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DEC 18 2015

BUREAU OF REAL ESTATE

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BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	No. H-39726 LA
)	
DANTE ERIN UNDERWOOD,)	OAH No. 2015030091
)	
Respondent.)	
)	

STIPULATION AND AGREEMENT AND DECISION AFTER REJECTION

It is hereby stipulated by and between Respondent DANTE ERIN UNDERWOOD (herein "Respondent"), acting by and through Frank M. Buda, and the Complainant, acting by and through Steve Chu, Counsel for the Bureau of Real Estate ("Bureau"), as follows for the purpose of settling and disposing of the Accusation filed on February 2, 2015, in this matter:

1. On July 16, 2015, a formal hearing was held on the Accusation in accordance with the provisions of the Administrative Procedure Act ("APA") before Administrative Law Judge Howard Posner ("ALJ Posner") where, after evidence and testimony were received, the record was closed and the matter was submitted for decision.
2. On September 3, 2015, ALJ Posner issued a Proposed Decision.
3. On October 6, 2015, the Commissioner rejected the Proposed Decision.
4. The parties wish to settle this matter without further proceedings.

1 5. Respondent, pursuant to the limitations set forth below, hereby admits
2 that the factual allegations in the Accusation filed in this proceeding are true and correct and the
3 Commissioner shall not be required to provide further evidence to prove such allegations.

4 6. It is understood by the parties that the Commissioner may adopt the
5 Stipulation and Agreement and Decision After Rejection ("Stipulation and Agreement") as his
6 decision in this matter thereby imposing the penalty and sanctions on Respondent's real estate
7 license and license rights as set forth in the below Order. In the event the Commissioner, in his
8 discretion, does not adopt the Stipulation and Agreement, the Stipulation and Agreement shall
9 be void and of no effect. If that occurs, the Commissioner will proceed pursuant to
10 Section 11517(c)(2)(E) of the California Government Code.

11 7. The Order or any subsequent Order of the Commissioner made pursuant
12 to this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further
13 administrative or civil proceedings by the Bureau with respect to any matters which were not
14 specifically alleged to be causes for the Accusation in this proceeding as admitted or
15 withdrawn.

16 DETERMINATION OF ISSUES

17 By reason of the foregoing stipulations, admissions, and waivers, and solely for
18 the purpose of settlement of the pending Accusation without further proceedings, it is stipulated
19 and agreed that the following Determination of Issues shall be made:

20 The acts and/or omissions of Respondent DANTE ERIN UNDERWOOD, as
21 described in the Accusation, violated Sections 10177(b) (conviction of a crime) and 10186.2
22 (failure to report conviction) of the California Business and Professions Code ("Code").

23 ORDER

24 All licenses and licensing rights of Respondent DANTE ERIN UNDERWOOD
25 under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson
26 license shall be issued to Respondent pursuant to Section 10156.5 of the Code if Respondent
27 makes application therefor and pays to the Bureau the appropriate fee for the restricted license

1 within ninety (90) days from the effective date of this Decision. The restricted license issued to
2 Respondent shall be subject to all of the provisions of Section 10156.7 of the Code and to the
3 following limitations, conditions, and restrictions imposed under Section 10156.6 of the Code:

4 1. The restricted license issued to Respondent may be suspended prior to
5 hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or
6 plea of nolo contendere to a crime which is substantially related to Respondent's fitness or
7 capacity as a real estate licensee.

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

13 3. Respondent shall not be eligible to apply for the issuance of an
14 unrestricted real estate license nor for the removal of any of the conditions, limitations or
15 restrictions of a restricted license until three (3) years have elapsed from the effective date of
16 this Decision and Order.

17 4. Respondent shall submit with any application for license under an
18 employing broker, or any application for transfer to a new employing broker, a statement signed
19 by the prospective employing real estate broker, on a form approved by the Bureau of Real
20 Estate, which shall certify:

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

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

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1 5. Respondent shall, within nine (9) months from the effective date of this
2 Decision and Order, present evidence satisfactory to the Commissioner that Respondent has,
3 since the most recent issuance of an original or renewal real estate license, taken and
4 successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the
5 Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this
6 condition, Respondent's real estate license shall automatically be suspended until Respondent
7 presents evidence satisfactory to the Commissioner of having taken and successfully completed
8 the continuing education requirements. Proof of completion of the continuing education
9 courses must be delivered to the Bureau of Real Estate, Flag Section at P.O. Box 137013,
10 Sacramento, CA 95813-7013.

11 6. Respondent shall notify the Commissioner in writing within 72 hours of
12 any arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate,
13 Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013. The letter shall set forth the
14 date of Respondent's arrest, the crime for which Respondent was arrested and the name and
15 address of the arresting law enforcement agency. Respondent's failure to timely file written
16 notice shall constitute an independent violation of the terms of the restricted license and shall
17 be grounds for the suspension or revocation of that license.

18 7. All licenses and licensing rights of Respondent will be indefinitely
19 suspended on September 1, 2016, unless or until Respondent pays the sum of \$1,831 for the
20 Commissioner's reasonable cost of the investigation and enforcement which led to this
21 disciplinary action. Said payment shall be in the form of a cashier's check made payable to the
22 Bureau of Real Estate. The investigative and enforcement costs must be delivered to the
23 Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to
24 September 1, 2016.

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26 DATED: 12-2-2015


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Steve Chu, Counsel
Bureau of Real Estate

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I have read the Stipulation and Agreement. I understand that I am waiving rights given to me by the California Administrative Procedure Act, (including but not limited to Sections 11521 and 11523 of the Government Code), and I willingly, intelligently, and voluntarily waive those rights, including the right to seek reconsideration and the right to seek judicial review of the Commissioner's Decision and Order by way of a writ of mandate. I can signify acceptance and approval of the terms and conditions of this Stipulation and Agreement by faxing a copy of the signature page, as actually signed by me, to the Bureau at fax number (213) 576-6917. I agree, acknowledge and understand that by electronically sending to the Bureau a fax copy of my actual signature as it appears on this Stipulation and Agreement, that receipt of the faxed copy by the Bureau shall be as binding on me as if the Bureau had received the original signed Stipulation and Agreement.

DATED: 11/30/2015



DANTE ERIN UNDERWOOD
Respondent

DATED: 12-3-15



Frank M. Buda
Counsel for Respondent
Approved as to Form

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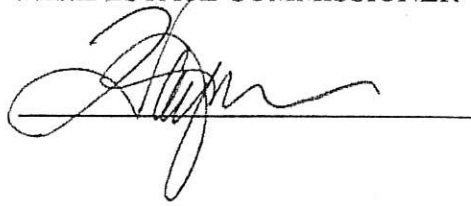
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The foregoing Stipulation and Agreement is hereby adopted by me as my
Decision in this matter as to Respondent DANTE ERIN UNDERWOOD, and shall become
effective at 12 o'clock noon on January 7, 2016.

IT IS SO ORDERED 12/18/2015

WAYNE S. BELL
REAL ESTATE COMMISSIONER

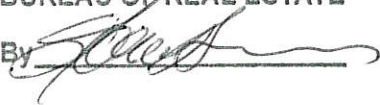


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FILED

OCT 12 2015

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of	}	Case No. H-39726 LA
DANTE ERIN UNDERWOOD,	}	OAH No. 2015030091
Respondent.	}	

NOTICE

TO: DANTE ERIN UNDERWOOD, Respondent, and FRANK M. BUDA, Esq., his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated September 3, 2015, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated September 3, 2015, is attached 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 July 16, 2015, 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 July 16, 2015, at the

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

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

6 DATED: 10/6/2015

7 REAL ESTATE COMMISSIONER

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10 WAYNE S. BELL

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

FILED


OCT 12 2015

BUREAU OF REAL ESTATE

In the Matter of the Accusation of:

DANTE ERIN UNDERWOOD,

Respondent.

Case No. H-39726 LA 

OAH No. 2015030091

PROPOSED DECISION

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on July 16, 2015.

Steve Chu, Staff Counsel, represented Complainant Maria Suarez, Deputy Real Estate Commissioner in the Bureau of Real Estate (Bureau).

Respondent was present at the hearing, represented by attorney Frank M. Buda.

Oral and documentary evidence was received at the hearing. The record was left open until August 7, 2015, to allow Respondent to submit evidence that his conviction was expunged. The court document was submitted and admitted without objection as Respondent's exhibit K, and the matter was submitted August 7, 2015.

Complainant brings this Accusation to revoke Respondent's real estate salesperson license. For the reasons set out below, the license is revoked, but Respondent may apply for a restricted license.

FACTUAL FINDINGS

Jurisdiction and Background

1. Complainant issued this Accusation in her official capacity.
2. Respondent has been licensed continually as a real estate salesperson since April 9, 2008. The license expires April 8, 2016. On February 2, 2016, Complainant brought this Accusation to revoke his license, and Respondent timely requested a hearing.

Criminal Conviction

3. On October 30, 2012, in the Superior Court of California, County of Los Angeles, case number 2BR01993, Respondent was convicted on his no contest plea of petty theft (Pen. Code, § 484, subd. (a)), a misdemeanor. While working at Burbank Airport as a gate operations agent for Southwest Airlines on the evening of February 20, 2012, Respondent kept an iPad that a passenger had left behind in a seatback compartment. He was fined \$240, ordered to complete 30 days of community labor and pay \$749.80 in restitution to the victim, and placed on summary probation for three years.

Mitigation, Aggravation and Rehabilitation

4. Respondent paid the required restitution and completed the community labor by November 6, 2013. The court terminated his probation four months early on June 17, 2015, and dismissed the conviction under Penal Code section 1203.4 on July 29, 2015.

5. Respondent has no other convictions and no history of license discipline.

6. Respondent no longer works for Southwest Airlines. He has worked as a full-time real estate salesperson for about two years. Since February 2012, he has closed about 10 sales transactions and five lease transactions. He is licensed to Pasadena Market Center dba Keller Williams Pasadena. Ken Parsons, its broker of record, described respondent as a consummate professional who has never acted dishonestly in a business situation. Parsons is aware of Respondent's conviction and failure to report it, and is willing to supervise him closely if his license is restricted.

7. Since May 1, 2013, Respondent has been attending a course in commercial real estate offered by Marcus & Millichap, which has offered him a sales position in its Encino office. Respondent submitted a letter from Jim Markel, an associate regional manager with Marcus & Millichap, who is aware of Respondent's conviction and failure to report it, opined that he is honest and trustworthy, and noted that Respondent would spend two years as a junior agent with mentors and senior agents assisting him.

8. Kenneth Wright, a client who leased a house in Fontana with Respondent's assistance, praised Respondent's attention to detail and described him as ethical and trustworthy. Wright was aware of the conviction and failure to report it.

9. Respondent worked in disaster relief for the Federal Emergency Management Agency in the aftermath of Hurricane Katrina, taking identification from victims and directing them to relief and lodging.

10. Respondent is 35 years old. He is married with two young children. His wife wrote a letter in support of Respondent, stating that he was hard working and ethical. A character letter from a spouse is not always meaningful, but Respondent's wife was a co-defendant in his criminal case because he gave the iPad to her without telling her it was stolen, and they are still together three years later.

11. Respondent is involved in several faith-based community and charitable activities. He is a member of Abundant Harvest Christian Center, and volunteers as a camera operator recording its services. Every four or five months, he participates with Christians in Action, providing "ministering and lunch" to homeless persons in Pasadena or downtown Los Angeles. He is involved with Iron Sharpens Iron, a faith-based male mentoring organization. He films its annual meetings and takes part in discussion groups, where he has talked about his conviction. He submitted a letter from Anthony McFarland, pastor of Abundant Harvest Christian Center, who lauded Respondent's character and participation in church activities generally but conveyed little specific information. Respondent also submitted a letter from Benjamin Drone, a pastor in Akron, Ohio, where Respondent grew up. Respondent stays in touch with Drone by phone and visits him when he goes back to Akron to see his grandmother. Drone emphasized that Respondent is a hard-working person who has often worked several jobs, even when in school, and is concerned with being a good provider for his family. He wrote Respondent has expressed remorse for his conviction.

12. Respondent appeared to be forthcoming in his testimony, and made a credible witness.

Failure to Report Conviction

13. Respondent did not report his conviction to the Bureau. He testified at hearing that his criminal attorney said he would handle reporting the conviction, and Respondent believed his attorney had taken care of the notification. The story of attorney negligence is more credible than such stories often are: Rodney Bickerstaff, the attorney who represented Respondent in the criminal case from September 2012 until some time between August 2013 and March 2014, was ordered inactive in a disciplinary action on April 19, 2013, and disbarred on May 11, 2013.

Costs

14. Complainant introduced evidence that it incurred \$1,217 in investigation costs, most of it consisting of 19.5 investigator hours (at \$62 per hour) spent obtaining police reports, communicating with Respondent's attorney, interviewing Respondent and drafting the Accusation. Complainant also introduced evidence that it incurred enforcement costs of \$614, consisting of 6.9 hours of attorney Steve Chu's time at \$89 per hour. All these costs are reasonable.

LEGAL CONCLUSIONS

1. There is cause to revoke or suspend Respondent's license under Business and Professions Code sections 490 and 10177, subdivision (b),¹ as paragraph 5 of the Accusation alleges. Section 490, subdivision (a) allows a board to revoke a license if the licensee "has

¹ Further references to section or "§" are to the Business and Professions Code, unless preceded by "CCR," which refers to the title 10 of the California Code of Regulations.

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." Section 10177, subdivision (b), which applies specifically to the Bureau, 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. Petty theft (Factual Finding 3) is a substantially related crime under CCR section 2910, subdivision (a)(8), because it is an "unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator[.]"

2. As paragraph 6 of the Accusation alleges, there is cause to revoke or suspend Respondent's license under section 10186.2, which requires a licensee to report "the conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor" to the Bureau in writing within 30 days of the conviction. Failure to report is cause for discipline. (§ 10186.2, subd. (b).) Respondent did not report his conviction to the Bureau. (Factual Finding 13.)

3. Respondent has the burden of showing rehabilitation. He meets the applicable criteria of rehabilitation set out in CCR section 2912:

a. Two years have passed since his conviction. (CCR §2912, subd. (a); Factual Finding 3.)

b. He has paid the fine (CCR §2912, subd. (g); Factual finding 4) and paid restitution. (CCR §2912, subd. (b); Factual finding 4.)

c. He has completed probation (CCR §2912, subd. (e); Factual Finding 4) and his conviction has been expunged. (CCR §2912, subd. (c); Factual Finding 4.)

d. He has shown stability of family life and fulfillment of parental and familial responsibilities (CCR §2912, subd. (j); Factual Finding 10.)

e. He has shown significant involvement in programs designed to provide social benefits or to ameliorate social problems. (CCR §2912, subd. (l); Factual Finding 11.)

f. He has shown a change in attitude from that which existed at the time of the crime (CCR §2912, subd. (m)), acknowledging that what he did was wrong, and speaking about it in public. (Factual Finding 11.)

4. Respondent's showing of rehabilitation and his unblemished record as licensee are evidence that his continued licensure is not a threat to the public, and his convictions, while serious, do not indicate otherwise. Concerns about his fitness can be addressed by restricting his license.

5. Complainant's costs of investigation and enforcement, totaling \$1,831, are reasonable. (Factual Finding 14.) Respondent testified that he can afford to pay those costs at a rate of \$200 per month, which is also reasonable under the circumstances.

ORDER

All licenses and licensing rights of Respondent Dante Erin Underwood under the Real Estate Law are revoked, but a restricted real estate broker license shall be issued to Respondent under Section 10156.5 of the Business and Professions Code if Respondent applies for, 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 shall be subject to all 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 before 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 before 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, or 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 the 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 pay Complainant its costs of \$1,831 at the rate of \$200 per month, beginning the effective date of this Decision.

DATED: September 3, 2015



HOWARD POSNER

Administrative Law Judge

Office of Administrative Hearings

Not Adopted