented the Complainant.

Respondent appeared and represented himself.

Oral and documentary evidence and evidence by way of official notice was received and the matter then argued and thereafter submitted.

The Administrative Law Judge now finds, concludes and orders as follows:

FACTUAL FINDINGS

*Parties*

1. The Complainant, Veronica Kilpatrick, a Deputy Real Estate Commissioner of the State of California, brought the Accusation in her official capacity.

2. Michael Capizzi, Respondent herein, is presently licensed and has license rights and privileges under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code, as a real estate broker in the State of California.

*Criminal Conviction*

3. On July 17, 2010, Respondent twice made entrance to a residence in La Quinta. The residence was in the process of being "staged" for sale by another licensed real estate

agent. The residence had a digital key box (lock box) to allow trusted entry only by licensed realtors with potential buyers. Respondent's license status allowed him to make entry to the residence.

4. After one of his entrances on said July 17 Respondent stole a Bose sound system from the residence. After police investigation Respondent was arrested for grand-theft on July 25, 2010, and subjected to criminal proceedings resulting in the conviction which follows.

5. On March 4, 2011, in the Superior Court of California, County of Riverside, in Case No. INM10005900, Respondent was convicted of violating Penal Code section 484, subdivision (a) (petty theft), a misdemeanor.

6. As a result of the conviction Respondent was placed on summary probation for 36 months on March 4, 2011, on standard conditions including payments of fines, fees and assessments.

#### *Rehabilitation*

7. Respondent is presently in compliance with all conditions of probation. Probation is set to end on March 3, 2014.

8. Respondent has suffered no other conviction. He is, presently, in compliance with the norms and rules of civil society.

9. Respondent has been a long time licensee of the Department. He has suffered no prior discipline. He was first licensed as a real estate salesperson in 1986 and was originally licensed as a real estate broker in 1992. He has an active Arizona real estate license which has suffered no discipline.

10. Respondent, 53 years old, is self-employed in his own business, MJC Properties. He has productive experience as a manager of an EXXON Mobil retail complex in Palm Desert and as an operator of a used car dealership.

11. Respondent is commended for his good conduct set forth in Findings 7 through 10. The crime however is a crime of moral turpitude. Given such a recent conviction a sustained record of clear and convincing rehabilitation is necessary for continued licensure as a real estate broker. The period of time since the conviction is not sufficient to establish such rehabilitation as is demonstrated in the Findings which follow.

12. There is no evidence by way of documentation of completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement. There is no evidence of new and different social and business relationships from those which existed at the time of the conviction. There is no evidence by way of documentation of any volunteer work.

13. Respondent proffered no evidence either oral or documentary from persons familiar with Respondent's present character. There was no evidence from clients or former clients as to Respondent's trustworthiness in handling or processing real estate transactions before or subsequent to the conviction. There was no evidence from family members or colleagues.

14. Respondent remains on probation. Accordingly, the misdemeanor is yet to be expunged (dismissed) under Penal Code section 1203.4.

### LEGAL CONCLUSIONS

#### *Applicable Statutes and Regulations*

1. Business and Professions Code section 490 provides in pertinent part:

(a) . . . 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. . . .

- - -

2. Business and Professions Code section 10177, subdivision (b) provides:

The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following. . . .

- - -

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime substantially related to the qualifications, functions or duties of a real estate licensee, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under section 1203.4

of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

*Substantial Relationship*

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

---

(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.

---

(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.

---

4. Penal Code section 484 provides in pertinent part:

(a) Every person who shall feloniously steal, take, carry, lead, or drive away the personal property of another, or who shall fraudulently appropriate property which has been entrusted to him or her, or who shall knowingly and designedly, by any

false or fraudulent representation or pretense, defraud any other person of money, labor or real or personal property, or who causes or procures others to report falsely of his or her wealth or mercantile character and by thus imposing upon any person, obtains credit and thereby fraudulently gets or obtains possession of money, or property or obtains the labor or service of another, is guilty of theft. . . .

- - -

5. The necessary elements of Respondent's criminal conduct include the fraudulent obtaining of property belonging to another; the employment of deceit to achieve an end and the doing an unlawful act with the intent of conferring an economic benefit upon the perpetrator. Accordingly, the crime set forth in Finding 5 bears a substantial relationship under California Code of Regulations, title 10, section 2910, subdivisions (a)(1)(2)(4) and (8), to the qualifications, functions or duties of a real estate licensee.

#### *Costs*

6. Business and Professions Code section 10106 provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Bureau, 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 investigation and enforcement of the case.

7. The Bureau, in its prayer, requests for costs of investigation and enforcement as permitted by law. The Complainant proffered no evidence in support of its request for costs under said section 10106.

8. Complainant's request for costs is denied by reason of Legal Conclusion 7.

#### *Violation*

9. Respondent's conviction for the substantially related crime set forth in Finding 5 constitutes cause to discipline his real estate license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b).

---

#### *Penalty Considerations*

10. In any licensing matter the public interest must be considered in that the objective of an administrative proceeding relating to licensing is to protect the public. *Fahmy v. MBC* (1995) 38 Cal. App. 4<sup>th</sup> 810, 817; *Ex Parte Brounsall* (1778) 2 Cowp. 829, 98 Eng. Rep. 1385.


11. With regard to the public interest and public protection California Code of Regulations, title 10, section 2912, sets forth criteria of rehabilitation that have been developed by the Bureau, pursuant to Business and Professions Code section 482, subdivision (a), to evaluate the rehabilitation of a licensee who is subject to disciplinary action on account of a crime or act committed by the Respondent. Respondent has yet to meet all of the criteria of rehabilitation as is demonstrated by Findings 12 through 14.

12. A real estate broker who acts as a fiduciary also acts without supervision. Additionally, the conviction transends a substantially related crime. The conviction is directly related to Respondent's broker license in that he grossly violated the trust of others by his conduct set forth in Findings 3 and 4. Accordingly, in light of the recent crime of theft combined with insufficient rehabilitation to date and a breach of trust, the order which follows is consistent with the public interest. Respondent, in the event of a petition for reinstatement, should document all continued rehabilitative efforts, and provide full disclosure to the Department.

ORDER

All licenses and licensing rights of Michael Capizzi under the Real Estate Law are hereby revoked.

Dated: August 13, 2013

  
RICHARD J. LOPEZ  
Administrative Law Judge  
Office of Administrative Hearings

RJL:ref