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APR - 8 2010

DEPARTMENT OF REAL ESTATE

By R. Henry

BEFORE THE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of WILLIAM JOHN VROOM, Respondent.	)	NO. H-4006 SD OAH NO. 2009101584

DECISION

The Proposed Decision dated March 4, 2010, 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(b)(3) of the Government Code, page 3, #4, paragraph 2, and page 9, #13 of the Proposed Decision is revised to read:

The Fosters engaged Vroom to obtain a loan for them through Fremont Investment.

Cause exists to impose discipline against Vroom's real estate broker license under Business and Professions Code sections 490 and 10177, subdivision (b)..

The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension 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 APR 28 2010.

IT IS SO ORDERED 4/6, 2010.

JEFF DAVI
Real Estate Commissioner

BY: Barbara J. Bigby
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against: WILLIAM JOHN VROOM, Respondent.	Case No. H-4006 SD OAH No. 2009101584

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on February 11, 2010, in San Diego, California.

Kenneth C. Espell, Counsel, represented complainant Joseph Aiu, a Deputy Real Estate Commissioner, Department of Real Estate, State of California.

William John Vroom represented himself and was present throughout the administrative hearing.

The matter was submitted on February 11, 2010.

FACTUAL FINDINGS

Jurisdictional Matters

1. On September 9, 2009, complainant Joseph Aiu, a Deputy Real Estate Commissioner, Department of Real Estate (the Department), State of California, signed Accusation No. H-4006 SD in his official capacity.

The accusation alleged that respondent William John Vroom (Vroom or respondent) was a licensed real estate broker; that on November 18, 2008, respondent was convicted on his pleas of guilty of embezzlement, using another's identity to obtain money, and offering a false document to a government office for recording, each a felony; and that each of these convictions had a substantial relationship to the qualifications, functions or duties of a real estate licensee. Complainant sought to impose discipline against respondent's real estate broker's license and the issuance of an order of debarment.

The accusation and other required jurisdictional documents were served on Vroom, who timely filed a notice of defense.

On February 11, 2010, the administrative record was opened. Jurisdictional documents were presented, sworn testimony was given, documentary evidence was received, closing arguments were made, the record was closed, and the matter was submitted.

License History

2. On March 10, 2005, the Department issued Broker License No. B/014840903 to Vroom. The license expired on March 9, 2009, and has not been renewed. There is no history of any previous administrative discipline having been imposed against Broker License No. B/014840903.

Vroom's Conviction

3. On November 18, 2008, Vroom was convicted on his pleas of guilty of violating Penal Code sections 508 (embezzlement), 530.5, subdivision (a) (using another's identity to obtain money), and 115, subdivision (a) (offering a false document to a government office for recording), all felonies, in the Superior Court of California, County of San Diego, Central Division, in Case No. CD214999 entitled *The People of the State of California, Plaintiff, vs. William John Vroom, Defendant.*

In his written change of plea form, Vroom adopted the following statement: "Being an agent, fraudulently appropriated for my own use money in excess of $400, unlawfully obtained credit by using the personal information of another person and offered a forged instrument to be filed and recorded in a public office."

Vroom signed the change of plea form under penalty of perjury, stating that everything in the change of plea form was true and correct.

On January 28, 2009, the Superior Court suspended imposition of sentence and placed Vroom on three years formal probation. Terms and conditions of probation required that Vroom be committed to custody for 365 days in a work furlough program (with credit given for 12 days of actual service and good time credit), that he pay fines and fees of approximately $1,300, that he make restitution in the amount of $8,000 to victim Ferrer (which was satisfied immediately), that he make restitution to victim Foster (which had already been made), that he seek and maintain full-time employment, that he complete up to 20 days public service if directed by his probation officer, that he complete an anti-theft program, that he not have further contact with the victims, that his employment be approved by his probation officer, that he not work in a capacity where he would be able to obtain personal or financial information from others, and that he obey all laws.

Vroom made restitution as required, he spent six months in a work furlough program, he paid fines and fees, and he remains on formal probation. Vroom will remain on probation through January 27, 2012.

Circumstances of the Offenses

4. No police report or investigative report was provided. All of the information relating to the circumstances of the offenses was obtained through Vroom, whose account of the two transactions giving rise to the convictions was sparse and somewhat confusing.

The Foster transaction: The Fosters engaged Vroom to obtain a loan for them through Fremont Investment. Vroom signed the Fosters' names to various loan documents, and then notarized those documents. The documents were filed with the County Recorder's office. The loan was funded, but it was not the loan the Fosters wanted, and Vroom's wrongdoing was discovered.

The Ferrer transaction: Ferrer agreed to buy a newspaper stand and a sandwich shop located at the San Diego County courthouse from a third party. Terms were agreed to, and the parties hired Vroom to act as escrow agent for the transaction. Ferrer deposited funds with Vroom to purchase the enterprise, and Vroom paid $30,000 more to the seller than Ferrer had authorized.

Vroom's Testimony

5. Vroom grew up in Hawaii. He played varsity basketball for the University of Hawaii, where he obtained a bachelor's degree in business administration in 1989. He attended law school at the University of Hawaii, and received a law degree in 1993. Vroom returned to Maui, where he was an executive assistant for a non-profit enterprise for two years. Vroom then ran for office and served as an elected official from 1995 through 2000. He did not enjoy politics, and returned to the private sector. He married in 2000. He and his wife have two children from their relationship, a six-year-old son and an eight-year-old daughter. Vroom also has a 14-year-old stepdaughter.

Vroom and his family moved to California where Vroom worked for Enterprise Rent a Car, as a manager for Boston Market, and as a real estate salesperson and real estate broker. Vroom felt as if he lost control in the management of his brokerage in his last year or so of licensure and let his license expire.

Vroom currently works as a basketball referee, working four or five games a night six or seven days a week. Vroom's wife works as a wedding coordinator.

Vroom acknowledged that he made a huge mistake, apologized profusely for his wrongdoing, and expressed regret for the disrespect his misconduct has brought to the real estate profession and to the Department.

6. Less than two years has passed since Vroom's convictions, which arose out of his licensed activities, and are directly related to the qualifications, functions or duties of a real estate licensee. Vroom has made restitution and has paid all fines. He remains on probation, and his conviction has not been expunged. Vroom no longer holds a real estate

license, and it is unlikely that his probation officer would approve of his licensure since that would provide Vroom with personal and financial information of others. Vroom appears to be meeting his familial responsibilities. Because of his work schedule and family obligations, Vroom does not have a significant involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems. Vroom expressed sincere remorse, but he did not provide any documentary evidence or sworn testimony to corroborate his self-described change in attitude from that which existed at the time of the commission of the criminal acts in question.

An outright revocation and the issuance of an order of debarment are amply supported by the record in this matter, and imposing that measure of discipline will protect the public.

LEGAL CONCLUSIONS

Purpose of Disciplinary Action

1. The object of an administrative proceeding aimed at revoking a real estate license is to protect the public, that is, to determine whether a licensee has exercised his privilege in derogation of the public interest, and to keep the regulated business clean and wholesome. Such proceedings are not conducted for the primary purpose of punishing an individual. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.)

Burden and Standard of Proof

2. In an administrative license disciplinary proceeding, the burden of proof is upon the party asserting the affirmative. In cases involving a real estate license, guilt must be established to a reasonable certainty. Guilt cannot be based on surmise or conjecture, suspicion or theoretical conclusions, or upon uncorroborated hearsay. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) The burden of proof requires clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) The key element of clear and convincing evidence is that it must establish a high probability of the existence of the disputed fact, greater than proof by a preponderance of the evidence. (*People v. Mabini* (2001) 92 Cal.App.4th 654, 662.)

Applicable Statutes

3. Business and Professions Code section 490 provides in part:

> "A board 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. A conviction within the meaning of this section means a plea . . . of guilty . . . Any action which a board is permitted to take following the establishment of a conviction may be taken . . . when an order granting probation is made suspending the imposition of sentence . . ."

4. Business and Professions Code section 10177 provides in part:

"The commissioner may suspend or revoke the license of a real estate licensee . . . who has done any of the following . . .

. . .

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information. . . ."

5. Business and Professions Code section 10087 provides:

"(a) In addition to acting pursuant to the authority provided under Sections 10086, 10176, and 10177, the commissioner may, after appropriate notice and opportunity for a hearing, by order, suspend, or bar from any position of employment, management, or control, for a period not exceeding 36 months, a real estate salesperson or real estate broker, or an unlicensed person issued an order under Section 10086, if the commissioner finds either of the following:

(1) That the suspension or bar is in the public interest and that the person has committed or caused a violation of this division or rule or order of the commissioner, which violation was either known or should have been known by the person committing or causing it or has caused material damage to the public.

(2) That the person has been convicted of or pleaded nolo contendere to any crime, or has been held liable in any civil action by final judgment, or any administrative judgment by any public agency, if that crime or civil or administrative judgment involved any offense involving dishonesty, fraud, or deceit, or any other offense reasonably related to the qualifications, functions, or duties of a person engaged in the real estate business in accordance with the provisions of this division.

(b) Within 15 days from the date of a notice of intention to issue an order pursuant to subdivision (a), the person may request a hearing under the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) of Division 3 of Title 2 of the Government Code). If no hearing is requested within 15 days after the mailing or service of that notice and none is ordered by the

commissioner, the failure to request a hearing shall constitute a waiver of the right to a hearing.

(c) Upon receipt of a notice of intention to issue an order pursuant to this section, the person who is the subject of the proposed order is immediately prohibited from engaging in any business activity involving real estate that is subject to regulation under this division.

(d) Persons suspended or barred under this section are prohibited from participating in any business activity of a real estate salesperson or a real estate broker and from engaging in any real estate-related business activity on the premises where a real estate salesperson or real estate broker is conducting business. Persons suspended or barred under this section are also prohibited from participating in any real estate-related business activity of a finance lender, residential mortgage lender, bank, credit union, escrow company, title company, or underwritten title company."

Substantial Relationship

6. Business and Professions Code section 481 provides:

"Each board under the provisions of this code shall develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates."

7. Licensing authorities do not enjoy unfettered discretion to determine on a case-by-case basis whether a given conviction is substantially related to the relevant professional qualifications. Business and Professions Code section 481 requires each licensing agency to develop criteria to aid it to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates. In response to this directive, the Department adopted section 2910 of Title 10 of the California Code of Regulations. (*Donaldson v. Department of Real Estate of State of Cal.* (2005) 134 Cal.App.4th 948, 955-956.)

8. Title 10, California Code of Regulations, section 2910 currently provides in part:

"(a) When considering whether a license should be . . . suspended or revoked on the basis of the conviction of a crime . . . the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of Sections 480 and 490 of the Code if it involves:

(1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person.

(2) Counterfeiting, forging or altering of an instrument or the uttering of a false statement.

. . .

(4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end.

. . .

(8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

. . .

(10) Conduct which demonstrates a pattern of repeated and willful disregard of law. . . ."

Rehabilitation

9. Business and Professions Code section 482 provides:

"Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

10. Title 10, California Code of Regulations, section 2912 sets forth the Department's criteria of rehabilitation as required by Business and Professions Code section 482 as follows:

"The following criteria have been developed by the department pursuant to Section 482(b) of the Business and Professions Code for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee.

(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 department. (A longer period will be required if there is a history of

criminal convictions or acts substantially related to the qualifications, functions or duties of a licensee of the department.)

(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 Section 290 of the Penal Code.

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

(f) 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.

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

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

(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 of applicant.

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

(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant'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 or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question."

11. The amount of evidence of rehabilitation varies according to the seriousness of the misconduct at issue. The mere expression of remorse does not demonstrate rehabilitation. A truer indication of rehabilitation will be presented if petitioner can demonstrate by his sustained conduct over an extended period of time that he is rehabilitated and fit to practice. (*In re Menna* (1995) 11 Cal.4th 975, 987, 991.) 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.) The evidentiary significance of an applicant's misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that an applicant for a professional license did not commit additional crimes while in prison or while on parole. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

12. The rehabilitation criteria were applied in Factual Finding 6.

Cause Exists to Impose Discipline

13. Cause exists to impose discipline against Vroom's real estate ~~salesperson's~~ broker license under Business and Professions Code sections 490 and 10177, subdivision (b). Vroom's November 2008 felony convictions are substantially related to the qualifications, functions, and duties of a real estate licensee under the Department's criteria of substantial relationship. Vroom failed to establish sufficient rehabilitation to retain his real estate broker's license.

This conclusion is based on all factual findings and on all legal conclusions.

Cause Exists to Issue an Order of Debarment

14. Cause exists to issue an order of debarment under Business and Professions Code section 10087. In November 2008, Vroom was convicted of offenses involving dishonesty, fraud, deceit, and forgery, all of which are reasonably related to the qualifications, functions, or duties of a person engaged in the real estate business.

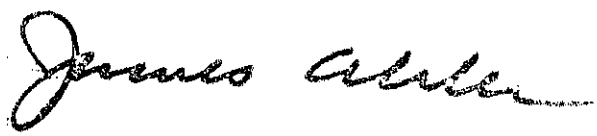
This conclusion is based on all factual findings and on all legal conclusions.

ORDERS

All licenses and licensing rights of respondent William John Vroom under the Real Estate Law are revoked.

An order of debarment shall be issued to William John Vroom in accordance with Business and Professions Code section 10087.

DATED: 3/4/2010



JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings

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SEP 16 2009

DEPARTMENT OF REAL ESTATE

By R. Henry

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of WILLIAM JOHN VROOM, Respondent.	H- 4006 SD ACCUSATION and NOTICE OF INTENTION TO ISSUE ORDER OF DEBARMENT (B&P Code §10087)

The Complainant, JOSEPH AIU, in his official capacity as a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against WILLIAM JOHN VROOM (hereinafter "Respondent"), is informed and alleges as follows:

1

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) (hereinafter "the Code") as a real estate broker.

2

On or about November 18, 2008, in the San Diego County Superior Court, State of California, Case Number SCD 214999, Respondent was convicted of violating Section 508 of the California Penal Code (Embezzlement); Section 530.5 of the Penal Code (Use of

Another's Identity to Obtain Money or Property); and Section 115(a) of the Penal Code (Offering False or Fraudulent Document to a Governmental Office for Recording), each a felony which bears a substantial relationship under Section 2910 of the Regulations, to the qualifications, functions, or duties of a real estate licensee.

3

The facts alleged in Paragraph 2, above, constitute cause under Sections 490 and 10177(b) of the Code for suspension or revocation of all licenses and license rights of Respondent under the Real Estate Law.

NOTICE OF INTENT TO ISSUE ORDER OF DEBARMENT

4

The facts alleged in Paragraphs 1 through 3, above, subject Respondent to the issuance of an Order of Debarment pursuant to Section 10087 of the Code. Pursuant to Section 10087(b) of the Code, you, Respondent, are hereby notified of the intention of the Commissioner to issue an Order of Debarment pursuant to Section 10087(a) of the Code should the facts alleged herein support findings that an Order of Debarment be issued.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and Notice of Intention to Issue Order of Debarment, and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondent under the Code and, in addition, an Order of Debarment issue against Respondent pursuant to Section 10087 of the Code, and for such other and further relief as may be proper under other provisions of law.

JOSEPH AIU
Deputy Real Estate Commissioner

Dated at San Diego, California,
this 9 day of September, 2009.