

FILED

JAN 25 2016

BUREAU OF REAL ESTATE

By *Sybil Garner*

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of HOBAB HENRY LIN, Respondent.))))	CalBRE No. H-39948 LA OAH No. 2015100147
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DECISION

The Proposed Decision dated December 18, 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 FEB 15 2016.

IT IS SO ORDERED 1/15/2016

WAYNE S. BELL
REAL ESTATE COMMISSIONER

Wayne S. Bell

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

HOBAB HARRY LIN,

Respondent.

Case No. H-39948 LA

OAH No. 2015100147

PROPOSED DECISION

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on December 15, 2015, at Los Angeles, California.

Diane Lee, Counsel for the Bureau of Real Estate (Bureau), appeared and represented complainant Maria Suarez, Deputy Real Estate Commissioner of the State of California.

Samuel Park, attorney at law, appeared and represented respondent Hobab Harry Lin, who was also present.

The record was closed and the matter was submitted for decision at the conclusion of the hearing.

FACTUAL FINDINGS

1. On October 18, 2012, the Bureau issued Broker License number B/01886620 to respondent. Respondent's license is valid and will expire on October 17, 2016, unless renewed.
2. Complainant brought the Accusation in her official capacity. Respondent timely submitted a Notice of Defense.
3. On February 13, 2015, respondent entered a plea of nolo contendere and was convicted of transporting and selling a controlled substance in violation of Health and Safety Code section 11379, subdivision (a), a felony. (*People v. Lin* (Super. Ct. Los Angeles County, 2015, No. GA094490).) The imposition of sentence was suspended and the court placed respondent on 36 months of probation under the following terms and conditions. The court ordered respondent to serve 180 days in jail with 9 days of credit, to obey all laws, to pay fines in the total amount of \$370, and to cooperate with his probation officer in a plan for drug treatment and rehabilitation.

4. The conviction arose from an incident on September 5, 2014. A police officer stopped respondent after he made an illegal U-turn. The officer observed that respondent's "hands were shaking and his body was shivering." (Ex. 4.) When asked about his condition, respondent admitted that he had smoked marijuana within the hour. The officer conducted a field sobriety test and searched respondent's vehicle. During the search, respondent "admitted to having 700 pills of ecstasy in his trunk" and the officer "found a large amount of pills contained inside a clear plastic bag." (*Ibid.*)

5. As of April 26, 2015, over two months after his conviction, respondent had not reported his conviction and arrest to the Bureau. The Bureau discovered the conviction through public records and sent respondent a request for an explanation. Upon receipt, respondent promptly completed an Interview Information Statement and Conviction Detail Report and returned it to the Bureau. Respondent explained that he "did not disclose and report to [the Bureau] in hopes that [the Bureau] will not discover arrest and conviction." (Ex. 5.)

6. Prior to the incident, respondent used ecstasy as a recreational drug and, for approximately 10 years, he sold the drug to friends and acquaintances to make extra money. On October 2, 2015, respondent completed a six-month outpatient drug treatment program to comply with the terms of his probation. Having satisfied the court-ordered requirement, respondent is no longer engaging in any formal drug treatment. He abstains from drugs by avoiding the friends who influenced him to use drugs. He lives at home with his parents and is concentrating on conforming to the cultural mores that his parents espouse.

7. Respondent's parents immigrated to the United States in the decade before respondent was born. In the family's Taiwanese culture, according to respondent, any deviant behavior causes severe shame and humiliation. Accordingly, respondent hid his drug use from his parents, but his parents now know about his activities and the conviction. Respondent testified that his parents pressured him not to make the event "a big deal" and to keep the matter private. To date, respondent has concealed his arrest and conviction from most family members and friends.

8. Respondent was born and raised in Monterey Park, California, and excelled academically. He graduated from the University of California at Berkeley with a Bachelor of Science degree in Environmental Economics and Policy. After graduating, he promptly entered the work force and worked full-time. Except for a single verbal reprimand for tardiness, respondent received no employment discipline. Respondent is studying to take the GRE Revised General Test in March 2016 to further his plans to enroll in an advanced degree program in real estate development.

9. Except for the conviction described in Factual Finding 3, there is no evidence that respondent has any criminal record.

10. Respondent presented character reference letters as evidence of rehabilitation. His mother wrote that respondent was raised in a strict and disciplined manner and that respondent "has learned a lot about himself and others" as a result of his conviction. (Ex. C.)

A classmate wrote that respondent "acknowledged . . . that he understands the error of his ways . . . and that he can and will learn from this mistake." Another classmate described respondent as honest and forthright, and wrote: "While [he] has had a horrible lapse in judgment, I firmly believe that he will learn from his mistakes and become a better person for it." His twin brother wrote that respondent "deeply regrets the offense he committed." A friend who has known respondent for 20 years wrote that respondent "truly regrets what he did, and if he could take it back, he would in a second." A real estate licensee, who has known respondent for 12 years, wrote that respondent is "an honest and productive individual." A former classmate, who has known respondent for over 15 years, described respondent as professional, good hearted, and dependable, notwithstanding "his most recent indiscretions." (*Ibid.*)

11. Respondent testified and filed a declaration about his conviction. He described his arrest and criminal conviction as "the lowest point in my life" and he declared that he renounces his past conduct and "intend[s] to abide by the law." (Ex. A.)

12. Complainant incurred \$1,389.50 to investigate the allegations and \$267 to prosecute the case. These costs, in the total amount of \$1,656.50, were reasonable under the facts and circumstances.

LEGAL CONCLUSIONS

1. Complainant has the burden of proving cause for discipline by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.)

2. The Bureau may discipline a licensee if convicted of a crime substantially related to the qualifications, functions, or duties of a real estate broker. (Bus. & Prof. Code, §§ 490, subd. (a), 10177, subdivision (b).)

3. A crime is substantially related to the qualifications, functions or duties of a real estate broker if the unlawful act is done with the intent of conferring a financial or economic benefit upon the perpetrator. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).)

4. A licensee is required to report to the Bureau any felony indictment and conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor. The report must be made in writing within 30 days of the indictment or conviction. The failure to make a report is cause for discipline. (Bus. & Prof. Code, § 10186.2, subs. (a)(2) and (b).)

5. In this case, respondent's felony conviction involved selling ecstasy, a controlled substance. Because respondent engaged in the unlawful act to make extra money, the crime is substantially related to the qualifications, functions, or duties of a real estate licensee. Notwithstanding respondent's cultural pressure to avoid shame and humiliation, he

was obligated to report the indictment and conviction to the Bureau within 30 days to avoid discipline.

6. Cause exists to discipline respondent's license under Business and Professions Code sections 490, 10177, subdivision (b), and 10186.2, subdivision (a). (Factual Findings 1-10.)

7. Respondent must establish rehabilitation under California Code of Regulations, title 10, section 2912. This regulation sets forth criteria developed by the Bureau for the purpose of evaluating the rehabilitation of a licensee when considering the revocation or suspension of the license as the result of a crime committed by the licensee. The criteria includes:

(A) The passage of not less than two years from the most recent criminal conviction that is "substantially related" to the qualifications, functions or duties of a licensee of the Bureau.

(B) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee.

(C) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action.

(D) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Penal Code section 290.

(E) Abstinence from the use of controlled substances or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance or alcohol.

(F) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.

(G) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.

(H) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.

(I) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.

(J) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

(K) Significant and conscientious involvement in community, church, or privately-sponsored programs designed to provide social benefits or to ameliorate social problems

(L) Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by any or all of the following: Testimony of applicant; Evidence from family members, friends, or other persons familiar with the licensee's previous conduct and with subsequent attitudes; Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments; Evidence from psychiatrists, clinical psychologists, sociologists, or other persons competent to testify with regard to neuropsychiatric or emotional disturbances; Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

8. Respondent has presented some evidence of rehabilitation. Character reference letters from family members and friends exhibit a change in respondent's attitude about drug use. He completed a court-ordered substance abuse program and he is no longer associating with friends who influenced his drug activities. He has worked full-time with scant evidence of employment discipline and no evidence of a criminal record. He is actively pursuing formal educational for economic self-improvement by preparing for the GRE Revised General Test in March 2016. Respondent expressed remorse and an intent to abide by the law and abstain from drug activities in the future.

9. However, mere remorse does not demonstrate rehabilitation; stronger evidence of rehabilitation is demonstrated by sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 987.) Less than one year has passed since respondent's conviction and he will remain under court supervision until 2018. Since people have a strong incentive to obey the law while under the supervision of the criminal justice system, little weight is generally placed on testimony of good behavior while on probation. (*In re Gossage* (2000) 23 Cal.4th 1080.) An insufficient period of time has passed to evaluate whether respondent's self-administered regimen to abstain from drug use will be effective to prevent a recurrence.

10. Trafficking drugs is more serious than possessing or using drugs because it involves the intent to corrupt others. (*Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1016.) Considering the seriousness of respondent's misconduct, and the recentness of his conviction, respondent is unable to present persuasive evidence of rehabilitation at this time. Respondent has statutory rights for reinstatement if or when he is able to present more compelling evidence of rehabilitation. (Gov. Code, §11522.)

11. Complainant has met her burden to establish by clear and convincing evidence that the public's interest will be best served and protected by the revocation of respondent's license.

12. Any licensee who violates the law may be assessed and ordered to pay the Bureau's reasonable costs incurred to investigate and prosecute the action. (Bus. & Prof. Code, §10106.)

13. Complainant has presented satisfactory proof that the Bureau incurred reasonable costs in the amount of \$1,656.50 to investigate and enforce the case against respondent. Accordingly, cause exists to award complainant costs in the amount of \$1,656.50 under Business and Professions Code section 10106. (Factual Finding 12.)

ORDER

Complainant's Accusation against respondent is affirmed. Broker license number B/01886620 issued to respondent is revoked.

Complainant shall recover costs from respondent in the amount of \$1,656.50, due and payable in 90 days from the effective date of this decision.

DATED: December 18, 2015

DocuSigned by:
Matthew Goldsby
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MATTHEW GOLDSBY
Administrative Law Judge
Office of Administrative Hearings