

**FILED**

SEP 07 2017

BUREAU OF REAL ESTATE

By H. Diaz

**BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA**

In the Matter of the Accusation of

**MARIA VEGA,**

Respondent.

No. H-2978 FR

OAH No. 2016010335

**ORDER ADOPTING PROPOSED DECISION OF  
ADMINISTRATIVE LAW JUDGE AND VACATING  
ORDER GRANTING RECONSIDERATION**

On November 2, 2016, an administrative hearing occurred before Administrative Law Judge (ALJ) Karen Brandt on the Accusation brought by the Bureau of Real Estate against Respondent Maria Vega. On November 4, 2016, ALJ Brandt rendered her Proposed Decision on the Accusation. ALJ Brandt found good cause to revoke Respondent's license, but proposed she be allowed to apply for a license on a restricted basis.

On December 9, 2016, the Real Estate Commissioner notified Respondent and her counsel that he was rejecting the Proposed Decision and that he would decide the case upon the record, the transcript from the proceedings, and the written arguments of the parties. The Real Estate Commissioner filed his Decision After Rejection on April 10, 2017, revoking the real estate salesperson license and all licensing rights of Respondent Maria Vega.

The Real Estate Commissioner's Decision was to become effective on April 20, 2017. The effective date of the Decision was stayed three times; first to May 10, 2017; second to May 20, 2017; and third to June 19, 2017. On June 15, 2017, an Order Granting Reconsideration was filed, granting reconsideration of the Real Estate Commissioner's Decision After Rejection.

In the interim on May 9, 2017, Respondent filed a Petition for Extraordinary Relief in the Nature of Mandamus; Request for Immediate Stay of Proceedings; Complaint for Declaratory Relief and Petition for Other Appropriate Relief against the Bureau of Real Estate in the Sacramento County Superior Court. On May 12, 2017, the Honorable Christopher E. Krueger, Judge of the Sacramento County Superior Court, granted Respondent's request for a stay of the Commissioner's Decision After Rejection.

Having further considered this case, the Real Estate Commissioner, the Bureau of Real Estate, and Respondent Maria Vega, agree that it is in the best interest of the parties to resolve the matters alleged in the petition and complaint filed in the superior court on May 9, 2017, the stay order entered by superior court judge Krueger on May 12, 2017, and the Real Estate Commissioner's pending decision on reconsideration.

Accordingly, the following shall constitute the order of the Real Estate Commissioner in this proceeding:

1. In accordance with Government Code section 11517, subdivision (c)(2)(C), the Commissioner adopts the November 4, 2016 Proposed Decision of ALJ Brandt as his decision; and makes the following change in the Proposed Decision:

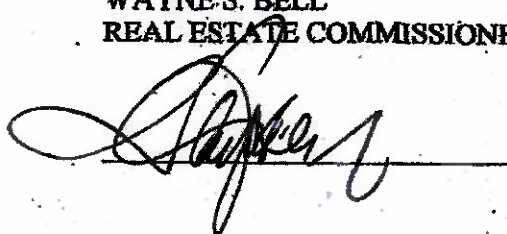
Whenever the terms "effective date of this Decision," are stated at pages 6 and 7 of the Proposed Decision, the terms are amended to state "effective date of this Order."

2. The June 15, 2017 Order Granting Reconsideration of the Commissioner's Decision After Rejection is vacated.

This Order shall be effective 21 days from the date it is filed.

Dated: 9/6/2017

WAYNE S. BELL  
REAL ESTATE COMMISSIONER



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

In the Matter of the Accusation Against:

MARIA VEGA,

Respondent.

Case No. H-2978 FR

OAH No. 2016010335

**PROPOSED DECISION**

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on November 2, 2016, in Sacramento, California.

Truly A. Sughrue, Counsel, represented Brenda Smith (complainant), Supervising Special Investigator, Bureau of Real Estate (Bureau), Department of Consumer Affairs, State of California.

Jonathan C. Turner, Attorney at Law, represented Maria Vega (respondent), who was present at the hearing.

Evidence was received, the record was closed, and the matter was submitted for decision on November 2, 2016.

**FACTUAL FINDINGS**

1. Complainant made and filed the Accusation in her official capacity.
2. On January 7, 2006, respondent was issued a real estate salesperson license. Her license will expire on January 6, 2018, unless renewed or revoked. Complainant seeks to discipline respondent's license based upon her federal felony conviction described below.

*Respondent's Conviction*

3. On December 1, 2014, in the United States District Court, Eastern District of California, Case No. 1:12CR00245-01, respondent, upon a plea of guilty, was convicted of violating Title 26 United States Code section 7206(1), making and subscribing a false tax

return, a felony. Respondent was ordered to pay \$179,465 in restitution. She was sentenced to serve six months in custody, followed by six months of confinement to her home, except for employment, education, religious services, medical treatment or other activities as pre-approved by her probation officer. After custody and house confinement, she was ordered to serve probation for six months.

4. Respondent's conviction was based upon her April 2008 federal income tax return filed for the 2005, 2006, and 2007 tax years. During these years, respondent owned and operated Vega's Financial Services. She was licensed as a broker by the California Department of Corporations, and brokered loans and worked as a real estate agent on real property transactions. She and her husband also owned rental properties. On her April 2008 tax return, respondent reported taxable income of \$0 for 2005, \$21,692 for 2006, and \$0 for 2007, even though she and her husband had joint taxable income totaling over \$740,000 for these three years.

5. At the time of her conviction, respondent paid \$161,785 toward the \$179,465 restitution order. She is paying \$300 per month toward the remaining \$17,680 she owes in restitution. Respondent successfully completed her six months of custody, six months of home confinement, and six months of probation. Her probation ended on October 1, 2016.

#### *Evidence of Aggravation, Mitigation and Rehabilitation*

6. Respondent testified at the hearing. She is 56 years old. She is married and has three adult children. She is the primary source of income for her family. Her husband maintains the 16 rental properties they own. In the past, respondent worked in banking for Wells Fargo, West America Bank and American National Bank. She also worked for Principal Financial Group, selling life insurance, mutual funds and annuities, and owned and operated a financial services company. In addition to her real estate salesperson license from the Bureau and her broker license from the Department of Corporations, she also held an insurance license and a securities license. She has let her insurance, securities and corporation licenses lapse, and has retained only her real estate salesperson license. At the hearing, respondent described the education she received from Wells Fargo's university while working in the banking industry in the 1990's.

7. At the hearing, respondent also described the significant community service in which she engaged as the Secretary/Treasurer for the Stanislaus County Hispanic Chamber of Commerce from the 1990's until the early 2000's. She submitted certificates of recognition she received for this community service in 1998.

8. Prior to her sentencing, respondent obtained counseling from a counselor through the criminal justice system. As required by the terms of her conviction, she spent six months at Dublin Correctional Facility, a minimum security prison camp, from April to September 2015. While there, she worked as a teacher's aide, tutoring inmates, primarily in math. She also took educational classes offered at the prison camp, including Financial Matters with Suze Orman Financial Series, Emotion Self-Regulation, Understanding Your

Personality, Weight Management Skills, Toastmasters, and GOGI Tools for Positive Decision-Making.<sup>1</sup> In addition, she took a class in Excel, but did not complete it before she was released. She described the 12-week GOGI course as particularly impactful. It taught her how to accept that she had engaged in illegal conduct and to learn from it, so that she could leave the prison camp with a more positive attitude. Since her release from incarceration, respondent has remained current on her knowledge of applicable real estate laws and regulations, taking continuing education courses through the Central Valley Realtor Association and MetroList. She has also continued to attend church weekly.

9. Respondent offered 15 character reference letters, which were admitted as administrative hearsay and have been considered to the extent permitted under Government Code section 11513, subdivision (d).<sup>2</sup> The letters writers included family members, friends and colleagues. Nine of these letters were written in 2014 before respondent was sentenced in the federal criminal action. The remaining letters were written in support of respondent in this proceeding. All of the letter writers were aware of the criminal action against respondent. They attested to respondent's significant involvement with and dedication to the Hispanic Chamber of Commerce in the 1990's. They generally described respondent as hard-working, professional, respectful, generous with her time, enthusiastic, dedicated to her community, and honest.

10. Respondent's employing broker is Carl Gene Gwaltney. Respondent testified that she spoke to Mr. Gwaltney about her conviction and this proceeding, and whether he would be willing to supervise her if her license were restricted. According to respondent, Mr. Gwaltney was aware of the amount of supervision that would be required if she were granted a restricted license, and he was willing to undertake such supervision.

### *Discussion*

11. The rehabilitation criteria applicable in this matter are set forth in California Code of Regulations, title 10, section 2912. Relevant rehabilitation criteria include: (1) the passage of not less than two years from the most recent criminal conviction; (2) successful completion or early discharge from probation or parole; (3) payment of any fine imposed in connection with the criminal conviction that is the basis for revocation of the license; (4) stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction; (5) completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement; (6) significant and conscientious

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<sup>1</sup> GOGI stands for Getting Out by Going In.

<sup>2</sup> Government Code section 11513, subdivision (d), in relevant part, states:

Hearsay 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.

involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems; and (7) change in attitude from that which existed at the time of the commission of the criminal acts in question.

12. Two years ago, respondent was convicted of making and subscribing a false tax return. Her conviction involved fraudulent conduct in failing to report on her federal income tax return significant income she earned during a three-year period. Two months ago, she successfully completed her probation. Less weight is generally accorded to good conduct while a person is on probation. (See *In re Gossage* (2000) 23 Cal.4th 1080, 1099.) But even though respondent was convicted only two years ago, the wrongdoing in which she engaged occurred in April 2008, regarding tax years 2005, 2006 and 2007. There was no evidence that respondent has engaged in any illegal conduct in the eight and one-half years since she filed her fraudulent tax return.

13. At the hearing, respondent testified in a candid and direct fashion. She took responsibility for her illegal conduct. The documents relating to her conviction submitted at hearing show that she was upfront and honest with her probation officer during the pre-sentencing phase of her criminal proceeding. She expressed what appeared to be sincere remorse and apologized for her criminal wrongdoing. Although she has not fully paid off all the restitution she owes, she has paid a significant proportion of it and is making monthly payments. She has a stable family life and appears to be fulfilling her familial responsibilities. She has completed and continues to enroll in vocational training courses for economic self-improvement. She is involved in her community and church. She has a broker who is willing to supervise her if she were granted a restricted license. She provided strong and supportive character references. She demonstrated insight and a change in attitude. (*Singh v. Davi* (2012) 211 Cal.App.4th 141, 149.)

14. When all the evidence is considered, respondent submitted sufficient evidence of rehabilitation to establish that it would be consistent with the public interest, safety and welfare to allow her to retain a restricted real estate salesperson license on the terms and conditions set forth below.

#### *Costs*

15. Complainant has requested that respondent be ordered to pay investigation costs in the amount of \$1,293.40, and enforcement costs in the amount of \$534, for total costs of \$1,827.40. The certifications regarding these requested costs include sufficient supporting documentation to establish that the time spent by the Bureau's investigators and counsel was appropriate in light of the allegations and legal issues in this matter, and that the amounts charged were reasonable. Respondent did not object to complainant's request for costs. Respondent testified about her financial circumstances. When all the evidence is considered, respondent did not establish that the requested costs should be reduced.

## LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 490, a professional license may be suspended or revoked if 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."

2. Pursuant to Business and Professions Code section 10177, subdivision (b), a real estate license may be disciplined when the licensee has "[e]ntered 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."

3. Pursuant to California Code of Regulations, title 10, section 2910, subdivision (a), a conviction is deemed to be substantially related to the qualifications, functions or duties of a real estate licensee if it involves:

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

[REDACTED] ... [REDACTED]

(3) Willfully attempting to derive a personal financial benefit through the nonpayment or underpayment of taxes, assessments or levies duly imposed upon the licensee or applicant by federal, state, or local government.

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

[REDACTED] ... [REDACTED]

(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.

4. Respondent's federal felony conviction for making and subscribing a false tax return is substantially related to the qualifications, functions and duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivisions (a)(1), (3), (4) and (8). Consequently, respondent's felony conviction establishes cause to discipline her real estate license under Business and Professions Code sections 490 and 10177, subdivision (b).

5. As set forth in Findings, respondent submitted sufficient evidence of rehabilitation to demonstrate that it would be consistent with the public interest, safety and



welfare to allow her to retain a restricted real estate salesperson license on the terms and conditions set forth below.

6. Business and Professions Code section 10106 permits the award of costs. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered when determining the reasonableness of costs sought pursuant to statutory provisions like Business and Professions Code section 10106. These factors include: (a) whether the licensee has been successful at hearing in getting charges dismissed or reduced; (b) the licensee's subjective good faith belief in the merits of his or her position; (c) whether the licensee has raised a colorable challenge to the proposed discipline; (d) the financial ability of the licensee to pay; and (e) whether the scope of the investigation was appropriate in light of the alleged misconduct.

7. As set forth in Finding 15, complainant seeks a total of \$1,827.40 in investigation and enforcement costs. When all the *Zuckerman* factors are considered, the requested investigation and enforcement costs are reasonable. Respondent did not offer sufficient evidence to establish that these costs should be reduced. Consequently, respondent will be ordered to pay these costs in full to the Bureau.

#### ORDER

All licenses and licensing rights issued to respondent Maria Vega under the Real Estate Law are revoked; provided, however, that a restricted real estate salesperson license shall be issued to respondent under Business and Professions Code section 10156.5 if respondent makes application therefor and pays to the Bureau of Real Estate the appropriate fee for the issuance of the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and shall be subject to the to the following limitations, conditions and restrictions imposed under authority of Business and Professions Code section 10156.6:

1. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.



3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until four (4) years have elapsed from the effective date of this Decision.

4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Bureau of Real Estate which shall certify:

(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

6. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of respondent's arrest, the crime for which respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

7. Respondent shall pay investigation and enforcement costs to the Bureau in the amount of \$1,827.40 within 30 days after the effective date of this Decision. These costs may be paid in accordance with a reasonable payment plan acceptable to the Commissioner or his designee.

DATED: November 4, 2016

DocuSigned by:

*Karen Brandt*

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KAREN J. BRANDT

Administrative Law Judge

Office of Administrative Hearings

Flag

FILED

JUN 15 2017

BUREAU OF REAL ESTATE

By B. Nicholas

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

\*\*\*

In the Matter of the Accusation of

MARIA VEGA,

Respondent.

No. H-2978 FR

ORDER GRANTING RECONSIDERATION

On April 8, 2017, a Decision After Rejection was rendered in the above-entitled matter to become effective April 20, 2017.

On April 18, 2017, an Order Staying Effective Date was filed by the Bureau thereby staying the Commissioner's Decision until May 10, 2017. On May 3, 2017, an Order Staying Effective Date was filed thereby staying the Commissioner's Decision until May 20, 2017. On May 24, 2017, an Order Staying Effective Date was filed thereby staying the Commissioner's Decision until June 19, 2017.

I have given due consideration to this matter, and I find good cause to reconsider the Decision. Reconsideration is hereby granted.

IT IS HEREBY ORDERED

6/15/17

WAYNE S. BELL  
REAL ESTATE COMMISSIONER

David J. Smith

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FILED

MAY 24 2017

BUREAU OF REAL ESTATE

By B. Nicholas

BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	CalBRE NO. H-2978 FR
	)	
MARIA VEGA,	)	OAH NO. 2016010335
	)	
Respondent.	)	

ORDER STAYING EFFECTIVE DATE

On April 8, 2017, a Decision was rendered in the above-entitled matter to become effective April 20, 2017. On April 18, 2017, an Order Staying Effective Date was filed and stayed until May 10, 2017. On May 3, 2017, an Order Staying Effective Date was filed and stayed until May 20, 2017.

IT IS HEREBY ORDERED that the effective date of the Decision of April 8, 2017, which was previously stayed for an additional period until May 20, 2017, to allow Complainant to file a petition for reconsideration.

The Decision of April 8, 2017, shall become effective at 12 o' clock noon on June 19, 2017.

DATED: 5/19/17

WAYNE S. BELL  
REAL ESTATE COMMISSIONER

By: Daniel J. Sandri  
DANIEL J. SANDRI  
Chief Deputy Commissioner

Flag.

**FILED**

**MAY 17 2017**

**BUREAU OF REAL ESTATE**

By B. Nicholas

**BEFORE THE BUREAU OF REAL ESTATE**

**STATE OF CALIFORNIA**

\* \* \*

In the Matter of the Accusation of

MARIA VEGA,

Respondent.

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CalBRE No. H-2978 FR

OAH No. 2016010335

**ORDER DENYING RECONSIDERATION**

On April 8, 2017, a Decision was rendered in the above-entitled matter. The Decision was to become effective on May 10, 2017, and was stayed by separate Order to May 20, 2017.

On May 2, 2017, Respondent petitioned for reconsideration of the Decision of April 8, 2017.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of April 8, 2017, and reconsideration is hereby denied.

IT IS SO ORDERED 5/17/17.

WAYNE S. BELL  
REAL ESTATE COMMISSIONER

Daniel J. Smith

Flag.

**FILED**

MAY 03 2017

BUREAU OF REAL ESTATE

By B. Nicholas

BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

\*\*\*

In the Matter of the Accusation of ) CalBRE NO. H-2978 FR  
MARIA VEGA, ) OAH NO. 2016010335  
Respondent. )

ORDER STAYING EFFECTIVE DATE

On April 8, 2017, a Decision was rendered in the above-entitled matter to become effective May 10, 2017.

IT IS HEREBY ORDERED that the effective date of the Decision of April 8, 2017, is stayed for a period of 10 days to allow Respondent MARIA VEGA to file a petition for reconsideration or consider Respondent's petition for reconsideration.

The Decision of April 8, 2017, shall become effective at 12 o' clock noon on May 20, 2017.

DATED: May 2, 2017

WAYNE S. BELL  
REAL ESTATE COMMISSIONER

By: Daniel J. Sandri  
DANIEL J. SANDRI  
Chief Deputy Commissioner

Flag.

**FILED**

APR 18 2017

BUREAU OF REAL ESTATE

By B. Nicholas

10BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	CalBRE NO. H-2978 FR
MARIA VEGA,	)	OAH NO. 2016010335
Respondent(s).	)	

ORDER STAYING EFFECTIVE DATE

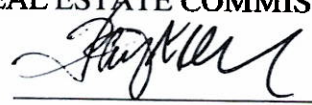
On April 8, 2017, a Decision was rendered in the above-entitled matter to become effective April 20, 2017.

IT IS HEREBY ORDERED that the effective date of the Decision of April 20, 2017, is stayed for a period of 20 days.

The Decision of April 8, 2017, shall become effective at 12 o' clock noon on May 10, 2017.

DATED: 4/17/2017

WAYNE S. BELL  
REAL ESTATE COMMISSIONER





FILED

APR 10 2017

BUREAU OF REAL ESTATE

By H. Diaz

BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of:

MARIA VEGA,

Respondent.

No. H-2978 FR

OAH No. 2016010335

**DECISION AFTER REJECTION**

This matter came to hearing before Honorable Karen Brandt, Administrative Law Judge ("ALJ"), Office of Administrative Hearings, State of California, in Sacramento, California, on November 2, 2016. Real Estate Counsel Truly Sughrue represented Complainant Brenda Smith, in her official capacity as a Deputy Real Estate Commissioner with the Bureau of Real Estate ("Bureau"). Respondent MARIA VEGA ("Respondent") was present and represented by attorney Jonathan C. Turner of the Law Office of Jonathan Turner.

Oral and documentary evidence was received, and the case was submitted for decision on November 2, 2016. On November 4, 2016, the ALJ rendered a Proposed Decision ("Proposed Decision"), which the Real Estate Commissioner declined to adopt as his Decision herein. Pursuant to Section 11517 of the Government Code of the State of California, Respondent was served with notice of the Real Estate Commissioner's determination not to adopt the Proposed Decision along with a copy of the Proposed Decision. Respondent was notified that the case would be decided by the Real Estate Commissioner upon the record, the

1 transcript from the proceeding, and the written arguments offered by Respondent and  
2 Complainant.

3 A written argument was submitted by Respondent on January 25, 2017, and by  
4 Complainant on February 1, 2017.

5 The following shall constitute the Decision of the Real Estate  
6 Commissioner in this proceeding:

7 FACTUAL FINDINGS

8 The Factual Findings of the Proposed Decision are adopted as part of this  
9 Decision, with the exception of the following:

10 Paragraph No. 14 of the Proposed Decision is amended as follows:

11 "14. When all the evidence is considered, respondent did not present sufficient  
12 evidence of rehabilitation to establish that it would be consistent with the public interest, safety  
13 and welfare to allow her to retain a real estate salesperson license even on a restricted basis."

14 LEGAL CONCLUSIONS

15 The Legal Conclusions of the Proposed Decision are adopted as part of this  
16 Decision, with the exception of the following:

17 Paragraph No. 5 of the Proposed Decision is amended as follows:

18 "5. As set forth in the Factual Findings, respondent did not present sufficient  
19 evidence of rehabilitation to demonstrate that it would be consistent with the public interest,  
20 safety and welfare to allow her to retain a real estate salesperson license even on a restricted  
21 basis."

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1 ORDER

2 All licenses and licensing rights issues to Respondent under the Real Estate Law  
3 (Part 1 of Division 4 of the Business and Professions Code) are REVOKED.

4 Respondent shall pay the Bureau the amount of \$1,827.40 in investigation and  
5 enforcement costs of this matter.

6 This Decision shall become effective at 12 o'clock noon on 4-20-2017.

7 IT IS SO ORDERED

8 4/8/2017

9 WAYNE S. BELL  
10 REAL ESTATE COMMISSIONER

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**FILED**

DEC 09 2016

BUREAU OF REAL ESTATE

By B. dew

BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	CalBRE No. H-2978 FR
	)	
MARIA VEGA,	)	OAH No. 2016010335
	)	
Respondent.	)	

NOTICE

TO: MARIA VEGA, Respondent, and JONATHAN TURNER.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated November 4, 2016, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated November 4, 2016, is attached hereto for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on Wednesday, November 02, 2016, and any written argument hereafter submitted on behalf of respondent and complainant.

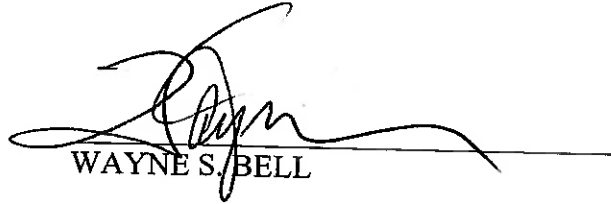
Written argument of respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of Wednesday, November 02, 2016, at the Sacramento office of the Bureau of Real Estate unless an extension of the time is granted for good

1 cause shown.

2 Written argument of complainant to be considered by me must be submitted within  
3 15 days after receipt of the argument of respondent at the Sacramento Office of the Bureau of Real  
4 Estate unless an extension of the time is granted for good cause shown.

5 DATED: 12/2/2016.

6 REAL ESTATE COMMISSIONER

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8   
9 WAYNE S. BELL

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

In the Matter of the Accusation Against:

MARIA VEGA,

Respondent.

Case No. H-2978 FR

OAH No. 2016010335

**PROPOSED DECISION**

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on November 2, 2016, in Sacramento, California.

Truly A. Sughrue, Counsel, represented Brenda Smith (complainant), Supervising Special Investigator, Bureau of Real Estate (Bureau), Department of Consumer Affairs, State of California.

Jonathan C. Turner, Attorney at Law, represented Maria Vega (respondent), who was present at the hearing.

Evidence was received, the record was closed, and the matter was submitted for decision on November 2, 2016.

**FACTUAL FINDINGS**

1. Complainant made and filed the Accusation in her official capacity.
2. On January 7, 2006, respondent was issued a real estate salesperson license. Her license will expire on January 6, 2018, unless renewed or revoked. Complainant seeks to discipline respondent's license based upon her federal felony conviction described below.

*Respondent's Conviction*

3. On December 1, 2014, in the United States District Court, Eastern District of California, Case No. 1:12CR00245-01, respondent, upon a plea of guilty, was convicted of violating Title 26 United States Code section 7206(1), making and subscribing a false tax



return, a felony. Respondent was ordered to pay \$179,465 in restitution. She was sentenced to serve six months in custody, followed by six months of confinement to her home, except for employment, education, religious services, medical treatment or other activities as pre-approved by her probation officer. After custody and house confinement, she was ordered to serve probation for six months.

4. Respondent's conviction was based upon her April 2008 federal income tax return filed for the 2005, 2006, and 2007 tax years. During these years, respondent owned and operated Vega's Financial Services. She was licensed as a broker by the California Department of Corporations, and brokered loans and worked as a real estate agent on real property transactions. She and her husband also owned rental properties. On her April 2008 tax return, respondent reported taxable income of \$0 for 2005, \$21,692 for 2006, and \$0 for 2007, even though she and her husband had joint taxable income totaling over \$740,000 for these three years.

5. At the time of her conviction, respondent paid \$161,785 toward the \$179,465 restitution order. She is paying \$300 per month toward the remaining \$17,680 she owes in restitution. Respondent successfully completed her six months of custody, six months of home confinement, and six months of probation. Her probation ended on October 1, 2016.

#### *Evidence of Aggravation, Mitigation and Rehabilitation*

6. Respondent testified at the hearing. She is 56 years old. She is married and has three adult children. She is the primary source of income for her family. Her husband maintains the 16 rental properties they own. In the past, respondent worked in banking for Wells Fargo, West America Bank and American National Bank. She also worked for Principal Financial Group, selling life insurance, mutual funds and annuities, and owned and operated a financial services company. In addition to her real estate salesperson license from the Bureau and her broker license from the Department of Corporations, she also held an insurance license and a securities license. She has let her insurance, securities and corporation licenses lapse, and has retained only her real estate salesperson license. At the hearing, respondent described the education she received from Wells Fargo's university while working in the banking industry in the 1990's.

7. At the hearing, respondent also described the significant community service in which she engaged as the Secretary/Treasurer for the Stanislaus County Hispanic Chamber of Commerce from the 1990's until the early 2000's. She submitted certificates of recognition she received for this community service in 1998.

8. Prior to her sentencing, respondent obtained counseling from a counselor through the criminal justice system. As required by the terms of her conviction, she spent six months at Dublin Correctional Facility, a minimum security prison camp, from April to September 2015. While there, she worked as a teacher's aide, tutoring inmates, primarily in math. She also took educational classes offered at the prison camp, including Financial Matters with Suze Orman Financial Series, Emotion Self-Regulation, Understanding Your

Personality, Weight Management Skills, Toastmasters, and GOGI Tools for Positive Decision-Making.<sup>1</sup> In addition, she took a class in Excel, but did not complete it before she was released. She described the 12-week GOGI course as particularly impactful. It taught her how to accept that she had engaged in illegal conduct and to learn from it, so that she could leave the prison camp with a more positive attitude. Since her release from incarceration, respondent has remained current on her knowledge of applicable real estate laws and regulations, taking continuing education courses through the Central Valley Realtor Association and MetroList. She has also continued to attend church weekly.

9. Respondent offered 15 character reference letters, which were admitted as administrative hearsay and have been considered to the extent permitted under Government Code section 11513, subdivision (d).<sup>2</sup> The letters writers included family members, friends and colleagues. Nine of these letters were written in 2014 before respondent was sentenced in the federal criminal action. The remaining letters were written in support of respondent in this proceeding. All of the letter writers were aware of the criminal action against respondent. They attested to respondent's significant involvement with and dedication to the Hispanic Chamber of Commerce in the 1990's. They generally described respondent as hard-working, professional, respectful, generous with her time, enthusiastic, dedicated to her community, and honest.

10. Respondent's employing broker is Carl Gene Gwaltney. Respondent testified that she spoke to Mr. Gwaltney about her conviction and this proceeding, and whether he would be willing to supervise her if her license were restricted. According to respondent, Mr. Gwaltney was aware of the amount of supervision that would be required if she were granted a restricted license, and he was willing to undertake such supervision.

### *Discussion*

11. The rehabilitation criteria applicable in this matter are set forth in California Code of Regulations, title 10, section 2912. Relevant rehabilitation criteria include: (1) the passage of not less than two years from the most recent criminal conviction; (2) successful completion or early discharge from probation or parole; (3) payment of any fine imposed in connection with the criminal conviction that is the basis for revocation of the license; (4) stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction; (5) completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement; (6) significant and conscientious

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<sup>1</sup> GOGI stands for Getting Out by Going In.

<sup>2</sup> Government Code section 11513, subdivision (d), in relevant part, states:

Hearsay 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.

involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems; and (7) change in attitude from that which existed at the time of the commission of the criminal acts in question.

12. Two years ago, respondent was convicted of making and subscribing a false tax return. Her conviction involved fraudulent conduct in failing to report on her federal income tax return significant income she earned during a three-year period. Two months ago, she successfully completed her probation. Less weight is generally accorded to good conduct while a person is on probation. (See *In re Gossage* (2000) 23 Cal.4th 1080, 1099.) But even though respondent was convicted only two years ago, the wrongdoing in which she engaged occurred in April 2008, regarding tax years 2005, 2006 and 2007. There was no evidence that respondent has engaged in any illegal conduct in the eight and one-half years since she filed her fraudulent tax return.

13. At the hearing, respondent testified in a candid and direct fashion. She took responsibility for her illegal conduct. The documents relating to her conviction submitted at hearing show that she was upfront and honest with her probation officer during the pre-sentencing phase of her criminal proceeding. She expressed what appeared to be sincere remorse and apologized for her criminal wrongdoing. Although she has not fully paid off all the restitution she owes, she has paid a significant proportion of it and is making monthly payments. She has a stable family life and appears to be fulfilling her familial responsibilities. She has completed and continues to enroll in vocational training courses for economic self-improvement. She is involved in her community and church. She has a broker who is willing to supervise her if she were granted a restricted license. She provided strong and supportive character references. She demonstrated insight and a change in attitude. (*Singh v. Davi* (2012) 211 Cal.App.4th 141, 149.)

14. When all the evidence is considered, respondent submitted sufficient evidence of rehabilitation to establish that it would be consistent with the public interest, safety and welfare to allow her to retain a restricted real estate salesperson license on the terms and conditions set forth below.

#### *Costs*

15. Complainant has requested that respondent be ordered to pay investigation costs in the amount of \$1,293.40, and enforcement costs in the amount of \$534, for total costs of \$1,827.40. The certifications regarding these requested costs include sufficient supporting documentation to establish that the time spent by the Bureau's investigators and counsel was appropriate in light of the allegations and legal issues in this matter, and that the amounts charged were reasonable. Respondent did not object to complainant's request for costs. Respondent testified about her financial circumstances. When all the evidence is considered, respondent did not establish that the requested costs should be reduced.

## LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 490, a professional license may be suspended or revoked if 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."

2. Pursuant to Business and Professions Code section 10177, subdivision (b), a real estate license may be disciplined when the licensee has "[e]ntered 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."

3. Pursuant to California Code of Regulations, title 10, section 2910, subdivision (a), a conviction is deemed to be substantially related to the qualifications, functions or duties of a real estate licensee if it involves:

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

[¶] ... [¶]

(3) Willfully attempting to derive a personal financial benefit through the nonpayment or underpayment of taxes, assessments or levies duly imposed upon the licensee or applicant by federal, state, or local government.

(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.

4. Respondent's federal felony conviction for making and subscribing a false tax return is substantially related to the qualifications, functions and duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivisions (a)(1), (3), (4) and (8). Consequently, respondent's felony conviction establishes cause to discipline her real estate license under Business and Professions Code sections 490 and 10177, subdivision (b).

5. As set forth in Findings, respondent submitted sufficient evidence of rehabilitation to demonstrate that it would be consistent with the public interest, safety and

welfare to allow her to retain a restricted real estate salesperson license on the terms and conditions set forth below.

6. Business and Professions Code section 10106 permits the award of costs. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered when determining the reasonableness of costs sought pursuant to statutory provisions like Business and Professions Code section 10106. These factors include: (a) whether the licensee has been successful at hearing in getting charges dismissed or reduced; (b) the licensee's subjective good faith belief in the merits of his or her position; (c) whether the licensee has raised a colorable challenge to the proposed discipline; (d) the financial ability of the licensee to pay; and (e) whether the scope of the investigation was appropriate in light of the alleged misconduct.

7. As set forth in Finding 15, complainant seeks a total of \$1,827.40 in investigation and enforcement costs. When all the *Zuckerman* factors are considered, the requested investigation and enforcement costs are reasonable. Respondent did not offer sufficient evidence to establish that these costs should be reduced. Consequently, respondent will be ordered to pay these costs in full to the Bureau.

### ORDER

All licenses and licensing rights issued to respondent Maria Vega under the Real Estate Law are revoked; provided, however, that a restricted real estate salesperson license shall be issued to respondent under Business and Professions Code section 10156.5 if respondent makes application therefor and pays to the Bureau of Real Estate the appropriate fee for the issuance of the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and shall be subject to the to the following limitations, conditions and restrictions imposed under authority of Business and Professions Code section 10156.6:

1. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until four (4) years have elapsed from the effective date of this Decision.

4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Bureau of Real Estate which shall certify:

(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

6. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of respondent's arrest, the crime for which respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

7. Respondent shall pay investigation and enforcement costs to the Bureau in the amount of \$1,827.40 within 30 days after the effective date of this Decision. These costs may be paid in accordance with a reasonable payment plan acceptable to the Commissioner or his designee.

DATED: November 4, 2016

DocuSigned by:

*Karen Brandt*

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KAREN J. BRANDT

Administrative Law Judge

Office of Administrative Hearings