

FILED

OCT 29 2009

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

[Signature]
By _____

In the Matter of the Accusation of)
)
PAUL SCOTT SHEIRING,)
)
Respondent.)
_____)

NO. H-5199 SAC

OAH NO. 2009061439

DECISION

The Proposed Decision dated September 17, 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

NOV 19 2009

IT IS SO ORDERED _____

10-22-09

JEFF DAVI
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

PAUL SCOTT SHEIRING,

Respondent.

Case No. H-5199 SAC

OAH No. 2009061439

PROPOSED DECISION

This matter was heard before Ronald Diedrich, Chief Administrative Law Judge, Office of Administrative Hearings, State of California, on August 28, 2009, in Sacramento, California.

John Van Driel, Assistant Chief Counsel, Department of Real Estate, and Joel Kautz, law student, appeared on behalf of Joe M. Carillo, a Deputy Real Estate Commissioner (complainant), Department of Real Estate (department).

Paul Scott Sheiring (respondent) appeared on his own behalf.

The case was submitted for decision on August 28, 2009.

FACTUAL FINDINGS

1. Respondent is currently licensed by the department as a real estate salesperson pursuant to the Real Estate Law, Business and Professions Code (Bus. & Prof. Code), Division 4, Part 1, (Bus. & Prof. Code § 10000, et seq.). Respondent's real estate salesperson license (license) is presently scheduled to expire on April 11, 2011.

2. On or about April 20, 2009, complainant made and filed the Accusation in his official capacity. On or about April 22, 2009, the Accusation and all required notifications were mailed to respondent by certified and regular mail to his address of record.

3. On or about April 23, 2009, respondent received the certified mailing described in Finding 2 above. On or about May 28, 2009, respondent filed a Notice

of Defense on Accusation, dated May 27, 2009. Respondent's filing was late.¹ By pursuing this matter thru a hearing, complainant impliedly authorized the filing of the late notice of defense; implicitly granted respondent the right to a hearing, and waived the ability to revoke respondent's license by way of a default as a result of that late filing.²

3. Complainant seeks to revoke respondent's license based upon respondent's 2006 criminal conviction described in Finding 4 below.

4. On or about July 10, 2006, respondent, upon a plea of guilty, was convicted of violating Penal Code section 422, willfully threaten to commit a crime which will result in death or great bodily injury to another, a misdemeanor pursuant to Penal Code section 17(b).³

5. The incident underlying respondent's criminal conviction occurred on January 2, 2006, at about 6:30 p.m. Respondent, who was engaged in an extra-marital affair, arrived unannounced at a home in Novato, California, to visit his paramour, Molly Meroney (Meroney). The home was the residence of Maroney's friend, Stacy Kimbley (Kimbley), who was present at the time.

A loud, heated argument ensued, during which respondent willfully and verbally threatened the women with death or great bodily harm, and made those threats with the intent that they be considered by the women as viable threats. The threats were such that a person would reasonably fear for their immediate safety and that of their families. Respondent accentuated his threats by displaying a bullet in an ominous manner. Then, after leaving the residence, over a period of time, respondent engaged in a series of harassing phone calls to both women.

6. Respondent was sentenced to serve three (3) years supervised probation and 60 days in the custody of the Marin County Sheriff,⁴ to provide 50 hours of community service, to pay a total of \$1,197.00 in fines and fees, to abide by the protective order, and to comply with all other terms and conditions of probation.

¹ Bus. & Prof. Code § 11506, subd.(a), provides, in pertinent part that "[w]ithin 15 days after service of the accusation the respondent may file with the agency a notice of defense ..." Additionally, respondent was notified of this requirement. See Exhibit 1, p. 3, Statement to Respondent.

² Bus. & Prof. Code § 11506, subd.(b), provides, in pertinent part that "... all of these notices (of defense) shall be filed within that period (15 days after service of the accusation) unless the agency in its discretion authorizes the filing of a later notice." Subd.(c) provides, in pertinent part, that "[f]ailure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

³ *People v. Paul Scott Sheiring*. (Super. Ct. Marin County, 2006, Case No. SC145375A)

⁴ Respondent served five days in the Marin County jail. He was given credit for two days of good behavior and served the remainder of his time under what was described as house arrest.

Respondent successfully complied with the terms of his sentence and his probation expired on July 10, 2009.

7. California Code of Regulations, title 10, section 2912,⁵ sets forth

⁵ California Code of Regulations, title 10, section 2912 provides:

Criteria of Rehabilitation (Revocation or Suspension).

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

(a) The passage of not less than two years from the most recent criminal conviction that is "substantially related" to the qualifications, functions or duties of a licensee of the department. (A longer period will be required if there is a history of criminal convictions or acts substantially related to the qualifications, functions or duties of a licensee of the department.)

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee.

(c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action.

(d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.

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

(f) Abstinence from the use of controlled substances or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance or alcohol.

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

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

(i) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.

(j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.

(k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

(l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by any or all of the following

(1) Testimony of applicant.

the criteria for assessing the rehabilitation of a licensee. Respondent has complied with some of the criteria set forth in section 2912. Respondent has not suffered any further criminal convictions, and more than two years have passed since his only misdemeanor criminal conviction. Respondent successfully completed his probation. He paid all required fines and fees. He has had no further contact with either Meroney or Kimbley. Respondent appears to be diligently working at repairing his marriage and is actively involved in the raising of his three children, the oldest of which is handicapped and has special needs. He does volunteer work for his church, as well as with the Ride to Walk organization.⁶ Respondent has been in on-going therapy since February 2006, with a licensed marriage and family therapist. Respondent is currently enrolled in a math class at Sierra Community College.

8. While holding an active license, respondent has not engaged in any activity for which a license is needed for at least four years. However, respondent wants to work as a licensee in the future and does not want to give up his license.

9. Although in his testimony respondent indicated that he takes full responsibility for the behaviors which led to his criminal conviction, the evidence, taken as a whole, was not persuasive. Rather, the evidence presented clearly and convincingly established that respondent only takes some responsibility for his behaviors, while still placing some of the blame on Meroney and Kimbley, on Meroney's alleged suicidal tendencies, on the stress of his affair, on the stress of having a handicapped child, and on working away from home. Respondent also demonstrated his incomplete insight into his conduct by minimizing the seriousness of his behavior and the impact it had upon his victims.

10. Respondent has not yet taken full and unequivocal responsibility for his conduct; nevertheless, he is making significant advancement toward that goal with his continuing counseling, and has engaged in noteworthy and on-going progress toward rehabilitation. Given the totality of the facts and circumstances,

(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.

⁶ Ride to Walk is a non-profit organization located in Lincoln, California, that provides equine therapy to children with certain handicapping conditions. Respondent's eldest son participates in Ride to Walk's program.

granting respondent at this time a restricted license for four years under appropriate terms and conditions would sufficiently protect the public's interest, safety and welfare.⁷

LEGAL CONCLUSIONS

1. Pursuant to Bus. & Prof. Code sections 490 and 10177, subdivision (b), complainant seeks to revoke respondent's license based upon a single, 2006, misdemeanor criminal conviction.

2. Because respondent's conviction occurred in 2006, in order to revoke or suspend respondent's license pursuant to Bus. & Prof. Code sections 490⁸ and 10177, subdivision (b)⁹, the complainant must prove that respondent was convicted of a crime involving moral turpitude and which bears a substantial relationship to the qualifications, functions or duties of a real estate licensee.¹⁰

⁷ State agencies, like the department, commence administrative enforcement actions, such as accusations or statement of issues, in order to protect the public and to maintain professional standards in regulated industries and professions. While an enforcement action might have the effect of punishing a licensee or applicant, such an action should not be brought for that reason. (See *Camacho v. Youde* (1979) 95 Cal.App.3d 161.) It is well established that the purpose of the process is public protection. (See *Viking Pool, Inc. v. Maloney* (1989) 48 Cal.3d 602 and *Hughes v. Board of Architectural Examiners* (1998) 68 Cal.App. 4th 685.)

⁸ At the time of respondent's conviction, Bus. & Prof. Code § 490 provided:

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

⁹ Prior to January 1, 2008, Business and Professions Code section 10177, subdivision (b), provided that, for a misdemeanor conviction to constitute a basis to discipline a license, it must involve moral turpitude.

¹⁰ Effective June 23, 2008, Bus. & Prof. Code § 490 was amended to read:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only 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.

3. Respondent was convicted of a crime of moral turpitude.¹¹ The least adjudicated elements of Penal Code section 422¹², of which respondent was convicted of violating, necessarily involve moral turpitude. It is a serious breach of

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Senate Bill 797 of the 2007-08 Regular Session do not constitute a change to, but rather are declaratory of, existing law.

¹¹ A criminal act involves moral turpitude if it involves a serious breach of duty owed to another or to society. *In re Stuart K. Lesansky* (2001) 25 Cal.4th 11, 16; (citing *In re Johnson* (1992) 1 Cal.4th 689,699; *In re Calaway* (1997) 20 Cal.3d 165, 169-170; *In re Higbie* (1972) 6 Cal.3d 562, 569-570). Acts of moral turpitude are acts which involve "bad character" and "readiness to do evil." *People v. Zataray* (1985) 173 Cal.App.3d 390, 400.

In deciding whether a conviction necessarily involved moral turpitude, a court must look to the statutory definition of the particular crime, and only if the least adjudicated elements of the crime necessarily involved moral turpitude does the conviction involve moral turpitude. (*People v. Forster* (1994) 29 Cal.App.4th 1746, 1756-7.) Inquiry into collateral acts to determine whether a conviction was for an offense involving moral turpitude is not permitted. (*Lorenz v. Board of Medical Examiners* (1956) 46 Cal.2d 684, 687.) As the California Supreme Court stated in *Adams v. Commission on Judicial Performance* (1994) 8 Cal.4th 630, 655-656:

In professional license-revocation cases, involving revocation based upon conviction of a crime involving moral turpitude, this court has considered the issue whether a license may be revoked on the basis of mere proof of conviction, without any consideration of the specific facts underlying the conviction. In these cases we have held: "Only if the minimum elements for a conviction necessarily involve moral turpitude and a conviction cannot be had without proof of facts showing moral turpitude, can the conviction be held to be of an offense involving moral turpitude." (*Cartwright v. Board of Chiropractic Examiners* (1976) 16 Cal.3d 762, 766-767, quoting *Lorenz v. Board of Medical Examiners* (1956) 46 Cal.2d 684, 687.)

¹² Pen. Code § 422 provides that:

Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison.

duty owed to another or to society, and displays a readiness to commit malevolence, when a person willfully threatens to commit a crime which will result in the death or great bodily injury of another, with the specific intent that such a threat be taken as a threat, and under circumstances where the subject of the threat is reasonably in fear of his or her safety.

4. Respondent was convicted of a crime which bears a substantial relationship to the qualifications, functions or duties of a licensee. California Code of Regulations, title 10, section 2910, provides the criteria for determining if the necessary substantial relationship exists. Subdivision (a)(8), of that regulation provides, in pertinent part, that:

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

(8) Doing of any unlawful act with ... with the intent or threat of doing substantial injury to the person or property of another.

As noted in Findings 4 and 5 above, respondent threatened substantial injury to Meroney and Kimbley.

5. As noted in Findings 4 and 5, and Conclusions 3 and 4 above, complainant has established clearly and convincingly that respondent was convicted in 2006 of a crime that involved moral turpitude and which bears a substantial relationship to the qualifications, functions or duties of a licensee. Accordingly, a factual and legal basis exists to impose disciplinary action against respondent's license.

6. Given Findings 7 thru 10 above, granting respondent a restricted license for four years, with appropriate terms and conditions, would satisfactorily protect the public's interest, safety and welfare, and would not be detrimental to the real estate industry.

ORDER

All licenses and licensing rights of respondent Paul Scott Sheiring under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application therefore 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 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 Department 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.

DATED: September 17, 2009



RONALD DIEDRICH
Chief Administrative Law Judge
Office of Administrative Hearings

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FILED

APR 22 2009

DEPARTMENT OF REAL ESTATE

By *[Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12) NO. H-5199 SAC
13 PAUL SCOTT SHEIRING,) ACCUSATION
14)
15 Respondent.)

16 The Complainant, JOE M. CARILLO, a Deputy Real Estate Commissioner of
17 the State of California, for cause of Accusation against PAUL SCOTT SHEIRNG (hereinafter
18 "Respondent"), is informed and alleges as follows:

19 I

20 Respondent is presently licensed and/or has license rights under the Real Estate
21 Law (Part 1 of Division 4 of the Business and Professions Code) (Code) as a real estate
22 salesperson.

23 II

24 The Complainant, JOE M. CARILLO, a Deputy Real Estate Commissioner of
25 the State of California, makes this Accusation in his official capacity.

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III

On or about July 10, 2006, in the Superior Court, County of Marin, State of California, in case number SC145375A, Respondent was convicted of a violation of Section 422 of the California Penal Code (Willfully threaten to commit a crime which will result in death or great bodily injury to another), a misdemeanor pursuant to Penal Code Section 17(b) and a crime involving moral turpitude which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

IV

The facts alleged 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. CARILLO
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 20 day of April, 2009.