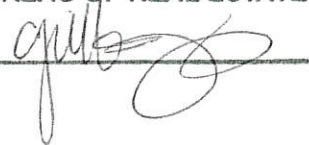


FILED

AUG 27 2015

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	CalBRE No. H-39777 LA
)	
CRISTIAN CECILIA ORELLANA,)	OAH No. 2015040349
)	
Respondent.)	

DECISION

The Proposed Decision dated July 1, 2015 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.

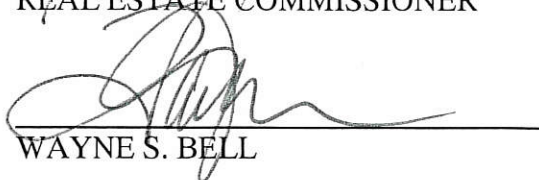
The Decision suspends or revokes one or more real estate licenses.

The right to reinstatement of a revoked real estate license or to the reduction of a penalty 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 SEP 16 2015.

IT IS SO ORDERED 8/13/2015.

REAL ESTATE COMMISSIONER


WAYNE S. BELL

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

In the Matter of the Accusation Against:

CRISTIAN CECILIA ORELLANA aka
CRISTIAN ORELLANA,

Respondent.

Case No. H-39777 LA

OAH No. 2015040349

PROPOSED DECISION

Administrative Law Judge Gloria A. Barrios heard this matter on June 10, 2015, in Los Angeles, California.

Judith Vasan, Staff Counsel for the Bureau of Real Estate (Bureau), represented Maria Suarez (Complainant), Deputy Real Estate Commissioner.

Cristian Cecilia Orellana aka Cristian Orellana (Respondent) was present and represented herself.

The record was closed and the matter was submitted for decision on June 10, 2015.

FACTUAL FINDINGS

1. Complainant brought the Accusation in her official capacity.
2. Respondent has been licensed as a real estate salesperson, license number 01787568, since January 9, 2007. The license expired on January 8, 2015. The license has not been previously disciplined.
3. Business and Professions Code¹ sections 118 and 10103 provide that the Bureau has jurisdiction over Respondent's license even though it has expired.
4. On April 4, 2014, Respondent was convicted, after her plea of nolo contendere, of violating Penal Code section 487, subdivision (a), grand theft of a value

¹ All further statutory references are to the Business and Professions Code except when noted.

exceeding \$400, a misdemeanor (*People v. Cristian Orellana*, Superior Court of the State of California, County of Los Angeles, case number LA077123.) Imposition of sentence was suspended, and Respondent was placed on summary probation for 36 months. Respondent was ordered to serve two days in jail less credit for two days served. She was ordered to pay restitution, fines and fees totaling \$511. The court also ordered Respondent to serve 20 days of community service. Respondent completed the court ordered community service, but is still on probation.

5. The facts and circumstances underlying Respondent's conviction are that on February 10, 2014, Respondent committed fraud and forgery. Respondent, a real estate salesperson, represented a client that purchased a property located in Lancaster. The client deposited \$3,000 into escrow as earnest money. The client cancelled the transaction. Respondent picked up the check made out to her client for \$2,700 representing the escrow deposit minus a \$300 cancellation fee. Respondent deposited the check into her own bank account forging her client's name.

6. Respondent admitted her wrongdoing. She explained that in February 2014 she was broke and depressed. Respondent is divorced and is the sole provider for her three sons and her mother. She needed to pay rent and her car payment. Respondent's former husband did not assist her financially. She intended to pay her client back with a commission on the sale of another property. Respondent eventually repaid her client \$3,000.

7. Respondent was terminated from her job at Century 21 All Moves due to her actions.

8. Respondent did not report her criminal conviction to the Bureau within 30 days as required by Code section 10186.2. She never reported her conviction to the Bureau. (Complainant's Exhibit 5.)

9. Although not alleged in the Accusation, on cross-examination Respondent admitted that she had earlier engaged in fraudulent conduct when she purchased a home through a straw buyer. Respondent had poor credit and was unable to obtain a loan to purchase a home. Although Respondent made the down payment and mortgage payments, her husband's niece legally owned the home. The niece later evicted Respondent and her family.

10. Respondent is an active member of the Jehovah Witnesses. Respondent was born in El Salvador. She became an American citizen in 2008. Respondent is currently employed as a driver for Uber. She earns approximately \$2,000 a month.

11. Complainant introduced evidence as to the cost of its investigation and enforcement pursuant to Code section 10106. The requested total amount is \$1,110.85, which is reasonable under the facts of this case. (Complainant's Exhibit 6.)

LEGAL CONCLUSIONS AND DISCUSSION

1. The standard of proof for the Bureau to prevail on the Accusation is clear and convincing evidence to a reasonable certainty. (See *Borror v. Dept. of Real Estate* (1971) 15 Cal.App.3d 531; *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) This means the burden rests with Complainant to offer proof that is clear, explicit and unequivocal—so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

2. Under Code section 10177, subdivision (b), a real estate licensee may have her license disciplined for conviction of a crime if it is substantially related to the qualifications, functions, or duties of a real estate licensee.

3. Under Code section 490, the Bureau 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.”

4. California Code of Regulations (CCR), title 10, section 2910, subdivision (a)(1), provides that, “fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person,” subdivision (a)(2), “counterfeiting, forging or altering of an instrument or the uttering of a false statement,” and subdivision (a)(4), “the employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end” bear a substantial relationship to the functions, duties and qualifications of a Bureau licensee.

5. The act for which Respondent was convicted (grand theft of a value exceeding \$400) is a crime that falls under CCR, title 10, section 2910, subdivisions (a)(1), (a)(2) and (a)(4) and is thus deemed substantially related to the duties, functions and qualifications of a real estate licensee.

6. Cause exists to impose discipline on Respondent’s real estate salesperson’s license pursuant to Code sections 490 and 10177, subdivision (b), because Respondent has been convicted of a crime which is substantially related to the qualifications, functions, or duties of a real estate salesperson, as set forth in Factual Findings 4 through 5 and Legal Conclusions 2 through 5.

7. Under Code section 10177, subdivision (j), a real estate licensee may have her license disciplined for fraudulent or dishonest conduct.

8. Cause exists to impose discipline on Respondent’s real estate salesperson’s license pursuant to Code section 10177, subdivision (j), because Respondent engaged in fraudulent and dishonest conduct when she forged a client’s check, deposited it into her own bank account and purchased a home using a straw buyer, as set forth in Factual Findings 4 through 5, 9, and Legal Conclusion 7.

9. Under Code section 10186.2, a real estate licensee shall report in writing any conviction she has suffered to the Bureau within 30 days of the conviction, which she failed to do as set forth in Finding 8.

10. "Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee." (*Harrison v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.) "If appellant's offenses reflect unfavorably on his honesty, it may be said he lacks the necessary qualifications to become a real estate salesperson." (*Harrington, supra*, at page 402.) Respondent's failure to inform the Bureau of her criminal conviction within thirty days are grounds to discipline her license under Code section 10186.2.

11. Although cause for discipline exists, it is necessary to determine whether Respondent has been sufficiently rehabilitated to warrant her continued licensure. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.)

12. The Bureau has established criteria for determining rehabilitation from a conviction of a crime sufficient to warrant continued licensure. The criteria, found at CCR, title 10, section 2912, are summarized as follows:

- Subdivision (a), passage of at least 2 years since the conviction or the underlying acts;
- Subdivision (b), restitution;
- Subdivision (c), expungement of the conviction;
- Subdivision (d), expungement of the requirement to register as a sex offender;
- Subdivision (e), completion of, or early discharge from, the criminal probation;
- Subdivision (f), abstinence from drugs or alcohol that contributed to the crime;
- Subdivision (g), payment of any criminal fines or penalties;
- Subdivision (h), correction of business practices causing injury;
- Subdivision (i), new and different social and business relationships;
- Subdivision (j), stability of family life;
- Subdivision (k), enrollment in or completion of educational or training courses;
- Subdivision (l), significant involvement in community, church or private programs for social betterment; and

Subdivision (m), change in attitude from the time of conviction to the present, evidenced by: testimony of the licensee and others, including family members, friends or others familiar with her previous conduct and subsequent attitudes and behavior patterns, or probation or parole officers or law enforcement officials; psychiatric or therapeutic evidence; and absence of subsequent convictions.

13. Respondent provided scant evidence of rehabilitation. She is still on probation and was convicted last year. Insufficient amount of time has passed for Respondent to have

established significant rehabilitation. She completed the court ordered community service. Respondent paid back the victim. However, she is still on probation. Although Respondent admitted her wrongdoing regarding the circumstances of her conviction, she admitted that she had engaged in earlier fraudulent activity when she purchased a home using a straw buyer. Respondent failed to inform the Bureau of her conviction as required by law. Respondent has failed to demonstrate any steps she has taken to ensure that the public will be protected if she was allowed to retain her real estate license.

14. Code section 10106, subdivision (d), provides that the administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case. Under *Zuckerman v. State Board of Chiropractic Examiners*, (2002) 29 Cal. App 4th 32, 45, the agency must exercise its discretion to reduce or eliminate cost awards in a manner which will ensure that the statute does not deter licensees with potentially meritorious claims or defenses from exercising their right to a hearing. "Thus the Board may not assess the full costs of investigation and prosecution when to do so will unfairly penalize a licensee who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed." (*Id.*) The agency in imposing costs in such situations must consider the licensee's subjective good faith in the merits of his position and the Bureau must consider whether or not the licensee has raised a colorable claim. The Bureau should also base its cost recovery order on equitable consideration including Respondent's ability to pay.


15. In this matter Respondent does not have the ability to pay the full requested amount of costs. The record shows that Respondent is providing for her three children, her mother and herself on a monthly income of \$2,000. Accordingly, the amount of costs for which Respondent is responsible will be \$500.

ORDER

1. Real estate salesperson's license number 01787568, and all licensing rights of Respondent Cristian Cecilia Orellana aka Cristian Orellana, are revoked.

2. Respondent shall pay to the Bureau the sum of \$500 at such time and in such manner as the Bureau may, in its discretion, direct.

DATED: July 1, 2015


GLORIA A. BARRIOS
Administrative Law Judge
Office of Administrative Hearings