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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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|------------------------------------|---|---------------------------|
| In the Matter of the Accusation of |) | DRE No. H-3297 FR |
| |) | |
| ANTERO DAVID ITURRIRIA, |) | OAH No. 2020030097 |
| |) | |
| Respondent. |) | |

NOTICE

TO: ANTERO DAVID ITURRIRIA, Respondent, and WILLIAM L. ALEXANDER, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated August 22, 2020, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated August 22, 2020, 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 Friday, July 24, 2020, 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 Friday, July 24, 2020, at the Los Angeles

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1 office of the Department of Real Estate unless an extension of the time is granted for good cause
2 shown.

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

6 DATED: 10.30.20.

7 DOUGLAS R. McCAULEY
8 REAL ESTATE COMMISSIONER

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10 DOUGLAS R. McCAULEY
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**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

ANTERO DAVID ITURRIRIA, Respondent

Case No. H-93297 FR

OAH No. 2020030097

PROPOSED DECISION

Thomas Y. Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by telephone and videoconference on July 24, 2020. Steve Chu, Staff Counsel, represented Brenda Smith, a Supervising Special Investigator for the State of California. William L. Alexander, Attorney at Law, represented Antero David (Ted) Iturriria, respondent.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on July 24, 2020.

STATEMENT OF THE CASE

In late 2015, respondent's wife falsified documents that he submitted to the Idaho Department of Finance in applying to renew his Mortgage Loan Originator (MLO) license. The department renewed the license, but soon discovered the

falsification by means of subpoenas to respondent's creditors. After respondent learned of his wife's misconduct, he agreed to a Consent Order revoking the license. Based on these events, the California Department of Real Estate (DRE) denied respondent's application for a broker license. Respondent regrets his unwitting submission of false documents to Idaho regulators. He contends his character and business record are good, so that if licensed he would present no public risk.

ISSUES

Is respondent's application for a broker license subject to denial because, when he submitted falsified documentation to a state licensing authority, he acted deceitfully, fraudulently, or otherwise with bad intent?

1. Is denial warranted now because: (i) another state's licensing authority denied respondent licensure based on conduct in violation of law; (ii) that violation would be grounds for discipline of a California real estate license; and (iii) the denial was decided in proceedings that protected respondent with due process of law?

2. If respondent's wrongful conduct was negligence, is a license, restricted or otherwise, properly granted based on rehabilitation criteria?

SUMMARY OF DECISION

Respondent's conduct was neglect, not intentional wrongdoing. The evidence of respondent's regret and good character is substantial, counterbalancing his wrongdoing and proper grounds to issue him a restricted license.

FINDINGS OF FACT

3. In response to the February 10, 2020 statement of issues, respondent submitted a February 25, 2020 Notice of Defense on Application.

Respondent's Application and Preceding Consent Order

4. On August 8, 2018, respondent applied for a broker license.

A. As required, respondent informed DRE of a Consent Order issued on March 23, 2017 by the Idaho Department of Finance. The Consent Order states at the outset that in applying to renew his Idaho MLO license respondent "engaged in violations of the Idaho Residential Mortgage Practices Act, Idaho Code § 26-31-101 et seq."

B. The Consent Order recounts that on November 27, 2015, respondent applied to renew his Idaho Mortgage Loan Originator License. After checking a credit report, an official wrote respondent with questions. Respondent provided account statements to show that delinquencies were erroneously reported. Based on the documentation, the Department of Finance granted respondent a conditional license, but on further review noted inaccuracies. It subpoenaed creditors' records, which were materially different from copies respondent provided. Concluding the documentation was falsified, the Department of Finance filed an administrative action on November 7, 2016 to revoke respondent's license. Respondent withdrew his request for a hearing after learning and admitting that his wife, Bernadette Iturriria, was responsible for the falsification. As set out in the Consent Order, respondent agreed that his Idaho Mortgage Loan Originator License would not be renewed and that he would not reapply for the license for at least five years.

C. Respondent wrote an August 8, 2018 letter, Exhibit D, to accompany his application. It agreed with his later testimony at the administrative hearing and stated in part:

I cannot tell you how embarrassed and disappointed I am with the situation that occurred. I have always taken great pride in being an honest and ethical person as these are strong values I maintain.

Upon the discovery of the issues that are illustrated in the attached documents I have taken full responsibility for the action of my spouse and have brought all delinquent mortgages current.

I am asking that the Department please review my situation and allow for me to obtain approval as a RE broker. . . . I will continue to take pride in being an honest and ethical person and would love nothing more than to help others.

D. The application included Ms. Iturriria's February 6, 2017 letter, Exhibit C, admitting, as she did during the administrative hearing, that she falsified the documentation sent to Idaho authorities. She wrote in part:

I had a clear lack of judgment and was trying to buy time to get us out of the financial despair that we were in.

[Respondent] did not know what the true financial situation we were in and instead I chose to alter the documents so that he wouldn't know. I would give anything to go back and correct what I did.

E. Linda Jensen, a Loan Officer at American Internet Mortgage (AIM), wrote in an Employment Verification submitted with respondent's application, that during his tenure at AIM from mid-1998 to early 2017, respondent trained and managed all of the company's loan officers and was in charge of secondary marketing and advertising, among other duties. His held MLO endorsements from all 50 states. She described respondent as knowledgeable and helpful, her go-to person with problems.

F. In her Employment Verification, Janet Hulse, also an AIM Loan Officer, wrote that respondent was instrumental in growing their business and a great manager.

G. On termination from AIM, respondent's base salary was \$150,000 per year.

H. There was some delay in processing respondent's application relating to a fictitious business name under which he sought to transact insurance business, a name that DRE did not allow.

5. As stated in a March 6, 2019 letter, Exhibit H, DRE forwarded respondent's application to its Licensing Background Review Unit for further processing, which wrote respondent a March 26, 2019 letter, Exhibit I, asking for more information about the Idaho Consent Order.

6. On April 8, 2019, respondent sent DRE his completed Interview Information Statement, part of Exhibit 4. In the Remarks section he wrote, "My wife made a terrible mistake in providing documentation that was not accurate and allowed me to provide that data to the State of Idaho" [O]ur rental properties had delinquent mortgages and she hid this information from me. . . . [W]e were able to

bring all our mortgages current without having to have any foreclosed upon or short sold. . . ." Respondent and his wife testified to the same effect at the administrative hearing.

7. Respondent sent DRE character references with the Interview Information Statement. In an April 4, 2019 letter, Exhibit K, Tim McCrary, a broker and president of Stockdale Real Estate Group in Bakersfield, California, described respondent as a man of high integrity, dependable and honest, who keeps his clients' best interests in mind.

8. Irene Reyes, Special Investigator, Fresno District Office, as indicated in her May 22, 2019 letter, Exhibit L, scheduled a June 2019 interview with respondent. In her October 22, 2019 letter, Exhibit M, she advised respondent that his application had been referred to the DRE Legal Section.

9. Respondent completed studies in real estate as shown in Exhibit B. He attended courses in 1994 and 1995 at Bakersfield College. In the late 1990's and later, as recently as 2013, he took courses San Diego Community College. He completed a 2018 correspondence course from Lumbleau Real Estate School.

Character Reference Letters

10. Mitch Gariador wrote respondent an April 13, 2019 character reference letter, part of Exhibit K. Mr. Gariador is Executive Director of Anthesis, a nonprofit organization in Montclair, California, whose mission is "to support inclusive and independent lives for individuals with {dis}abilities through employment and community integration." Over the years, respondent has volunteered time and donated money to the organization.

11. Jesse DeLille, Center Director II, La Jolla Recreation Center, Parks and Recreation Department of the City of San Diego, wrote an April 4, 2019 character reference letter, included in Exhibit K. Mr. DeLille worked with respondent for a few years, while he was on a City recreation council representing UC Del Sol, a girls fastpitch softball league. Respondent volunteered his time and attended to "the best interest of his players and the overall community"
12. Brent Torgeson, Second Vice President of UC Del Sol, wrote an April 4, 2019 character reference letter, included in Exhibit K, stating that respondent "was instrumental in gaining support from various local businesses and nonprofit organizations. [Respondent] was relentless in his efforts to make a difference not only with UD Del Sol but within the University City Community."
13. Mr. Alexander, respondent's counsel at the hearing, wrote a May 18, 2020 letter, Exhibit N, to counsel for complainant. As he noted, Mr. Alexander is married to respondent's first cousin and hence has long known respondent. The letter provides a brief biography of respondent and praises his character.
14. Exhibit K includes entries from the LinkedIn website praising respondent as professional, expert in loan production for his employers, insightful, and generous toward community organizations. For instance, Paul Alvarez, Senior Applications Developer, Port of San Diego, wrote that he met respondent as an AIM customer. He wrote that much of AIM's success as a "leading nationwide mortgage provider . . . [of] fast, friendly service at competitive prices . . . was the result of [respondent's] hard work, dedication, people skills and industry expertise. The crew that he trained and managed was terrific. I would recommend him highly for any related work."

PRINCIPLES OF LAW

1. Complainant presented a prima facie case based on respondent's being denied a license by a licensing authority, in this case the Idaho Department of Finance. It was then respondent's burden under Evidence Code sections 115 and 500 to demonstrate by a preponderance of the evidence circumstances and good character which would warrant licensure.

2. Business and Professions Code section 480, subdivision (a)(2), as effective at the time of respondent's application to DRE, provides that a department or board may deny a license based on any act involving dishonesty, fraud, or deceit done with intent to substantially benefit the applicant or another person.

3. Business and Professions Code section 10177 provides that the Real Estate Commissioner may deny a license if:

A. Under subdivision (a), the applicant "[p]rocured, or attempted to procure, a real estate license or license renewal . . . by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a real estate license, license renewal, or reinstatement";

B. Under subdivision (d), the applicant "[w]illfully disregarded or violated the Real Estate Law [Business and Professions Code sections 10000 through 10580] . . . or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 [Business and Professions Code sections 11000 through 11200];

C. Under subdivision (f), the applicant "[a]cted or conducted themselves in a manner that would have warranted the denial of their application for a real estate

license, or either had a license denied or had a license issued by another agency of this state, another state, or the federal government revoked, surrendered, or suspended for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, if the action of denial, revocation, surrender, or suspension by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act [Government Code sections 11340 through 11529] . . . , and only upon an express finding of a violation of law by the agency or entity; or

D. Under subdivision (j), the applicant "[e]ngaged in any . . . conduct . . . that constitutes fraud or dishonest dealing."

ANALYSIS

1. The testimony of respondent and his wife was believable and decisive. He did not deceive or commit fraud. His wife did, as she admitted.

2. Respondent might have benefitted from his wife's misconduct. In fact, he did briefly. The Idaho Department of Finance granted respondent an MLO endorsement, which he lost after the department discovered the falsification of the documents respondent submitted. Because he benefitted and stood to benefit beyond the brief period before discovery of the falsification, there is doubt, difficult to dispel, that respondent did not have some inkling of his wife's plan. His character references and the type of duties he had while employed for the years he and his family lived in San Diego show that respondent has a sophisticated knowledge of money matters and finances. Such sophistication might have led respondent to suspect that all was not

well, and that his documentation as submitted to Idaho authorities must have been misleading in some manner.

3. Though respondent had the means and sophistication to see through the false representation to Idaho in which he participated, his evidence that he was innocent of deliberate misconduct was persuasive. Respondent's career in lending and finance was rising. There was little reason based on matters of employment and business reputation for him to follow such a risky and imprudent course as to misrepresent finances to a Department of Finance.

4. Respondent did not have, whereas his wife did, emotional pressure to misrepresent. Ms. Iturriria was in charge of household matters, bills and payment of debts, while respondent worked long hours and devoted energy and thinking to the finances of others. Ms. Iturriria had incentive to protect her husband from worry over finances and may have been impelled in part as well by personal embarrassment. She more than he was in a position to call a halt to the family's financial excesses, over which she had primary control.

5. Respondent is not liable for intentional wrongdoing. Respondent would likely be liable in closely related circumstances, if for instance Ms. Iturriria were respondent's employee, whom he supervised or was obligated to supervise. Respondent's liability for her wrongful conduct would then arise under the doctrine of respondeat superior. (*Rodgers v. Kemper Constr. Co.* (1975) 50 Cal.App.3d 608, 621.) The respondeat superior doctrine extends to malicious acts and other intentional torts of an employee or agent, so long as the employee or agent committed the acts while acting within the scope of assigned duties. (*Ibid.*) The evidence did not support a conclusion that Ms. Iturriria was in effect working for respondent when they cooperated in the false submission to Idaho authorities.

6. Cause does not exist to deny respondent a license based on intentional misconduct under section 480, subdivision (a)(2), or section 10177, subdivisions (a), (d), or (j), of the Business and Professions Code.

Cause for Denial

7. Cause exists to deny respondent's license application under Business and Professions Code section 10177, subdivision (f). Respondent may have paid incomplete attention to the precarious state of his finances when in communication with Idaho authorities, but he had reason and was required to be more careful. It was his duty to check that information he supplied was accurate and truthful. He neglected that duty. Respondent acted in a manner that would have warranted the denial of his application for a California real estate license. In addition, under Business and Professions Code section 10177, subdivision (f), respondent had a license denied by another state for acts that, if done by a California real estate licensee, would be grounds for license suspension or revocation. The revocation of the Idaho MLO endorsement was taken by the Department of Finance after giving respondent fair notice of charges against him and an opportunity for a hearing, and respondent was afforded other due process protections comparable to the Administrative Procedure Act. The Department of Finance made an express finding that respondent violated the law, more specifically the Idaho Residential Mortgage Practices Act.

8. Cause for denial notwithstanding, evidence of rehabilitation and good character may be grounds to issue a license. The Real Estate Commissioner's criteria for evaluating rehabilitation are set out in section 2911 of title 10 of the California Code of Regulations.

A. Under subdivision (a)(1)(A), less than two years from acts underlying a statement of issues is inadequate to show rehabilitation. Respondent's conduct, by contrast, was in November 2015. This part of the criteria align with case law such as *Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070, where the court, citing other authority, aptly observed that misconduct's evidentiary significance "is greatly diminished by the passage of time and by the absence of similar, more recent misconduct." There is moreover no reason to increase the two-year period based on the severity of conduct or the like under section (a)(1)(B).

B. With a stable family life, respondent fulfills the criteria of subdivision (a)(8).

C. Respondent meets the criteria relating to formal education in subdivision (a)(9).

D. The evidence did not establish that respondent has adjudicated debts, as stated in subdivision (a)(10), but he has attended to paying off debt that contributed to conduct underlying the Consent Order in Idaho. He has also been diligent to put himself in healthy financial condition. Respondent fulfills the spirit of this part of the criteria.

E. Respondent has put his personal finances in order and reformed related financial practices. He has striven to stay in business for his own prosperity and that of his colleagues in business and clients. Respondent meets the criteria of section (a)(11).

F. Respondent is conscientiously involved in the community and volunteers for community projects. He meets the criteria of section (a)(12).

G. Respondent should face no hindrance in obtaining a license under section (a)(14). The evidence does not indicate that he was in need of a change of attitude. Respondent has conducted himself responsibly, with however the one lapse in failing to check documentation submitted to Idaho authorities.

9. Respondent's application may be safely granted, except that restrictions are prudent for two years.

LEGAL CONCLUSIONS

1. When he submitted falsified documentation to another state's licensing authority, respondent did not act deceitfully, fraudulently, or otherwise with bad intent, so that his application for a California broker license is not subject to denial for intentional misconduct.

2. Denial of respondent's application has some warrant in these proceedings because: (i) another state's licensing authority denied respondent licensure based on conduct in violation of that state's law; (ii) that violation would be grounds for discipline of a California real estate license; and (iii) in denying respondent a license, the other state made its decision after affording respondent legal protections and due process of law.

3. Respondent's wrongful conduct was neglect of his obligation to check documentation carefully and not submit false information to a licensing authority. However, evaluating respondent's conduct under rehabilitation criteria, a restricted license is properly granted without undue risk to public safety.

ORDER

The application of respondent, Antero David Iturriria, for a real estate broker license is granted, provided, however, the license is immediately revoked and a restricted real estate broker license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for 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 section 10156.7 of the Business and Professions Code and to the following limitations, conditions, and restrictions imposed under authority of section 10156.6 of that Code:

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 two years have elapsed from the effective date of this Decision.

4. 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.

5. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest. Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of respondent and periodic summaries of salient information concerning each real estate transaction in which the respondent engaged during the period covered by the report.

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6. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department 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

DATE: August 22, 2020

DocuSigned by:
Thomas Lucero
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THOMAS Y. LUCERO

Administrative Law Judge

Office of Administrative Hearings