


FEB 26 2019

DEPT. OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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|-------------------------------------|---|--------------------|
| In the Matter of the Accusation of: | ) | DRE No. H-40724 LA |
|                                     | ) |                    |
| FELICIA MUHAMMAD,                   | ) | OAH No. 2018100474 |
|                                     | ) |                    |
| Respondent.                         | ) |                    |

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DECISION

The Proposed Decision dated February 1, 2019, 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.

Pursuant to Government Code Section 11521, the Department 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 Department'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 March 18, 2019.

IT IS SO ORDERED February 20, 2019

DANIEL SANDRI  
ACTING REAL ESTATE COMMISSIONER



BEFORE THE  
DEPARTMENT OF REAL ESTATE<sup>1</sup>  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

FELICIA MUHAMMAD,

Respondent.

Case No. H-40724- LA

OAH No. 2018100474

**PROPOSED DECISION**

Eileen Cohn, Administrative Law Judge, Office of Administrative Hearings, heard this matter on January 7, 2019, in Los Angeles, California.

Steven Chu, Real Estate Counsel, represented complainant Maria Suarez, a Supervising Special Investigator of the State of California.

Felicia Muhammad (respondent) was present and represented herself.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

**FACTUAL FINDINGS**

1. Complainant brought the Accusation in her official capacity as a Supervising Special Investigator of the State of California. During the hearing, the Accusation was amended to strike the reference to a plea of guilty on paragraph three, page two.

2. Respondent was licensed as a real estate salesperson on November 1, 2009 (S/01513757). Respondent's salesperson license expires on July 15, 2019. (Ex. 2.)

3 (a) On October 3, 2016, (the 2016 Conviction), in the United States District Court, Central District of California, Case No. CR 14-228-MWF, respondent was found guilty and convicted after a trial by jury, of a felony, on all five counts of the criminal indictment for False Statements to a Financial Institution, in violation of 18 U.S.C. section 1014, and Aiding and Abetting and Causing an Act to be Done, in violation of 18 U.S.C. section 2: false

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<sup>1</sup> The Bureau of Real Estate became the Department of Real Estate on July 1, 2018.

statements on a loan application to Countrywide Bank for the purchase of a residential real estate property located on Hazelhurst dated June 20, 2008 (Count One); false statements on a Occupancy Certification submitted to Countrywide Bank in support of Uniform Residential Loan Application (URLA) for purchase of Hazelhurst dated June 20, 2008 (Count Two); false statement on URLA submitted to First Horizon for purchase of residential real estate property located on Topanga dated June 24, 2008 (Count Three); false statement in an occupancy affidavit submitted to First Horizon in support of URLA for purchase of Topanga (Count Four); and false statement in a URLA submitted to U.S. Bank for Hazelhurst dated June 25, 2008 (Count Five).

(b) After an appearance before the court on October 3, 2016, on October 12, 2016, the court adjudged the respondent guilty as charged and convicted her to a term of prison for a period of 24 months. Respondent served her prison term; according to respondent she was released from prison on November 2, 2018, 22 months from the inception of her prison term for good conduct. In addition to the standard terms of probation, the court ordered respondent, upon her release from prison, to be placed on supervised release for a term of five years under terms and conditions which include: participation in mental health treatment, which may include evaluation and counseling, until discharged by the treatment provider; payment of part or all the costs of mental health treatment; payment of any special assessment or restitution; 20 hours of community service; and collection of a DNA sample.

(c) As part of the probation, the court also prohibited respondent from being employed "in any position that requires licensing and/or certification by any local, state, or federal agency without the prior written approval of the Probation Officer." (Ex. 3.)

(d) Respondent has served her prison term but there is insufficient evidence that she satisfied any other conditions of probation, including the payment of restitution.

(e) Respondent appealed the conviction to the United States Court of Appeals for the Ninth Circuit. In an unpublished Memorandum and Mandate entered July 11, 2018, the Ninth Circuit affirmed the 2016 Conviction.

(f) At the time of the hearing, no further appeal was pending. Respondent stated her intent to file an appeal on the ground of ineffective assistance of counsel, but it is uncertain whether she will file and whether she can file an additional appeal at this time.

4. The circumstances of the conviction are that respondent signed loan documents, before notaries, erroneously certifying that she would be occupying the properties when she had no intention to do so. Respondent was a licensed real estate agent at the time she executed the loan documents, but nevertheless, during the hearing she insisted that she had no knowledge of the contents of the documents. Respondent admitted that she received payment from the investor for her participation in signing the documents in the form of payment of her credit cards in the amount of \$18,000 and a purchase on her behalf of a motor vehicle, a BMW.

5. (a) Respondent testified at hearing and appeared to be convinced of her innocence even in the face of a jury verdict. Respondent correctly identified an error in the United States District Court's case docket where a box was checked next to a plea of guilty. Nevertheless, respondent was convicted on all counts of the indictment to which she refused to enter a plea. The remaining docket was correct and reflected her finding of guilt and conviction set forth above.

(b) Respondent's insistence that she is innocent, had no intent to deceive or manipulate anyone, did not know what she signed, and that the trial was unfair and unjust, was not supported by the conviction or the Ninth Circuit's Memorandum and Mandate.

(c) Respondent's acceptance of payment for her part in the transactions in the form of debt relief and a BMW lease and her attempt to explain these away was not credible. Respondent may believe she is innocent, but her protestation of innocence is directly contradicted by the evidence. As a licensed real estate agent she is expected to understand the representations made as a condition of obtaining loans to purchase residential real estate. Instead, she insists that she did not know what she signed.

(d) Respondent's statement that she participated in the purchase only to establish relationships with an individual who was buying properties as an investment makes no sense especially since she obtained debt relief and a leased BMW. In total the properties purchased with her false statements involved loans in excess of \$1,000,000. Respondent knew the individual investor and understood his intent to purchase, fix and rent the properties. She understood he was paying her debts and that he was leasing a BMW on her behalf.

6. Respondent provided no evidence of mitigation or rehabilitation. Respondent maintained her innocence and only accepted responsibility for associating with an individual whom she trusted. Respondent has not yet established a payment plan for any restitution owed as part of her probation, and could not clearly identify the total amount she owed. Respondent does not have a consistent work history as a real estate salesperson. She had mainly opened houses. She did not provide any character references or any letter from her probation officer permitting her to work as a licensee.

7. The Department incurred costs of investigation in the amount of \$575 and enforcement in the amount of \$534, for a total cost of \$1,109. These costs are reasonable pursuant to Business and Professions Code<sup>2</sup> section 10106. Respondent did not provide evidence of her ability or inability to pay. However, respondent has been incarcerated and has not worked as a real estate salesperson since her conviction and has not been employed in any other job or profession.

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<sup>2</sup> All future statutory references shall be to the Business and Professions Code unless otherwise stated.

## LEGAL CONCLUSIONS

1. Complainant bears the burden of proving by clear and convincing evidence to a reasonable certainty that respondent has engaged in conduct warranting suspension or revocation of respondent's real estate licenses. (See *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853,855-6.) Clear and convincing evidence means the evidence is "so clear as to leave no substantial doubt" and is "sufficiently strong to command the unhesitating assent of every reasonable mind." (*Mathieu v. Norrell Corp.* (2004) 115 Cal.App.4th 1174, 1190 [citing *Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 332-333].)

2. Cause exists to discipline respondent's real estate salesperson license pursuant to Code sections 490 and 1077, subdivision (b)(1) for respondent's 2016 felony conviction and conduct related thereto. Code sections 490, subdivision (a), and 10177, subdivision (b), authorizes the suspension or revocation of a license on the ground that the licensee has been convicted of a felony or has been convicted of a crime substantially related to the qualifications, functions, or duties of a real estate licensee, and the time for appeal has elapsed.

### *Rehabilitation*

3. The Department has set forth criteria to evaluate the rehabilitation of a licensee who is subject to administrative discipline because of committing a crime. (Cal. Code. Regs., tit 10, § 2912.) The relevant criteria are as follows:

(a) The time that has elapsed since commission of the act(s) or offense:

(1) The passage of less than two years after the most recent criminal conviction or act of the licensee that is a cause of action in the Department's Accusation against the licensee is inadequate to demonstrate rehabilitation.

(2) Notwithstanding subdivision (a)(1), above, the two year period may be increased based upon consideration of the following:

(A) The nature and severity of the crime(s) and/or act(s) committed by the licensee.

(B) 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.

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

(c) Expungement of the conviction(s) which culminated in the administrative proceeding to take disciplinary action. [¶] . . . [¶]

(e) Successful completion or early discharge from probation or parole.

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

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

(i) 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.

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

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

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

(m) 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:

(1) Testimony and/or other evidence of rehabilitation submitted by the licensee.

(2) Evidence from family members, friends and/or other persons familiar with the licensee's previous conduct and with subsequent attitudes and/or behavioral patterns.

(3) Evidence from probation or parole officers and/or law enforcement officials competent to testify as to licensee's social adjustments.

(4) Evidence from psychiatrists, clinical psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

(5) Absence of subsequent felony convictions, or misdemeanor convictions, or other conduct that provides grounds to discipline a real estate licensee, which reflect an inability to conform to societal rules when considered in light of the conduct in question.

6. Respondent has failed to satisfy the relevant rehabilitation criteria. Respondent was convicted of a felony which also is directly related to the practice of real estate as it involves residential real estate loan documentation, her conviction was two years ago, but the minimum time period from her conviction must be enlarged to account for her recent completion of the first phase of her sentence, her 22-month incarceration, and her supervised probation. Her supervised probation began a short time ago in November 2018 and will not be completed until November 2023. Respondent presented no evidence of rehabilitation. A showing of rehabilitation requires sustained exemplary conduct over an extended period. (See *In re Menna* (1995) 11 Cal.4th 975, 991.) Respondent failed to provide evidence of her education, restitution payments, new social relationships, a strong family and community foundation, or support from her probation officer, who is directly responsible for authorizing her employment in a licensed activity. Respondent persists in blaming her problems on her trust in another individual. A demonstrated change in attitude has been considered "arguably the most important in predicting future conduct . . ." (*Singh v. Davi* (2012) 211 Cal.App.4th 141, 149.) Respondent does not accept her fault in signing loan documents for multiple properties during the same period of time where she falsely stated that these properties would be her primary residence. The interests of public protection require that respondent's real estate salesperson license be revoked.

#### *Cost Award*

9. The Department requests reimbursement of \$1,109 in investigation and enforcement costs. (Factual Finding 7.) In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court rejected a constitutional challenge to a cost recovery provision similar to section 10106. In so doing, however, the Court directed the administrative law judge and the licensing agency to evaluate several factors to ensure that the cost recovery provision did not deter individuals from exercising their right to a hearing. The Department must consider a licensee's ability to pay. (*Id.* at p. 45.) Here, there is insufficient

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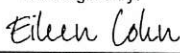


evidence that the respondent can pay the cost of investigation and enforcement. However, it is reasonable to require respondent to pay the costs of investigation and enforcement in the amount of \$1,109 if and when respondent applies for and is granted a real estate license in the future.

### ORDER

The Real Estate Salesperson License S/01513757 issued to respondent Felicia Muhammad is hereby revoked. At such time respondent applies for and is granted a license by the Department, respondent shall be required to pay, as a condition of licensure, the costs of investigation and enforcement in the amount of \$1,109.

DATED: February 1, 2019

DocuSigned by:  
  
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EILEEN COIN  
Administrative Law Judge  
Office of Administrative Hearings