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OCT 31 2017

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-40563 LA
JOSE ARTURO ALONSO,)
Respondent.)

ORDER DENYING RECONSIDERATION

On August 31, 2017, a Decision was rendered to become effective September 27, 2017. Said Decision was stayed by separate order to October 27, 2017.

On September 27, 2017, Respondent petitioned for reconsideration of the Decision of August 31, 2017.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of August 31, 2017 and reconsideration is hereby denied.

IT IS SO ORDERED 10/25/17

WAYNE S. BELL
Real Estate Commissioner

Daniel J. Sandri

By: DANIEL J. SANDRI
Chief Deputy Commissioner

FILED

September 27, 2017

BUREAU OF REAL ESTATE

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BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	CalBRE NO. H-40563 LA
JOSE ARTURO ALONSO,)	OAH NO. 2017040134
Respondent(s).)	

ORDER STAYING EFFECTIVE DATE

On August 31, 2017, a Decision was rendered in the above-entitled matter to become effective September 27, 2017.

IT IS HEREBY ORDERED that the effective date of the Decision of August 31, 2017, is stayed for a period of 30 days to allow Respondent JOSE ARTURO ALONSO to file a petition for reconsideration or consider Respondent's petition for reconsideration.

The Decision of August 31, 2017, shall become effective at 12 o' clock noon on October 27, 2017.

DATED: September 27, 2017.

WAYNE S. BELL
REAL ESTATE COMMISSIONER

By: 
DANIEL J. SANDRI
Chief Deputy Commissioner

FILED

SEP - 7 2017

BUREAU OF REAL ESTATE

By *[Signature]*

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of JOSE ARTURO ALONSO, Respondent.))))	CalBRE No. H-40563 LA OAH No. 2017040134
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DECISION

The Proposed Decision dated August 4, 2017, 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.

Pursuant to Section 11517(c)(2) of the Government Code, the following corrections are made to the Proposed Decision.

Findings, Page 1, Paragraph 1, Line 1, "January 27, 2016" shall read: "February 28, 2017".

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

Pursuant to Government Code section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Bureau's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first.

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 Sections 11521 and 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 27 2007

IT IS SO ORDERED

8/31/17

WAYNE S BELL
REAL ESTATE COMMISSIONER



By: DANIEL J. SANDRI
Chief Deputy Commissioner

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

In the Matter of the Accusation Against:

JOSE ARTURO ALONSO,

Respondent.

Case No. H-40563 LA

OAH No. 2017040134

PROPOSED DECISION

Administrative Law Judge Irina Tentser, State of California, Office of Administrative Hearings, heard this matter on July 25, 2017, in Los Angeles, California.

James R. Peel, Counsel, Bureau of Real Estate (Bureau), represented Veronica Kilpatrick (Complainant), a Supervising Special Investigator of the State of California.

Jose Arturo Alonso (respondent) appeared and was represented by Stephen A. Diguseppe, Attorney at Law.

Oral and documentary was received and the matter was submitted on July 25, 2017.

FACTUAL FINDINGS

Procedural Background

1. On ^{February 28, 2017} ~~January 27, 2016~~, Complainant filed the Accusation in her official capacity. Complainant seeks to impose disciplinary action against respondent's real estate salesperson license based on his 2016 felony convictions for conspiracy and grand theft.

2. Respondent was licensed as a real estate salesperson on September 10, 2013. Respondent is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code (Code)). His real estate salesperson's license is scheduled to expire on September 9, 2017.

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Criminal Conviction

3. On August 10, 2016, in the County of Los Angeles, Superior Court of California, case number BA440171, respondent was convicted, by plea of nolo contendere, of violating Penal Code section 182, subdivision (a)(1) (conspiracy), and Penal Code section 487, subdivision (a) (grand theft), felonies.

4. Pursuant to the convictions, the court ordered the imprisonment of respondent in state prison for 40 months. Execution of the sentence was suspended and respondent was placed on formal probation for a period of five years under terms and conditions including that he perform 75 days of community labor and pay assessments, fines, and \$140,263.74 in restitution to the victim.

5. As of the date of the hearing, Respondent has not completed his community labor, has not fully paid restitution to the victim,¹ and continues to be on formal probation until August 2021.

6. Respondent's convictions are substantially related to the functions and duties of a real estate licensee because they involve his ongoing perpetration of an unlawful act motivated for financial gain in willful disregard for the law.

7. The facts and circumstances underlying respondent's convictions are as follows: Between July 1, 2009 and November 1, 2011, respondent and Vilma Maria Escobar (Escobar), an escrow officer then employed by A.C.T. Escrow (ACT Escrow) conspired to steal in excess of \$300,000 from ACT Escrow. At the time of the theft, respondent was employed as an executive assistant for the owner of 2000 Mortgage Group, who also owned ACT Escrow. ACT Escrow performed escrow services for 2000 Mortgage Group. To accomplish the theft, Escobar wired funds from the ACT Escrow trust account to respondent's personal bank account. Respondent accepted the wire transfers to his personal bank account. He then transferred these wired funds between personal and business accounts several times before withdrawing cash and giving it to Escobar. Respondent was paid by Escobar for performing his role in stealing funds during the two and a half year pendency of their crime.

8. Subsequent to his arrest, Respondent cooperated with authorities.

9. Respondent did not report his October 2015 arrest, indictment, and his subsequent August 2016 convictions to the Bureau until October 27, 2017.

Factors in Aggravation, Mitigation, or Rehabilitation

10. Respondent is 30 years old and has been happily married to his wife since 2009. He met his wife in September 2000 when they were 13 years old. He is the father of

¹ Respondent testified that a \$43,000 balance remains to be paid.

an eight month old daughter. Respondent is a graduate of John Francis Polytechnic High School in Sun Valley, California. In the past, respondent attended California State University, Northridge, in the pursuit of a Bachelor of Science degree in Business Management.

11. Prior to his 2016 convictions, he had no criminal history. Respondent has worked in the real estate industry for the majority of his employment. Both respondent's deceased father and brother also worked in the industry. Respondent is a hard worker who is diligent in providing financial support to his family, widowed mother, and sister-in-law.

12. David Rendall, the broker owner of respondent's current employer, Remax of Santa Clarita, testified on his behalf. He was aware of respondent's conviction at the time respondent was hired in November 2013. He testified that there were no problems with any of the 65 real estate transactions handled by respondent during his Remax employment; that he would continue to act as respondent's broker if respondent's license was disciplined; that there was no chance of a recurrence of respondent's diversion of escrow funds at Remax based on their procedures; and that, in his opinion respondent had learned his lesson from his past mistakes.

13. Michelle Ira-Alonso, respondent's wife, testified and submitted a character reference letter on his behalf. She asserted that she did not know of respondent's ongoing crimes during the two and a half year time period they were committed. She testified that respondent had learned from his past mistakes, worked well with his real estate clients, was a mature hard worker, and a dedicated family man. She attested that she and respondent surrounded themselves with established friends who led by example and had become more responsible since becoming parents to their eight month old daughter.

14. Troy Stairs, Escrow Advantage, Inc.'s escrow officer and manager, testified and submitted a character reference letter on respondent's behalf. She testified that Escrow Advantage is the escrow company used by Remax and described the company's practices that would prevent a similar type of embezzlement as perpetrated by respondent and Escrobar. She described respondent as a "great guy" whose customers "love him," a hard and good worker, and a person who cares about people.

15. Vicki Murphy, manager of respondent's Remax location, testified and submitted a letter of reference on his behalf. She testified respondent was an "amazing young man" who was very respected and well-liked, ethical, hardworking, and emphasized that she had received no complaints from consumers regarding his real estate salesperson services.

16. Joann Meinardus, contract manager of respondent's Remax location testified on behalf of respondent. She described respondent as a "fabulous guy," who was organized and good with clients.

17. Respondent submitted 13 letters and a thank you card from clients describing positive experiences they had with him during their real estate transactions. Respondent testified he was a member of the SCV Advisory Group Real Estate Network, a networking organization. In addition, he is a member of the Complete Marketing Network (CMA Network), an invitation only professional organization for real estate agents. Respondent was a Miracle Agent for 2016 for the Children's Miracle Network Hospital, having donated \$500 from his real estate transaction to the hospital for the year. He donates regularly to the church he attends with his family.

18. In discussing his crime, respondent testified that he pleaded nolo contendere based on his attorney's advice and fear he could potentially serve between 7 and 10 years if convicted by a jury. He asserted that he was Escobar's victim and was under the false impression he was not engaging in illegal activity by allowing her to deposit funds into his personal account, but was helping her hide her salary from her abusive husband. Respondent provided no corroborating independent evidence for his self-serving testimony. Respondent emphasized that the actions that led to his convictions occurred prior to the time he submitted his real estate salesperson application to the Bureau.

19. He admitted that he was aware of the requirement that he report his 2016 convictions to the Bureau. However, respondent justified his delay in complying with the Bureau's reporting requirements on his desire to compile complete information. Respondent mistakenly believed he did not need to report his October 2015 arrest and indictment to the Bureau.

20. Respondent minimized the moneys he received from Escobar for his role in the theft. While Respondent expressed some regret for his actions, his testimony focused on his feelings that his role in the crime was caused by Escobar's manipulation. He emphasized he had learned from his crimes and would not repeat the same mistakes, pointing to his positive track record as a real estate salesperson as proof of his rehabilitation.

21. For purposes of evaluating his rehabilitation, it is significant that respondent has not fully acknowledged his wrongdoing and delayed more than a year in reporting his 2016 conviction to the Bureau. (See, *Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Cal.3d 933, 940 ["Fully acknowledging the wrongfulness of his actions is an essential step towards rehabilitation."].) Respondent blames Escobar and, despite expressing regret for his crime, believes himself to be a victim. As such, he has not acknowledged his responsibility in violating the law during the approximately two and a half year period he was actively involved in a theft that caused over \$300,000 of losses to the victim. While Respondent attempts to couch his conduct as motivated by his desire to help Escobar, it is undeniable that his involvement was driven by an economic motive. The fact is that respondent was well compensated for diverting funds into his personal account.

22. Further, rehabilitation must be demonstrated by sustained conduct over an extended period of time. (See, *In re Menna* (1995) 11 Cal.4th 975, 991.) Because respondent is currently on probation and will remain so until August 2021, he is not in a

position to demonstrate true rehabilitation. Minimal weight is given to his good behavior while on probation because such behavior is expected. (See, *In re Gossage* (2000) 23 Cal.4th 1080, 1099.) Additional time is necessary to evaluate respondent's rehabilitation.

Bureau's Rehabilitation Criteria

23. The Bureau has developed criteria for evaluating whether a licensee has been rehabilitated since he suffered the conviction constituting grounds for license discipline. (Cal. Code Regs., tit. 10, § 2912.) The criteria relevant here are (1) the passage of at least two years since the licensee's most recent conviction; (2) the two year period since the most recent criminal conviction may be increased based upon the nature and severity of the crime and/or acts committed by the licensee, the licensee's history of criminal convictions, and/or license discipline that are "substantially related" to the qualifications, functions, or duties of a real estate licensee; (3) expungement of conviction or convictions resulting in administrative disciplinary proceeding; (4) successful completion or early discharge from probation or parole; (5) expungement; (6) restitution to any person who has suffered monetary losses; (7) change in attitude from that which existed at the time of the commission of the acts in question; (8) correction of business practices responsible in some degree for the crime or crimes for which licensee was convicted; (9) 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 convictions; and (10) stability of family life and fulfillment of parental and familial responsibilities. (Cal. Code Regs., tit. 10, § 2912, subds. (a), (b), (c), (e), (h), (i), & (j), (l), & (m))

24. Based on the relevant criteria, Respondent rehabilitation is incomplete. Respondent's convictions occurred less than two years ago, which is too recent to permit a showing of rehabilitation. He remains on probation and has yet to complete his restitution to the victim of his financial crimes. Respondent's failure at hearing to forthrightly accept the wrongfulness of his actions and his delay in reporting his conviction to the Bureau are of great concern. In order to demonstrate rehabilitation, respondent must acknowledge wrongdoing and demonstrate a change in attitude through conduct. Respondent instead deflects blame on Escobar and provides unconvincing justification for his delay in reporting his crimes to the Bureau. Respondent's hearing testimony is inconsistent with a showing of rehabilitation because it does not demonstrate full acceptance of responsibility, or full acknowledgment of wrongdoing, with respect to his prior criminal behavior.

25. As discussed below, cause exists to discipline respondent's real estate licenses. Respondent has not demonstrated sufficient rehabilitation to mitigate the discipline to be imposed.

Costs of Investigation and Enforcement

26. Complainant offered declarations that supported investigative costs of \$1,014.90 and enforcement costs of \$218. The combined investigative and enforcement

costs of \$1,232.90 are reasonable and the Bureau is, therefore, entitled to recover \$1,232.90 in costs.

LEGAL CONCLUSIONS

1. Section 490 permits the Bureau to inquire into the circumstances surrounding the commission of a crime, by one of its licensees, to determine if the crime is substantially related to the qualifications, functions, or duties of a real estate licensee. In this case, the requisite substantial relationship exists with respect to Respondent's conviction.

2. A real estate license may be disciplined when the licensee has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee. (Bus. & Prof. Code, §§ 490, subd. (a); 10177, subd. (b).) Respondent was convicted of two felonies, for conspiracy and grand theft, as described in factual findings 3 through 7. Such crimes, under the factual circumstances presented, are deemed to be substantially related to the qualifications, functions, or duties of a real estate salesperson. The crimes involved the performance of unlawful acts with the intent of conferring a financial benefit upon the perpetrator and demonstrated a pattern of repeated and willful disregard of law. (See, Cal. Code Regs., tit. 10, § 2910, subds. (a)(8) ["Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator ..."], and (a)(10) ["Conduct which demonstrates a pattern of repeated and willful disregard of law."].) Therefore, cause for discipline exists pursuant to Code sections 490, subdivision (a), and 10177, subdivision (b).

3. A professional license may be disciplined only upon "clear and convincing evidence to a reasonable certainty." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal. App.3d 853-856.)

4. Clear and convincing evidence established cause for discipline of respondent's license pursuant to Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b), in that respondent was convicted of crimes substantially related to the qualifications, functions, and duties of a real estate salesperson, as described in factual findings 3 through 7 and legal conclusions 1 through 3.

5. Code section 10186.2 provides, in relevant part:

"(a) (1) A licensee shall report any of the following to the bureau:

"(A) The bringing of an indictment or information charging a felony against the licensee.

"(B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.

“(9) . . . (9)

“(2) The report required by this subdivision shall be made in writing within 30 days of the date of the bringing of the indictment or the charging of a felony, the conviction, or the disciplinary action.”

6. Clear and convincing evidence established respondent violated Code section 10186.2 in that respondent failed to report his indictment and convictions to the Bureau within 30 days, as described in factual finding 9 and legal conclusions 3 and 5.

7. In determining the appropriate discipline, the central question is what level of discipline is necessary to protect the public. Disciplinary proceedings to suspend or revoke a real estate license are not conducted for the primary purpose of punishing an individual. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) Based upon all of the matters set forth in factual findings 3 through 25 above, including the lack of rehabilitation evidence, public protection requires that respondent’s real estate salesperson’s license be revoked.

8. Code section 10106 permits the Real Estate Commissioner to request an administrative law judge hearing a disciplinary matter to direct a licensee to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case, except as otherwise provided by law. Evidence is required to support an award.

9. Complainant provided sufficient evidence to support an award of the costs of investigation and enforcement in the amount of \$1,232.90, as described in factual finding 26.

ORDER

1. All licenses and licensing rights of respondent Jose Arturo Alonso under the Real Estate Law are revoked.
2. Respondent Jose Arturo Alonso shall pay \$1,232.90 to the Bureau of Real Estate as its costs of investigation and enforcement of this case.

DATED: August 4, 2017

DocuSigned by:

Irina Tentser

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IRINA TENTSER
Administrative Law Judge
Office of Administrative Hearings