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MAY 10 2016

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

VLAD FAYNGOLD,

Respondent.

) CalBRE No. H-39305 LA
) OAH No. 2015030305
)
)
) STIPULATION & AGREEMENT
) AND DECISION AFTER
) REJECTION

The California Bureau of Real Estate ("Bureau") filed an Accusation against VLAD FAYNGOLD ("Respondent") on February 11, 2014. On September 24, 2015, and December 30, 2015, a hearing was held and evidence was received; the case was deemed submitted on December 30, 2015.

On January 28, 2016, the Proposed Decision of Administrative Law Judge Eric Sawyer was issued, and determined, among other things, that Respondent's real estate broker license should be revoked; provided, however, Respondent should be issued a restricted real

1 estate broker license by the Real Estate Commissioner ("Commissioner") pursuant to section
2 10156.5 of the Business and Professions Code ("Code").

3 On March 7, 2016, the Commissioner rejected the Proposed Decision of January
4 28, 2016.

5 The parties wish to settle this matter without further proceedings.

6 IT IS HEREBY STIPULATED by and between Respondent VLAD
7 FAYNGOLD, represented by Frank Buda, Esq., and the Bureau, acting by and through Cheryl
8 Keily, Counsel for the Bureau, as follows for the purpose of settling and disposing of the
9 Accusation filed by the Bureau:

10 I acknowledge that I have received, read and understand the Accusation filed
11 by the Bureau of Real Estate against me on February 11, 2014, and the Statement to
12 Respondent and the Discovery Provisions of the Administrative Procedure Act ("APA") sent
13 to me in connection with the Accusation.

14 I hereby admit that the allegations contained in the Accusation filed against me
15 are true and correct and constitute a basis for the discipline of my real estate broker license. I
16 also hereby admit that the allegations contained in the Accusation filed against me are
17 substantially related to the qualifications, functions or duties of licensee pursuant to Section
18 2910(a)(9) of Title 10, Chapter 6, Code of Regulations.

19 I further acknowledge that the Commissioner held a hearing on this Accusation
20 on September 24, 2015, and December 30, 2015, before the Office of Administrative Hearings
21 for the purpose of proving the allegations therein. I was present at the hearing and represented
22 by Frank Buda, Esq., and participated therein. Further, I have had an opportunity to read and
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1 review the Proposed Decision of the Administrative Law Judge.

2 I understand that pursuant to Government Code Section 11517(c) of the APA,
3 the Commissioner has rejected the Proposed Decision of the Administrative Law Judge. I
4 further understand that pursuant to the same Section 11517(c), the Real Estate Commissioner
5 may decide this case upon the record, including the transcript, without taking any additional
6 evidence, after affording me the opportunity to present written argument to the Commissioner.
7

8 I further understand that by signing this Stipulation and Agreement, I am
9 waiving my right to obtain a dismissal of the Accusation through proceedings under
10 Government Code Section 11517(c) if this Stipulation and Agreement is accepted by the
11 Commissioner. However, I also understand that I am not waiving my rights to further
12 proceedings to obtain a dismissal of the Accusation if this Stipulation and Agreement is not
13 accepted by the Commissioner.
14

15 I hereby request that the Commissioner in his discretion revoke my real estate
16 broker license and issue to me a restricted real estate salesperson license under the authority of
17 Code Section 10156.5 if I make application therefor and pay to the Bureau the appropriate fee
18 for said license within 90 days from the effective date of the Decision herein.
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20 I further understand that the restricted license shall be subject to the provisions
21 of Section 10156.7 of the Code and the following conditions, limitations and restrictions will
22 attach to the restricted license issued by the Bureau.

23 By reason of the foregoing and solely for the purpose of settlement of the
24 Accusation without further administrative proceedings, it is stipulated and agreed that the
25 Commissioner shall adopt the following Order:
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I. The restricted salesperson license issued to Respondent shall be subject to all of
the provisions of Section 10156.7 of the Code and to the following conditions, limitations and
restrictions imposed under the authority of Section 10156.6 of the Code:

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

1 4. Respondent shall submit with any application for license under an employing
2 broker, or any application for transfer to a new employing broker, a statement signed by the
3 prospective employing real estate broker, on a form approved by the Bureau, which shall certify:

4 (a) That the employing broker has read the Decision of the Commissioner
5 which granted the right to a restricted license; and
6

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

10 5. Respondent shall, within nine (9) months from the effective date of this
11 Decision and Order, present evidence satisfactory to the Commissioner that Respondent has,
12 since the most recent issuance of an original or renewal real estate license, taken and
13 successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the
14 Real Estate Law for renewal of a real estate salesperson license. If Respondent fails to satisfy
15 this condition, Respondent's real estate license shall automatically be suspended until
16 Respondent presents evidence satisfactory to the Commissioner of having taken and successfully
17 completed the continuing education requirements. Proof of completion of the continuing
18 education courses must be delivered to the Bureau of Real Estate, Flag Section at P.O. Box
19 137013, Sacramento, California 95813-7013.
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22 6. Respondent shall notify the Commissioner in writing within 72 hours of any
23 arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate, Flag
24 Section at P.O. Box 137013, Sacramento, California 95813-7013. The letter shall set forth the
25 date of Respondent's arrest, the crime for which Respondent was arrested and the name and
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1 address of the arresting law enforcement agency. Respondent's failure to timely file written
2 notice shall constitute an independent violation of the terms of the restricted license and shall be
3 grounds for the suspension or revocation of that license.

4 II. Respondent shall pay the Bureau its costs of investigation and enforcement in
5 the amount of \$3,868.95 within 60 days of the effective date of this Decision.
6

7 DATED: April 6, 2016

8 Cheryl D. Keily
9 CHERYL D. KEILY, Counsel
10 BUREAU OF REAL ESTATE

11 I have read the Stipulation and Waiver and its terms are agreeable and acceptable to me.
12 I understand that I am waiving my rights given to me by the California Administrative
13 Procedure Act (including but not limited to Section 11506, 11508, 11509, and 11513 of the
14 Government Code), and I willingly, intelligently, and voluntarily waive those rights.

15 Respondent can signify acceptance and approval of the terms and conditions of
16 this Stipulation and Agreement by faxing a copy of its signature page, as actually signed by
17 Respondent, to the Bureau at the following telephone/fax number (213) 576-6917. Respondent
18 agrees, acknowledges, and understands that by electronically sending to the Bureau a fax copy
19 of his actual signature as it appears on the Stipulation and Agreement, that receipt of the faxed
20 copy by the Bureau shall be as binding on Respondent as if the Bureau had received the original
21 signed Stipulation and Agreement.

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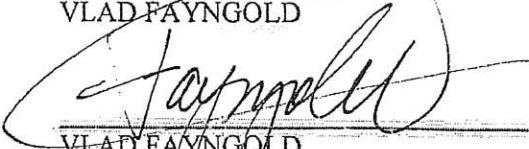
1 I have reviewed the Stipulation and Agreement as to form and content and have
2 advised my client accordingly.

3
4 DATED: 3-31-16



5 Frank Buda, Esq.
6 Attorney for Respondent
7 VLAD FAYNGOLD

8 DATED: 3/28/16



9 VLAD FAYNGOLD
10 Respondent

11 ***

12 The foregoing Stipulation and Agreement is hereby adopted as my Decision in
13 this matter and shall become effective at 12 o'clock noon on MAY 30, 2016.

14 IT IS SO ORDERED May 9, 2016.

15
16 WAYNE S. BELL

17 Real Estate Commissioner

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FILE

FILED

MAR 08 2016

BUREAU OF REAL ESTATE

By *[Signature]*

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

VLAD J. FAYNGOLD,

Respondent.

) CalBRE No. H-39305 LA

) OAH No. **2015030305**

NOTICE

TO: VLAD J. FAYNGOLD, Respondent, and FRANK M. BUDA, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated January 28, 2016, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated January 28, 2016, is attached hereto for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on December 30, 2015, and any written argument hereafter submitted on behalf of respondent and complainant.

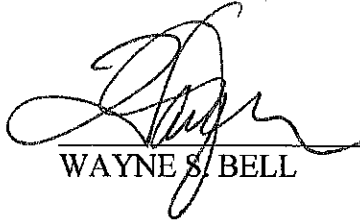
Written argument of respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of December 30, 2015, at the Los Angeles

1 office of the Bureau of Real Estate unless an extension of the time is granted for good cause shown.

2 Written argument of complainant to be considered by me must be submitted within
3 15 days after receipt of the argument of respondent at the Los Angeles Office of the Bureau of Real
4 Estate unless an extension of the time is granted for good cause shown.

5 DATED: 3/7/2016.

6 REAL ESTATE COMMISSIONER

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9 WAYNE S. BELL

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

FILED

MAR 08 2016

BUREAU OF REAL ESTATE

BY *[Signature]*

In the Matter of the Accusation Against:

VLAD J. FAYNGOLD,
a.k.a. Vlad Gold

Case No. H-39305 LA

OAH No. 2015030305

Respondent.

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on September 24, 2015, and December 30, 2015, in Los Angeles.

Cheryl D. Kelly, Real Estate Counsel, represented Maria Suarez (complainant).

Frank M. Buda, Esq., represented Vlad J. Fayngold, a.k.a. Vlad Gold (respondent), who was present.

The record was held open for respondent to submit photographs, which were received the same day the hearing concluded, and were marked and admitted (without objection) as exhibit K. The ALJ also marked for identification as exhibit L a certified copy of the transcript from the first day of the hearing submitted by respondent. The record was closed and the matter submitted for decision on December 30, 2015.

SUMMARY

Complainant seeks to discipline respondent's real estate broker license based on a 2013 misdemeanor trespass conviction resulting from a nolo contendere plea. Complainant contends the actions underlying the conviction demonstrate respondent actually committed theft or shoplifting. Respondent argues the conviction was the result of a misunderstanding and that he committed no crime. As discussed below, respondent's trespass conviction constituted a willful violation of a court order (his probation from a prior federal court conviction) and therefore is substantially related to the qualifications, functions or duties of a real estate broker. Due to his turbulent past licensing history and moderate level of rehabilitation, a restricted real estate broker license is warranted with a costs order.

FACTUAL FINDINGS

The following facts were established by clear and convincing evidence to a reasonable certainty (see Legal Conclusion 1):

Parties and Jurisdiction

1. Complainant brought the Accusation in her official capacity as a Deputy Real Estate Commissioner for the Bureau of Real Estate (Bureau). Respondent timely submitted a Notice of Defense, which contained a request for a hearing to contest the Accusation.

2. Respondent's real estate broker license was first issued on June 19, 2002; it is scheduled to expire on February 25, 2017, unless renewed.

Respondent's Prior Licensing Background

3. Before obtaining his real estate broker license (broker license), respondent became a licensed attorney with the State Bar of California (State Bar) in 1999.

4. In a Confidential – Interview Information Statement respondent completed in connection with this case, he advised the Bureau of his resignation from the State Bar and voluntary surrender of his broker license in May 2004 “because of a misdemeanor accessory guilty plea in 2003 and failure to disclose the pending criminal case to the Department of Real Estate on the Corporate Broker's license application.” (Ex. 10, p. 3.) Respondent clarified the prior misdemeanor conviction was for violating Penal Code section 32 (accessory to a felony after-the-fact). (Ex. 10, p. 4; Ex. 3E.)

5. Respondent successfully petitioned for reinstatement of his broker license, which was reissued as of May 19, 2007.

6. A. On February 1, 2010, in the United States District Court, Central District of California, respondent pled guilty to and was convicted of violating title 18 United States Code sections 1341 (mail fraud) and 2 (causing an act to be done). Respondent was placed on supervised release for three years under various terms, including that he pay \$852,365 restitution to the victim(s) of his crimes, as well as a \$20,000 fine. Respondent's supervised release terminated on June 3, 2013.

B. The events underlying the conviction occurred from June 2008 through August 2008, just over one year from when his broker's license had been reissued. Respondent and others used the mail system to engage in a credit card fraud scheme to purchase hotel accommodations and luxury items, such as watches, in foreign countries. Respondent was arrested and detained in Switzerland for approximately one year, before

being returned to the United States for the prosecution of the above-described criminal case in federal court.¹

7. Respondent allowed his broker license to expire on May 18, 2011.

8. On February 2, 2013, respondent signed and submitted to the Bureau a broker renewal application. By respondent's own admission during the hearing, he intentionally submitted his renewal application the day after expiration of the limitations period for the Bureau to take administrative action against him for his federal conviction.

9. The Bureau renewed respondent's broker license as of February 26, 2013.

Respondent's 2013 Trespass Conviction

10. A. On January 23, 2013, in the Superior Court of the State of California, Los Angeles County, respondent pled nolo contendere to, and was convicted of, one count of trespass in violation of Penal Code section 602, subdivision (d), a misdemeanor.²

B. Imposition of sentence was suspended and respondent was placed on summary probation for two years under certain terms and conditions, including that he serve one day in jail (less credit for one day served), pay fines and fees totaling \$240 and make restitution to the victim of his crime (Target) in the sum of \$1,009.20. Respondent paid his fines, fees and restitution, and his probation was terminated after only four months.

C. On May 29, 2013, the court granted respondent's motion pursuant to Penal Code section 1203.4 and expunged his conviction.

11. As a result of his misdemeanor trespass conviction, the federal court found respondent in violation of the terms of his supervised release, and ordered his supervised release extended for three additional months. (Respondent's testimony; Ex. 8, pp. 20-21.)

¹ The Accusation does not allege the federal conviction as cause for discipline, but only as "aggravation." The sole basis for discipline alleged is respondent's 2013 trespass conviction described in more detail below.

² The court's docket print-out shows respondent was convicted of violating Penal Code 602, subdivision (d). (Ex. 4, pp. 3-4.) But a fine payment receipt created by a court clerk shows respondent's conviction was for "602(l) PC." (Ex. 3F, p. 2.) Respondent has also stated on several other documents that he was convicted of violating section 602, subdivision (l). The court's docket print-out is deemed to be a more accurate and reliable recitation of the crime for which respondent was convicted. In any event, all forms of trespass enumerated in section 602, including subdivisions (d) and (l), involve a person "who willfully commits a trespass." As applied to this case, the difference between the two subdivisions is without substantive distinction.

12. The facts and circumstances of respondent's conviction, which occurred on May 17, 2012, are the primary subject of dispute in this case. Respondent was arrested and prosecuted for entering a Target store and committing commercial burglary for essentially stealing two expensive vacuum cleaners through the ruse of an exchange of the same items purchased earlier that morning. He has denied at all times doing so and maintains he bought two new vacuum cleaners, returned them to Target after finding both were defective and left with two replacement vacuums after being advised to do so by Target employees. His case was resolved by a plea bargain to the crime of trespass as discussed above.

13. A. Normally, a nolo contendere plea to a misdemeanor conviction cannot be used against the defendant as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution was based. (Pen. Code, § 1016, subd. 3.) However, the Legislature expressly allows the Bureau, and many other licensing boards, to take disciplinary action against a licensee convicted of a felony or substantially related crime based on a nolo contendere plea. (Bus & Prof. Code, §§ 490, subd. (c); 10177, subd. (b).) Thus, the Bureau may premise discipline on respondent's misdemeanor trespass conviction entered as a result of his nolo contendere plea.

B. Regardless of the various motives which may have compelled a nolo contendere plea, the conviction which was based thereon stands as conclusive evidence of the licensee's guilt of the offense charged. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.) Based on the above, respondent's conviction of Penal Code section 602, subdivision (d), establishes that on May 17, 2012, respondent willfully trespassed on Target property.

C. The record of conviction shall be conclusive evidence of the fact that the conviction occurred, but only of that fact; the licensing board in question may nonetheless inquire into the circumstances surrounding the commission of the crime in order to determine if the conviction is substantially related to the qualifications, functions or duties of a licensee. (Bus & Prof. Code, § 493.) In this case, both parties actively seek to establish respondent's actions underlying his trespass conviction: complainant, to prove respondent committed shoplifting or theft; respondent, to prove the entire incident was a misunderstanding.

14. The following facts are not in dispute. On the afternoon of May 17, 2012, respondent purchased two different vacuum cleaners for a total amount of \$1,009.20, using his father's credit card. Each vacuum was in its own box, one smaller than the other. He returned to the same Target later that evening carrying only one box. He approached Target employee Rolando Milan at the Customer Service desk and asked to exchange the vacuums because there was something wrong with them. He gave Milan the purchase receipt from earlier that day and left the box with him. Milan placed the box on the floor behind the desk but did not open or otherwise inspect the contents. Respondent was told to go find the new vacuums from inside the store. Respondent found two vacuums matching the ones he purchased earlier that day. Respondent spoke to a Target security guard near an exit before he left. He left the store carrying out two new vacuums but did not return to Mr. Milan.

15. Complainant presented evidence she argued showed respondent committed theft on the day in question. Primarily, two Target loss prevention employees, Julia Santamaria and Magaly Patino, both testified Mr. Milan had instructed respondent to return to the Customer Service desk after he found the replacement vacuums; respondent never returned to Mr. Milan; the one vacuum box left by respondent was opened hours later; the box contained parts for only one vacuum instead of two; the vacuum parts inside were old and had signs of substantial wear; and the parts were for a vacuum that was no longer sold at that Target store. Ms. Santamaria and Ms. Patino both concluded respondent had used a ruse to steal two additional vacuums from Target in the early evening by exchanging one, old, used vacuum no longer carried by Target.

16. Respondent offered a different version of the events. He testified as follows. He purchased the vacuums with his father's credit card. One vacuum, the larger of the two, was for his elderly parents; the smaller vacuum he would keep to clean up pet hair at his home. He later discovered both boxes were taped up as if they had been resealed. After walking his dog, he opened the smaller box first and discovered a brush was missing. After opening the larger box, he found a used vacuum inside. He called Target and spoke to the store manager, who told him to bring the items back for an exchange. He had previously thrown the smaller box down a trash chute in his building and was not able to retrieve it. So he put all the parts for both vacuums in the one larger box. He went to Target that evening carrying one box and approached Mr. Milan at the Customer Service desk. Mr. Milan advised him to find two replacement vacuums. Respondent left the larger box with Mr. Milan. Respondent was able to locate both vacuums from the store. He made contact with a store security guard. After explaining the situation, the security guard told him he could leave the store. Respondent did so, thinking he did not need to contact Mr. Milan again.

17. After considering all the evidence, it was not established respondent committed theft or shoplifting on the day in question. This finding is based primarily on the following two dynamics:

A. The evidence in support of complainant's version was undercut to some degree by deficiencies in the evidence emanating from Target. For example, there were a number of material conflicts and inconsistencies in the declarations and testimony of Target loss prevention employees Santamaria and Patino. Mr. Milan was a critical witness to the events in question but he was not presented; he still works for Target. The store security guard was also a potential key witness. He was easily identified by law enforcement officers who investigated the matter. He was not presented either. Target disposed of the box returned by respondent soon after the events in question and photographs taken of its contents are not comprehensive. Neither Target loss prevention employee took out the contents and tried to reassemble them. Thus, it is not clear what exactly respondent returned.

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B. Respondent presented evidence tending to corroborate his version of events. For example, respondent's explanation has remained consistent, beginning with what he told law enforcement officers investigating the case, his explanation to the Bureau and his testimony during the hearing. His live-in fiancé, who was present when respondent brought the vacuum cleaners home from initial purchase, testified and corroborated respondent's version. Respondent presented a telephone bill corroborating he called the Target store at the time he indicates. Both Mr. Milan and the store security guard confirmed to the police respondent had contacted them about exchanging the items. Respondent left with Target staff the sales receipt and the box with parts in it, inviting the question why he would leave behind incriminating evidence if he was involved in a theft scheme. Respondent physically demonstrated during the hearing how parts from both vacuums, after the packaging material was removed, could fit within the one larger box. Finally, evidence was presented indicating Target has, in the past, sold to customers items that had been used or materially different from what was displayed on the box.

Other Relevant Evidence

18. Respondent's license is affiliated with Keller Williams in Beverly Hills. He and his fiancé are some of that office's top producers, which has garnered awards for them. Respondent presented character reference letters from a handful of clients which corroborated his testimony that he does well for his customers.

19. Not long ago, respondent legally changed his name to Vlad Gold. He testified he did so because he wants to start a new life and does not want his past to haunt him. He had not formally advised the Bureau of his name change.

20. A. Respondent has suffered from depression for several years. By 2010, he was diagnosed with Major Depressive Disorder, recurrent, and prescribed anti-depressant medications by psychiatrist Eleanor Lavretsky. In 2010, respondent also began psychotherapy with Michael Peck, a clinical and forensic psychologist. Respondent has continued psychotherapy with Dr. Peck until the present time. In total, respondent has spent approximately 450 hours in psychotherapy. Dr. Peck believes respondent's depression is currently in remission. Although respondent continues with psychotherapy, he no longer takes anti-depressant medications.

B. Dr. Peck testified in this case. He opined respondent's depression was a major reason he committed crimes leading to the federal conviction, in that respondent viewed "the caper" as exciting and a way to avoid his depression. At the time, respondent's career was spotty. Now that respondent has found success in real estate, and is involved in a loving relationship (see below), Dr. Peck believes respondent is no longer depressed. The psychotherapy has also provided respondent with tools to deal with any symptoms should they arise. Dr. Peck also believes respondent now has a good support network in place should any more serious problem surface. For these reasons, Dr. Peck concludes respondent is not likely to become depressed and commit a crime in the future.

21. The Bureau has developed criteria for evaluating the rehabilitation of a licensee convicted of a crime. (Cal. Code Regs., tit. 10, § 2912.) With respect to respondent's 2013 trespass conviction (which is the sole ground alleged for discipline), the applicable criteria are analyzed as follows:

A. More than two years have passed since respondent's conviction. (Criterion (a).)

B. Respondent fully paid the fines and restitution, successfully completed probation and had his conviction expunged. (Criteria (b), (c), (e) & (g).)

C. Respondent is involved in a stable and loving relationship with his fiancé. He lives with his fiancé and her daughter from a previous relationship. Respondent treats his fiancé's daughter as his own and they get along well. Respondent supports his elderly parents morally and financially. He enjoys a good relationship with his sister. (Criterion (j).)

D. Respondent is significantly involved in the community through attendance at his synagogue and his efforts to assist with its holiday fundraising. (Criterion (l).)

E. Respondent does not believe he committed any crime at Target. He does not believe he trespassed on Target property; he pled to that charge as part of his plea bargain. He testified his sole mistake was not returning to Mr. Milan after finding the two replacement vacuums. (Dr. Peck similarly testified he does not believe respondent committed a crime at Target.) Overall, it was not shown respondent has experienced a change in attitude since he committed his crime of trespass. (Criterion (m).)

22. The Bureau incurred reasonable costs in the investigation and enforcement of this matter in the amount of \$3,868.95.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant has the burden of proving cause for discipline by clear and convincing evidence to a reasonable certainty. (*The Grubb Co., Inc. v. Dept. of Real Estate* (2011) 194 Cal.App.4th 1494, 1505; *Ettinger v. Board of Med. Quality Assurance* (1982) 135 Cal.App.3d 853, 857.)

Cause for Discipline

2. A. The Bureau may discipline a licensee who has been convicted of a felony or a crime substantially related to the qualifications, functions or duties of a real estate licensee. (Bus & Prof. Code, §§ 490, subd. (c); 10177, subd. (b).)

B. The Bureau has established criteria to be used in determining whether a crime is substantially related to the qualifications, functions or duties of a real estate licensee. (Cal. Code Regs., tit. 10, § 2910.) In this case, complainant argues two criteria apply: "willful failure to comply with a court order" (§ 2910, subd. (a)(9)) and "conduct which demonstrates a pattern of repeated and willful disregard of the law" (§ 2910, subd. (a)(10)).

3. A. In this case, it was established that respondent's 2013 trespass conviction is substantially related to the qualifications, functions or duties of a real estate licensee. When respondent was convicted of trespass in 2013, he was on supervised release from his federal conviction, which was a court order containing various terms and conditions of which respondent was required to obey and comply. The federal court specifically found respondent's trespass conviction constituted a violation of his supervised release and warranted additional sanctions. The elements of respondent's trespass conviction included that his conduct was willful. Under these circumstances, it was established respondent willfully violated a court order within the meaning of California Code of Regulations, title 10, section (Regulation) 2910, subdivision (a)(9).

B. However, it was not established that respondent's 2013 trespass conviction is substantially related pursuant to Regulation section 2910, subdivision (a)(10). Complainant argues the fact the trespass conviction also violated the supervised release in the federal case demonstrated a pattern of repeated and willful disregard of the law. However, it cannot be concluded that one act (willful trespass) which violated two sets of laws (the California Penal Code and respondent's federal supervised release) should be viewed as repeated actions for purposes of this regulation. Complainant did not argue the federal conviction itself should be viewed as one of a pattern of acts demonstrating repeated disregard of the law.

C. Though much time was spent litigating the events underlying respondent's trespass conviction, complainant does not argue any other criteria demonstrating a substantial relationship recited in Regulation section 2910 apply. Since it was not established respondent committed theft or shoplifting at Target, none of the criteria related to theft, dishonesty or unlawful acts for personal gain apply.

4. Based on the above, cause for disciplinary action against respondent's real estate broker license was established pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), because his 2013 trespass conviction is substantially related to the qualifications, functions or duties of a real estate broker within the meaning of Regulation 2910, subdivision (a)(9). (Factual Findings 1-17.)

Disposition

5. A. Since cause for discipline is based on respondent's 2013 trespass conviction, which violated a federal order, the level of discipline should be related to those events, while also considering respondent's licensing history with the Bureau and his rehabilitation.

B. Standing alone, respondent's trespass conviction demonstrates he willfully violated a court order. Bureau licensees must respect and obey all laws; willfully violating a federal court order therefore undercuts a core duty of a licensee and is concerning. In mitigation, respondent's willful violation of his federal supervised release was a result of events at Target that were not proven to involve theft, shoplifting or an unlawful act for the sake of personal gain. Thus, respondent's misconduct is viewed as moderate, and not so severe as to warrant revocation of his license.

C. However, respondent has had a turbulent licensing history with the Bureau indicating serious discipline is still warranted. Specifically, respondent surrendered his broker license due to a misdemeanor conviction in 2003. A little more than one year after having his license reinstated in 2007, respondent committed crimes in 2008 leading to his federal conviction in 2010. Respondent allowed his broker license to expire and then, in a calculating manner, sought to renew it after the limitations period ran on administrative action for the federal conviction. The Bureau's most recent reissuance of respondent's broker license was one month after his 2013 trespass conviction. Thus, respondent has yet to demonstrate that he can hold his broker license without incident.

D. On the other hand, respondent has demonstrated a moderate level of rehabilitation in the three years since his 2013 trespass conviction. Yet, his good behavior since his conviction is off-set by the fact he has a more complicated criminal record and licensing history with the Bureau. His depression is in remission and he is taking steps to keep it that way, which are all encouraging signs. But while it is understandable respondent is not remorseful about the events at Target given the evidence of the underlying events presented, there is still pause created by the fact his attitude has not changed much since those events. The other indicia of rehabilitation presented are modest if not encouraging, but fall short of being completely satisfactory given respondent's complicated history. Under these circumstances, the public will be most adequately protected by allowing respondent to retain a restricted license for a period of time long enough for him to demonstrate his complete rehabilitation. (Factual Findings 1-21.)

6. Business and Professions Code section 10106 provides, in part, that in any order issued in resolution of a disciplinary proceeding before the Bureau, the Real Estate Commissioner may request the administrative law judge to direct a licensee found to have violated the Real Estate Law to pay the reasonable costs of the investigation and enforcement of the action. In this case, it was found respondent violated the Real Estate Law. He therefore is liable for the reasonable costs of the investigation and enforcement of this action in the amount of \$3,868.95. (Factual Finding 22.)

ORDER

All licenses and licensing rights of respondent Vlad J. Fayngold, a.k.a. Vlad Gold, under the Real Estate Law, are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to Section 10156.5 of the Business and

Professions Code if respondent makes application therefor and pays to the Bureau of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent 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:

1. 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.

2. 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.

3. 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.

4. 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.

5. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Bureau 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.

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6. Respondent shall pay costs of the investigation and prosecution of this matter in the amount of \$3,868.95 to the Bureau of Real Estate within 30 days of the effective date of this decision.

DATED: January 28, 2016

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ERIC SAWYER,
Administrative Law Judge
Office of Administrative Hearings