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JUN 23 2015

BUREAU OF REAL ESTATE

By S. Black

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of LAMARR ANDRE BAXTER, Respondent.	No. H-5221 SAC

ORDER GRANTING REINSTATEMENT OF LICENSE

On November 25, 2009, in Case No. H-5221 SAC, a Decision was rendered revoking the real estate salesperson license of Respondent effective December 28, 2009.

On April 23, 2015, Respondent petitioned for reinstatement of said real estate salesperson license, and the Attorney General of the State of California has been given notice of the filing of the petition.

I have considered Respondent's petition and the evidence submitted in support thereof. Respondent has demonstrated to my satisfaction that Respondent meets the requirements of law for the issuance to Respondent of an unrestricted real estate salesperson license and that it would not be against the public interest to issue said license to Respondent.

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NOW, THEREFORE, IT IS ORDERED that Respondent's petition for reinstatement is granted and that a real estate salesperson license be issued to Respondent if Respondent satisfies the following conditions within twelve (12) months from the date of this order:

1. Qualify for, take and pass the real estate salesperson license examination.

2. Submit a completed application and pay the fee for a real estate salesperson license.

This Order shall become effective immediately.

DATED: 6/17/2015

REAL ESTATE COMMISSIONER

Wayne S. Bell

FILED

DEC - 8 2009

DEPARTMENT OF REAL ESTATE

By R. Henry

BEFORE THE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of LAMARR ANDRE BAXTER, Respondent.	)	NO. H-5221 SAC OAH NO. 2009060941

DECISION

The Proposed Decision dated October 19, 2009, 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 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 DEC 28 2009.

IT IS SO ORDERED 11-25-09.

JEFF DAVI
Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against: LAMARR ANDRE BAXTER, Respondent.	Case No. H-5221 SAC OAH No. 2009060941

PROPOSED DECISION

This matter was heard before Bob N. Varma, Administrative Law Judge, Office of Administrative Hearings, State of California, on October 6, 2009, in Sacramento, California.

Kenneth C. Espell, Counsel, represented complainant, Joe M. Carrillo, a Deputy Real Estate Commissioner for the Department of Real Estate (department).

Lamarr Andre Baxter (respondent) was present and was represented by Ian Kelley, Attorney at Law.

Evidence was received, the record was closed and the matter was submitted on October 6, 2009.

FACTUAL FINDINGS

1. At all times relevant herein, respondent was licensed by the department as a real estate salesperson (License Number S01335059). Respondent's license is active, and has been renewed through April 21, 2010.

2. Complainant made and filed the Accusation in his official capacity.

3. Respondent timely filed a Notice of Defense to the Accusation (NDA), pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500, et seq.

4. In his NDA, counsel for respondent, pursuant to Government Code section 11506, subdivision (a)(5), raised a new matter by way of defense, asserting that respondent was in the process of challenging orders against him by way of extraordinary writ, and asked the evidentiary hearing in this matter be stayed for 90 days. The NDA is dated June 4, 2009, received by the department on June 11, 2009. The evidentiary hearing occurred on October 6, 2009, over 120 days after the NDA. At the hearing, respondent did not present any evidence as to the new matter asserted in the NDA, and did not request a stay of proceedings.

5. On May 15, 2008, in the Superior Court, County of Alameda, State of California, in Case No. 527161F, respondent was convicted, upon his plea of nolo contendere, of a misdemeanor violation of Penal Code section 32, accessory aiding a principal in a felony. On May 15, 2008, imposition of sentence was suspended, and respondent was placed on formal probation for 90 days, and ordered to pay a fine of $130.

6. On August 28, 2008, the Alameda County Superior Court issued an order that: (1) found that respondent had fulfilled the conditions of his probation; (2) permitted respondent to withdraw his plea of nolo contendere and enter a plea of not guilty; and (3) dismissed the criminal complaint pursuant to Penal Code section 1203.4.

Circumstances Related to the Conviction

7. Respondent was charged with two counts of defrauding another individual, a financial lender, on July 16, 2001, and one count of defrauding another individual, a financial lender, on March 28, 2003. These charges are contained in Exhibit 5, a copy of the criminal complaint in the above referenced case in Alameda County. The complaint charged eight individuals, including respondent, and his ex-wife, Daralynn Lavonne Dise-Baxter[1], of various crimes involving fraudulent transactions.[2]

8. The essential underlying allegations are that respondent, his ex-wife, and several other individuals obtained mortgage loans for themselves and others through a sophisticated scheme wherein fraudulent employment and earnings records were created, and submitted to the lender funding the mortgage loans between 2001 and 2003. Respondent denies involvement in the alleged crimes.

9. According to respondent, he was unaware that the loan for his own home, as well loans for the homes of several of his clients, were being procured using fraudulent documents. Respondent asserted that his ex-wife was solely responsible for the fraud as she processed his loans. Respondent asserted that he was innocent and accepted a plea bargain

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[1] At all times relevant herein, Ms. Dise-Baxter was a real estate broker.

[2] The criminal complaint was received in evidence as "administrative hearsay," and is considered to the extent permitted by Government Code section 11513, subdivision (d), which states that, "[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. An objection is timely if made before submission of the case or on reconsideration."

because he lacked the financial means to take the criminal matter to trial. Respondent cannot impeach his conviction. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449 ["Regardless of the various motives which may have impelled the plea, the conviction which was based thereupon stands as conclusive evidence of appellant's guilt of the offense charged."] By pleading nolo contendere, respondent stands convicted of every element of the crime.

10. The department submitted the report of the investigating officer, Inspector Kim Tejada. Tejada did not testify. As part of the criminal investigation, Tejada filed an 80-page report. There were 251 exhibits to the report, which were not submitted into evidence. Contained within the report are interview statements from a number of witnesses who were either alleged victims or alleged participants in the crimes. Respondent did not provide a statement to Tejada, and therefore, the statements of the witnesses contained in the report are inadmissible hearsay. (*Lake v. Reed* (1997) 16 Cal.4th 448, 461.)

11. However, Tejada did record her observations of evidence that was seized in the investigation, which are discussed below. Because they are the direct observations of a police officer, they are admissible statements.

12. On March 11, 2003, Tejada executed a search warrant at 1007 Stanford Avenue, Oakland, California, home of Nayaa Irene Lacy, and business location for a childcare called The Homework Club (THC). On top of a desk in the residence, Tejada observed a faxed letter beginning "Hello Naya," which was a request with specific data for the preparation of pay stubs and W-2s for Hector Barrios (Barrios loan). The letter was closed with "Thanks, Lamarr." Tejada noted the fax line to be dated February 19, 2003. Also on the letter were notations regarding bank account information for THC.

13. On August 7, 2003, Tejada executed search warrants at respondent's home and at his place of work. At that time respondent resided in Elk Grove, California, and worked in Roseville, California, for Paradise Mortgage. At respondent's residence, Tejada found the original of the "Hello Naya" letter that had been faxed to Lacy. Tejada also found wages and salary records pertaining to the Barrios loan with fax lines confirming they had been sent to respondent's residence from Lacy. In respondent's briefcase, also seized by Tejada, was a copy of the W-2 for the Barrios loan as sent by Lacy.

14. As part of the search in Oakland, computer equipment was seized from the Lacy residence. On one of the computers, Tejada found W-2s for respondent from 1999 and 2000. The 1999 W-2 showed respondent's wages at $75,855.43, and the 2000 W-2 showed his wages at $73,579.35. Tejada noticed that respondent's employer was New Beginning in Oakland, California.

15. At respondent's residence, Tejada found wage and tax information for respondent for 2001 and 2000. The 2000 information showed respondent to have a taxable income for state purposes in the amount of $38,240.00, and taxable income for federal purposes in the amount of $48,553.00. These figures do not match the income figures on the records at the Lacy residence. On the records at respondent's residence, Tejada noted the

employer as Riviera West Incorporated, Volt Management Corporation, and Entegrity Solutions Corporation. These employers do not match the records for respondent at the Lacy residence.

16. On August 8, 2003, Tejada executed a search warrant on Citibank for bank records of THC. Within those records, Tejada noted a check from respondent's account, signed by respondent, to THC dated February 18, 2003, for "consulting services."

17. At hearing, respondent testified that his ex-wife admitted that she had been responsible for the fraud. Respondent authenticated a chain of emails between himself and his ex-wife, dated August 17, 2007, which are contained in Exhibit 6. In the email by respondent, he discusses the personal loan for his own home, obtained in 2001. Respondent asserted in the email that his ex-wife utilized fraudulent income records for respondent to obtain their personal mortgage loan. This is supported by the income records for respondent found by Tejada, discussed above.

18. Respondent's email also acknowledged that fraudulent income documents were used for the Barrios loan. In the email, respondent, consistent with his testimony, blamed his ex-wife for the fraud. The falsified income documents referenced by respondent are those recovered by Tejada.

19. Respondent's email acknowledged that he signed the check to THC, discussed above. Again, respondent's email blames his wife for misleading him regarding the purpose for the check and getting him to write the check under false pretenses.

20. Pertinent to respondent's conviction and the fraud described in the items above, is respondent's own statement in his email. Referencing the Barrios loan, respondent wrote to his ex-wife, "I was a bit suspicious about this transaction since August 2003 as it relates to you having done wrong doing based on my overhearing you speak with other borrowers of yours on the phone about obtaining fraudulent documentation for their files, but without proof I did not confront you and waited to see what evidence the DA had before confronting you about it. I regret NOT sharing my suspicions and truth with our attorney . . . but I guess I was trying to protect you . . . ."

21. In closing, respondent's August 2007 email to his ex-wife states, "[L]astly, I have done some research on other financial transactions you have done over the past (9) years both business and personal and I am sure if I provide this information to the DA they will find more fraud committed by you."

22. In a separate letter to the department, dated November 24, 2008, respondent acknowledged that since August 2007 he had information that his ex-wife had engaged in fraud to obtain mortgage loans. Respondent authenticated this letter, and it is included in Exhibit 6.

Evidence of Rehabilitation

23. Respondent testified that his current employing broker agency is American Union Financial Services Incorporated, and the supervising broker is Joel Feinstein. Respondent testified that he did not disclose his conviction to his employing broker because the company has a zero tolerance policy concerning fraud.

24. Respondent is not currently working as a real estate salesperson. Instead, since March 2009, he has been employed by Entrust Financial Group, wherein he does presentations on self-directed Individual Retirement Accounts. Respondent did not disclose his conviction to his current employer because his attorney told him it had been expunged.

25. Respondent did successfully complete the terms of his probation. He paid the fines levied by the court, and his conviction has been expunged.

26. Respondent holds a Bachelor of Science from Phoenix University, conferred in 2006. He has taken classes in business law and real estate finance at Consumnes River Community College. Respondent testified that he has not maintained his continuing education requirements for his real estates salesperson license because he could not afford the classes, and because he questioned the value of the classes if his license was going to be restricted or revoked.

27. Respondent continues to reside in Elk Grove, California. He attends the Southside Community Baptist Church every Sunday. Other than attending church, respondent did not present any evidence of being involved in church or community activities.

28. Respondent testified that he is divorced. The Interview Information Statement, Exhibit 6, states that respondent has two children. However, no evidence was presented regarding respondent's family life.

29. Respondent did not present any character witnesses on his behalf. Respondent did not submit any letters of recommendation on his behalf.

LEGAL CONCLUSIONS

1. The burden of proof in this matter is on complainant to show by clear and convincing evidence to a reasonable certainty that respondent's license should be suspended or revoked. (See *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-56.)

2. Respondent argued that his misdemeanor conviction under Penal Code section 32 is not a conviction for a crime involving moral turpitude. He contends that a plea bargained conviction as an accessory without any factual findings, does not establish the

basis of a crime involving moral turpitude. Respondent has failed to grasp the applicable legal standard.[3]

3. Business and Professions Code section 10177, subdivision (b), provides that the commissioner may suspend or revoke the license of a real estate licensee if the licensee has "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 ...." The code requires conviction of a crime "substantially related to," not of a crime of "moral turpitude."

4. Business and Professions Code section 490, subdivision (a), provides that the 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 licensee's license was issued."

Substantial Relationship

5. 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 by which it may determine whether a crime is substantially related to the qualifications, functions, or duties of the business or profession it regulates. In response to this directive, the California Code of Regulations, title 10, section 2910 sets forth the criteria to be utilized. (*Donaldson v. Department of Real Estate* (2005) 134 Cal.App.4th 948, 955-956.)

6. California Code of Regulations, title 10, section 2910, subdivision (a), states in pertinent part:

"When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime . . . the crime or act shall be deemed to be substantially related . . . 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.
>
> [¶] ... [¶]
>
> (4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end.
>
> [¶] ... [¶]

[3] Even though respondent has cited to the incorrect standard, the crime of violating Penal Code section 32 necessarily involves moral turpitude. (*In re Young* (1989) 49 Cal.3d 257, 264.)

(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."

7. The determination that a licensee's conviction justifies revocation of the license cannot rest on the moral reprehensibility of the underlying conduct, but requires a reasoned determination that the conduct was, in fact, substantially related to the licensee's fitness to engage in the profession. (*Gromis v. Medical Board* (1992) 8 Cal.App.4th 589, 598.)

8. Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee. There is more to being a licensed professional than mere knowledge and ability. Honesty and integrity are deeply and daily involved in various aspects of the practice. If an applicant's criminal offense reflects unfavorably on his honesty, it may be said to be substantially related to his qualifications. (*Golde v. Fox* (1979) 98 Cal.App.3d 167, 176.)

9. Respondent was convicted of being an accessory after the fact, pursuant to Factual Finding 5. As discussed in Factual Findings 17, 18, 20, 21, and 22, the evidence established that respondent knew, from August 2003 onwards, that mortgage loans for his own house, as well as the houses of some of this clients, may have been obtained using falsified income records. Respondent acknowledged that by August 2007 he knew that his ex-wife had fraudulently obtained mortgage loans, as discussed in Factual Finding 22. Respondent's conviction is for aiding a principal in a felony, for being an accessory to the act, and therefore, is substantially related pursuant to California Code of Regulations, title 10, section 2910, subdivisions (a)(1), (a)(4), and (a)(8).

Rehabilitation

10. The determination whether a person is presently fit for licensure should be made only after consideration of the conduct of the licensee and consideration of any factors introduced in justification, aggravation or mitigation. "The licensee, of course, should be permitted to introduce evidence of extenuative circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation." (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449; *Brandt v. Fox* (1979) 90 Cal.App.3d 737, 747).

11. In California Code of Regulations, title 10, section 2912, the Department has set forth the criteria to be applied when reviewing whether a real estate license should be disciplined when the licensee has been convicted of a crime.[4]

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[4] California Code of Regulations, title 10, section 2912 provides:
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.

12. Reviewing these criteria, and based upon Factual Findings 5, and 6, it has not been 2 years since respondent's conviction. The record has been expunged, respondent has paid the fines levied by the court, and there is no evidence that he has engaged in subsequent criminal activity. Respondent did not complete early probation.

(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.

13. Respondent has not sustained educational or vocational training courses for economic self-improvement. As discussed in Factual Finding 26, he has not maintained continuing education coursework related to his real estate sales license.

14. Respondent attends church on a weekly basis. However, as set out in Factual Finding 27, he is not involved in any significant and conscientious manner with his community, his church or other programs designed to benefit or ameliorate social problems.

15. Respondent failed to present any evidence regarding his family life.

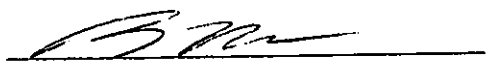
16. Respondent did not present any family members, friends or other persons who could testify as to changes in respondent's attitude or behavior since the conviction. Instead, as noted in Factual Findings 23, and 24, respondent testified that he has withheld from his current supervising broker, and from his current employer, information about his conviction.

17. Finally, respondent's failure to accept responsibility for his conviction was troubling in light of the duties and responsibilities of a real estate salesperson. The primary goal of the licensing statutes is to protect the public from unscrupulous and irresponsible licensees. A real estate salesperson is expected to behave with honesty and integrity toward the public and his clients, and to inquire and disclose adverse information about the properties he is selling. Respondent's attitude towards his conviction, and his refusal to accept responsibility casts doubt he has been substantially rehabilitated.

ORDER

The real estate salesperson license of LAMARR ANDRE BAXTER is hereby REVOKED.

DATED: October 19, 2009



BOB VARMA
Administrative Law Judge
Office of Administrative Hearings

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FILED
MAY 29 2009
DEPARTMENT OF REAL ESTATE
By L Henry

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of LAMARR ANDRE BAXTER, Respondent.	H- 5221 SAC ACCUSATION

The Complainant, JOE M. CARRILLO, in his official capacity as a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against LAMARR ANDRE BAXTER (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 salesperson.

2

On or about May 15, 2008, in the Alameda County Superior Court, State of California, case number 527161F, Respondent was convicted of violating Section 32 of the California Penal Code (Aiding and Abetting), a misdemeanor which bears a substantial

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relationship Section 2910, Title 10, California Code of 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.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondent under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further relief as may be proper under the provisions of law.

JOE M. CARRILLO
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 28 day of May, 2009.