FILED

AUG 05 2011

DEPARTMENT OF REAL ESTATE

By L. Jones

BEFORE THE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Bar Order Against:	)	
	)	NO. H-5484 SAC
LAMARR ANDRE BAXTER,	)	
	)	OAH NO. 2010110100
Respondent.	)	
	)	

DECISION

The Proposed Decision dated July 5, 2011, 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 with the following correction.

Pursuant to Section 11517(c)(2)(c) of the Government Code, the following correction is made to the Proposed Decision:

Respondent's first name in the caption on page 1, of the Proposed Decision, is corrected to read: LAMARR.

This Decision shall become effective at 12 o'clock noon on AUG 26 2011

IT IS SO ORDERED 8/5/11.

BARBARA J. BIGBY
Acting Real Estate Commissioner

Barbara J. Bigby

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Bar Order Against: LAMAAR ANDRE BAXTER, Respondent.	Case No. H-5484-SAC OAH No. 2010110100

PROPOSED DECISION

This matter was heard before Danette C. Brown, Administrative Law Judge, Office of Administrative Hearings, State of California, on June 13, 2011, in Sacramento, California.

Kenneth C. Espell, Counsel, represented complainant Jeff Davi, Real Estate Commissioner of the Department of Real Estate (department), State of California.

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

Evidence was received, the record was closed, and the matter was submitted for decision on June 13, 2011.

FACTUAL FINDINGS

1. On November 25, 2009, the department adopted the proposed decision of an administrative law judge, revoking respondent's real estate salesperson license effective December 28, 2009. Respondent's revocation was based on his criminal conviction on May 15, 2008, for violating Penal Code section 32, accessory after the fact (in aiding a principal in the commission of a felony). The facts and circumstances surrounding respondent's conviction are that, during the period of 2001 to 2003, respondent assisted his ex-wife in fraudulently obtaining mortgage loans for his own house, as well as the houses of some of his clients, using falsified income records.

2. On October 5, 2010, complainant issued a Bar Order pursuant to Business and Professions Code section 10087, subdivision (b), barring and prohibiting respondent, for 36 months, from engaging in:

(a) Holding any position of employment, management, or control in a real estate business;

(b) Participating in any business activity of a real estate salesperson or a real estate broker;

(c) Engaging in any real estate related business activity on the premises where a real estate salesperson or real estate broker is conducting business; and, 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.

3. Respondent timely filed a Request for Hearing, 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. Respondent asserted that the department's 36-month bar denied him due process, in that respondent's real estate salesperson license was revoked in December 2009, and the department did not issue its bar order until ten months later, which extended the time period that respondent is prohibited from engaging in real estate and real estate-related activities. Respondent further asserted that the 36-month bar is excessive, in light of the fact that respondent is eligible to petition for reinstatement of his real estate salesperson license within one year of the effective date his revocation.

Factors in Mitigation, Aggravation, or Rehabilitation

5. As a result of respondent's conviction set forth in Finding 1, respondent was placed on 90 days informal probation, and was ordered to pay a $32 fine. He did not serve any jail time. Respondent completed the terms of his probation and his conviction has been expunged.

6. Respondent is gainfully employed in the financial services industry working with individual retirement accounts. His job is administered by the Department of Labor. Respondent wishes to advance in his field by obtaining a Certified Individual Retirement Account (IRA) Services Professional (CISP) certification from the American Bankers Association to allow him to work in the field of self-directed individual retirement accounts, and employer plans involving IRA's. Respondent is required to meet a minimum of two years of IRA operational and technical experience, and to complete an Institute of Certified Bankers (ICB) approved education program, or four years of "dedicated IRA operational and technical experience." No evidence was provided regarding respondent's IRA education or experience, or proof of completion of an ICB-approved education program. Respondent did not provide any evidence of positive work performance in his current job, or any additional training in his chosen field.

7. Respondent asserted that the department's bar order is affecting his ability to obtain a CISP certification, however, he has not yet submitted his application for the CISP certification. Respondent admitted that he does not know for sure whether the department's bar order will cause his CISP certification application to be denied by the American Bankers Association.

LEGAL CONCLUSIONS

Applicable Statute and Legislative Intent

1. Business and Professions Code section 10087, subdivision (a), provides that 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.

2. The legislative intent for authorizing the commissioner to issue an Order of Debarment is to prevent real estate licensees, who have been disciplined by the department, from seeking employment with real estate-related companies that are regulated by departments other than the Department of Real Estate. (Stats.2008, c. 286 (S.B. 1737), § 1.)

3. This statute applies to real estate salespersons, real estate brokers, or unlicensed persons issued an order pursuant to Business and Professions Code section 10086. Respondent is a person whose real estate salesperson license has been revoked. Even though his license has been revoked, he is subject to the jurisdiction of the department by virtue of having been licensed and having rights of reinstatement, pursuant to Business and Professions Code sections 10171.3 and 10182, in conjunction with Government Code section 11522.

4. Pursuant to Government Code section 11522, respondent has an opportunity to petition for reinstatement of his license after one year following the revocation of his license. However, even if respondent's petition for reinstatement is granted, the Bar Order, if not lifted, would prohibit respondent from engaging in real estate and related real estate activities until the 36-month bar period has elapsed.

Cause to Issue Bar Order

5. Respondent is subject to debarment under Business and Professions Code section 10087, subdivision (a)(1), because he has violated the Real Estate Law by aiding and abetting a principal in a fraudulent mortgage scheme, as set forth in Factual Finding 1. In so doing, respondent caused material damage to the public. The commissioner's issuance of the Bar Order ten months after respondent's real estate salesperson license was revoked is reasonable. Respondent showed some evidence of rehabilitation, as set forth in Findings 5 and 6, however, given the seriousness and recency of his crime, it would be contrary to the public interest to reduce the period of debarment. Respondent's bar from any position of employment, management or control in any real estate-related business for a period of 36 months is appropriate given the facts and circumstances in this matter.

ORDER

The department's Bar Order against respondent Lamarr Andre Baxter is affirmed.

DATED: July 5, 2011

DANETTE C. BROWN
Administrative Law Judge
Office of Administrative Hearings

DEPARTMENT OF REAL ESTATE
P. O. Box 187000
Sacramento, CA 95818-7000

Telephone: (916) 227-0789

FILED
OCT 06 2010
DEPARTMENT OF REAL ESTATE
By L. Henry

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Bar Order Against: LAMARR ANDRE BAXTER	DRE NO. H-5484 SAC BAR ORDER (B&P Code § 10087)

Pursuant to Section 10087(b) of the California Business and Professions Code (hereinafter "the Code"), you are hereby notified of the intention of the California Real Estate Commissioner (hereinafter "Commissioner") to issue a Bar Order pursuant to Section 10087(a) of the California Business and Professions Code.

Pursuant to the authority granted by Section 10087 of the Code, and after review and consideration of the following facts, the Commissioner makes the following:

FINDINGS OF FACT

1. 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 (Accessory After the Fact), a misdemeanor which bears a substantial relationship Section 2910, Title 10, California Code of Regulations to the qualifications, functions, or duties of a real estate licensee and constituted grounds 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. The conviction concerns a scheme to defraud home

mortgage lenders by submitting false and fraudulent loan applications and supporting documentation in order to obtain the funding of mortgages.

2. On or about May 29, 2009, the Department of Real Estate filed its *Accusation* , Department of Real Estate Case Number H-5221 SAC, seeking discipline against the real estate salesperson license issued to LAMARR ANDRE BAXTER for the conviction identified in Paragraph 1 herein.

3. On or about October 6, 2009, a hearing on the Department's Accusation was held before the Honorable Bob N. Varma, Administrative Law Judge, Office of Administrative Hearings, Sacramento Office. Respondent appeared and was represented by Ian B. Kelley, attorney at law. The Department was represented by Kenneth C. Espell, Real Estate Counsel. Evidence was submitted, testimony taken and argument received. The matter was submitted to the court for its decision on October 6, 2009.

4. On or about October 19, 2009, Judge Varma issued his proposed decision recommending that the real estate salesperson license issued to LAMARR ANDRE BAXTER be revoked. On or about November 25, 2009, the Commissioner ordered that the proposed decision of Judge Varma be adopted as the Commissioner's decision with an effective date of December 28, 2009 at 12 o'clock noon. A true and correct copy of the Commissioner's *Decision* and Judge Varma's *Proposed Decision* are attached hereto as Exhibit 1 and are incorporated herein by reference.

CONCLUSIONS OF LAW

Based on the findings set forth above, the Commissioner has determined that:

(A) A Bar Order is in the public interest;

(B) Respondent has knowingly committed violations of the Real Estate Law; and,

(C) Respondent's violations of the Real Estate Law have caused material damage to the public.

NOW, THEREFORE, IT IS ORDERED, pursuant to the authority of Section 10087 of the Code, LAMARR ANDRE BAXTER, is hereby barred and prohibited for

a period of thirty-six (36) months from the effective date of this Bar Order, from engaging in any of the following activities in the State of California:

(A) Holding any position of employment, management, or control in a real estate business;

(B) Participating in any business activity of a real estate salesperson or a real estate broker;

(C) Engaging in any real estate related business activity on the premises where a real estate salesperson or real estate broker is conducting business; and, 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.

NOTICE OF RIGHT AND OPPORTUNITY FOR A HEARING

Pursuant to Section 10087 of the Code, you have the right to request a hearing under the California Administrative Procedure Act (Chapter 4.5 – commencing with Section 11400 of the Government Code). If you desire a hearing, you must submit a written request within fifteen (15) days after the mailing or service of this "Notice of Intention to Submit Bar Order; and Bar Order." The request may be in any form provided it is in writing, includes your current return address, and indicates that you want a hearing, is signed by you or on your behalf, and is delivered or mailed to the Department of Real Estate, P. O. Box 187007, Sacramento, California, 95818-7007, Attention Legal Section, or is delivered personally to the offices of the Department of Real Estate, 2201 Broadway, Sacramento, California.

If no hearing is requested within said fifteen (15) day time period, your failure to request a hearing shall constitute a waiver of the right to a hearing.

THIS BAR ORDER IS EFFECTIVE IMMEDIATELY.

It is so ordered on 10/5/2010.

JEFF DAVI
Real Estate Commissioner

BY: Barbara J. Bigby
Chief Deputy Commissioner