

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

FEB 24 2010

DEPARTMENT OF REAL ESTATE

By R. Henry

In the Matter of the Accusation of)
)
SHAUN L. CROOK,)
)
Respondent.)
_____)

NO. H-5217 SAC

OAH NO. 2009060035

DECISION

The Proposed Decision dated January 7, 2010, 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

MAR 16 2010

IT IS SO ORDERED 2/16/10

JEFF DAVI
Real Estate Commissioner

Barbara J. Bigby

BY: Barbara J. Bigby
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

SHAUN L. CROOK,

Respondent.

Case No. H-5217 SAC

OAH No. 2009060035

PROPOSED DECISION

Administrative Law Judge Marilyn A. Woollard, Office of Administrative Hearings (OAH), State of California, heard this matter in Sacramento, California, on October 27, 2009.

Kenneth C. Espell, Counsel, represented complainant Joe M. Carrillo in his official capacity as a Deputy Real Estate Commissioner, Department of Real Estate (Department), State of California.

J. Anne Rawlins, Attorney at Law, represented respondent Shaun L. Crook who was present.

Oral and documentary evidence was received. Pursuant to the October 28, 2009 Order Regarding Case Status, the record remained open for respondent to submit verification of the termination of his probation and for complainant to file any response to respondent's submission. On December 4, 2009, OAH received a letter from Ms. Rawlins, attaching the following documents: respondent's November 30, 2009 declaration under penalty of perjury, Tuolumne County Superior Court's November 20, 2008 minute order granting probation, and four email messages between Laurie Office and Stacy Spring, which were marked for identification as Exhibit B. On December 8, 2009, OAH received Mr. Espell's reply to Exhibit B, raising hearsay objections. Exhibit B was admitted as administrative hearsay to the extent permitted by Government Code section 11513, subdivision (d).¹ On December 9, 2009, the record was closed and the matter was submitted for decision.

¹ Government Code section 11513, subdivision (d), provides in pertinent part that "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..."

FACTUAL FINDINGS

1. On July 13, 2005, the Department issued to respondent Real Estate Brokers License No. B01495608. Since that time, respondent has been employed as a broker associate. He worked with Prudential California Realty for two years, through September 2008. On October 1, 2008, respondent began his current job working with Coldwell Banker Mother Lode Real Estate (Coldwell).

2. On May 12, 2009, complainant made and filed an Accusation against respondent seeking to discipline his license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), due to his misdemeanor conviction described in Factual Finding 4.²

3. On May 21, 2009, respondent filed his Notice of Defense. Thereafter, the matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500, et seq. The hearing convened and concluded on November 30, 2009.

4. *Respondent's Conviction:* On November 20, 2008, in Tuolumne County Superior Court Case No. CRM28350, *People of the State of California vs. Shaun Larkin Crook*, respondent was convicted of violating Penal Code 602.5 (unauthorized entry of property), a misdemeanor, based upon his plea of guilty.³ Respondent was not present at the criminal hearing, but was represented by an attorney. Respondent testified he believed he plead "no contest" to the charges; he first learned it was a guilty plea at the administrative hearing. Respondent was sentenced to one year of summary probation, ordered to obey all laws and to pay a restitution fine of \$254. Respondent's probation was scheduled to expire on November 20, 2009.

Respondent's conviction arose out of his conduct between October 31 and November 3, 2008 when he attempted to secure a real estate owned (REO) residential property in foreclosure located at 23846 Hilltop Circle, in Twain Harte, California (the property), which was owned by his client Wachovia Bank (Wachovia). On November 3, 2008, tenant Cyrus Saghebi informed police that he returned from the Bay Area to the property to find a 60-day move-out foreclosure notice on his door.

² Unless otherwise indicated, all statutory references are to the California Business and Professions Code.

³ Penal Code section 602.5, subdivision (a), provides that "[e]very person other than a public officer or employee acting within the course and scope of his or her employment in performance of a duty imposed by law, who enters or remains in any noncommercial dwelling house, apartment, or other residential place without consent of the owner, his or her agent, or the person in lawful possession thereof, is guilty of a misdemeanor."

He also found a business card from respondent, identifying him as a broker for Coldwell. Mr. Saghebi discovered that the locks to the doors on his house had been changed and that respondent had entered his house while Mr. Saghebi was not present. Mr. Saghebi reported that several guns with a total value of \$850 had been taken from his property. When Mr. Saghebi called respondent late Sunday evening, November 2, 2008 to ask about the guns, respondent denied having them. The next day, respondent called Mr. Saghebi and admitted that he had taken the guns for safekeeping. That day, respondent returned the guns to Mr. Saghebi's house; after he was contacted by the police, he brought them to the police. Following an investigation, respondent was arrested for felony violations of Penal Code sections 485 (theft/appropriation of lost property with knowledge or means of inquiry as to true owner); 487, subdivision (a) (grand theft of property valued over \$400); and 496, subdivision (a), (receiving stolen property).

When the investigating police officer told respondent that his denial of taking the guns made it appear that he really intended to keep them, respondent insisted that he had only taken the guns for safekeeping. He gave one to a friend to keep. Both respondent and his friend acknowledged hoping that they would eventually be able to keep the guns if the owner did not claim them during Coldwell's 18-day personal property holding procedure.

The only criminal charge ever filed against respondent was for violating section 602.5, by entering a residential place without consent of the person in lawful possession of the premises between October 31, 2008 and November 3, 2008.

Evidence in Mitigation

5. *Respondent's Testimony:* Respondent's relevant testimony is paraphrased as follows.

Respondent grew up in the Sonora area. His family has a logging business, Crook Logging, Inc., in which he has been involved since his teenage years. He described his family business as a second full time job with demands that fluctuate with the seasons.

Respondent is married with three children. He earned a degree in agricultural business and has been a licensed broker since 2005. Respondent and his family have lived in Jamestown for three years. His work at Coldwell has been primarily as a realtor.

6. On October 26, 2008, respondent was notified by Wachovia's asset manager Holly that Wachovia had taken back the property. Holly gave respondent instructions about tasks he should do, including conducting an occupancy check to determine if the property was still occupied, and arranging for contractors to come into the property the following Monday to bid for paint and renovation work.

On October 26, 2008, respondent went to the property. A woman came to the door. She did not give her name, but told respondent she was a tenant. When asked what the tenants' plans were, the woman indicated that they planned to leave the property at the end of the month. Respondent gave her his business card.

Respondent returned to the property on the afternoon of October 31, 2008, to see if the tenants were still present and to secure it. No one responded to his knocks at the door. Looking into the windows, respondent observed that there was no furniture. He walked to the side of the home and found the sliding door wide open. Respondent entered the home, identified himself as a realtor. When no one responded, respondent walked around the inside of the home. He noticed remnants of marijuana plants, some drug paraphernalia, and miscellaneous socks and shoes. The downstairs windows were all blacked out. Respondent concluded that this was a drug house. Respondent did see a truck and a jet ski on the property before he entered the house.

Respondent called Holly and asked if he should contact the Sheriff. She told him not to do so. Holly instructed respondent to put all remaining personal property into the detached garage, which remained unlocked, and to change the locks to the house. Respondent called a locksmith. Respondent could not lock the sliding door due to a defect, but he placed a broom handle in the runner so it could not be opened. Because it was Halloween, respondent was concerned that the house might be vandalized or damaged, like other unsecured properties in the area.

On Saturday, November 1, 2008, respondent returned to inventory the remaining personal property that was primarily in the garage. His friend Mr. Lemke was with him. At this time, respondent believed that the tenants were no longer in legal possession of the property. In the garage, respondent saw boxes with stereos, hydroponic equipment, and DVDs. Respondent also found two guns in cardboard boxes in the house, which he removed for safekeeping. Respondent believed the guns were a safety hazard because it would be easy to break into the house through the sliding door. He gave one of the guns to Mr. Lemke and secured the other in his truck. He emailed Holly; however, she was out of town. Respondent did not contact his supervising broker or anyone at Coldwell to discuss his removal of the guns. He did not contact the police. He denied telling police he hoped to keep the guns. Respondent never prepared a written inventory of the personal property found.

Mr. Saghebi called respondent's home at 11 p.m. and asked about his guns. Respondent admitted lying when he denied having the guns, but explained that he believed Mr. Saghebi was involved in illegal drugs. He did not want to tell Mr. Saghebi that he had removed the rifles. Respondent's wife was afraid for the safety of their family.

Respondent was not involved in any actions by Wachovia to notify the tenants to vacate the property. He had no knowledge about whether Wachovia had pursued an action for unlawful detainer against the tenants or obtained a writ of possession for the property. In hindsight, respondent would have called the sheriff immediately even if this was contrary to the wishes of the asset manger. Respondent now realizes that he had more control of what actions he should have taken than he believed at the time. In his family's business, respondent was accustomed to doing "what the boss says."

Prior to this incident, respondent had only handled three bank owned foreclosure properties. None of the banks, including Wachovia, had written instructions about what to do with tenants or about legal eviction procedures. Since his conviction, respondent has changed his policy about handling REO properties. He conducts occupancy checks with a partner, he provides tenants with a verification of occupancy form to complete; if there is any hostility, he leaves the premises immediately and refers all possession issues to eviction counsel for further action. The procedure is much more formal and structured. Respondent believes this procedure assures him that he has a right to enter property because the bank's asset manager will give him either written permission or a copy of the deed.

7. Respondent has been involved in various community activities. He is a T-ball head coach for his son and eight other boys. Prior to that, he assisted coaching with baseball. Since 2006, respondent has been the sergeant at arms for his local homeowner's association. He is an active member of the County's Farm Bureau, both as director and State representative for forestry and natural resources. His family's timber company is working to make forest use sustainable, due to the recent closure of a mill.

Respondent and his family received much notoriety from newspaper reports of his arrest and felony charges. He expressed feeling shame and remorse for the damage his conduct inflicted on his family, and for any loss to the tenants. He paid the \$254 fine as ordered.

8. *Respondent's Witnesses:* Respondent called two witnesses: licensed real estate brokers Mark Thomas Kraft and William Clark Segerstrom, whose families jointly own the Coldwell independent franchise. Their relevant testimony is paraphrased below.

9. Mr. Kraft has known respondent's family for many years. Respondent was working for one of Coldwell's competitors, when Mr. Kraft's partner recruited him to work for Coldwell. Mr. Kraft rated respondent as in the top quartile of agents with whom he has worked; he described respondent as very knowledgeable, stable and productive, and devoted to his family.

In 2008 when bank foreclosures became more common, there were no written policies or procedures for handling REO properties. Each bank had its own procedure. It was a new type of business for the realtors as well. The realtor's primary obligation in these situations is to determine if the foreclosed property is abandoned and, if so, to ensure that any personal property left is secured. Coldwell did not have written company policies regarding what to do with firearms found in repossessed property; this was the first time this issue was encountered. Mr. Kraft might have stored a firearm temporarily, but would not have given one to a friend for safekeeping. There was no policy regarding suspected drug houses.

Before respondent was arrested, Coldwell had not required its employees to take any training regarding landlord-tenant laws, unlawful detainer proceedings or how to handle personal property found in REO properties. These are courses agents can elect to take. Mr. Kraft was not aware of any change in policies since this incident. He recommended that agents photograph and document all personal property.

Mr. Kraft had no concerns about respondent's continued employment after his conviction. He opined that respondent's "intentions were good" and that he did not know if he would have done anything differently. Mr. Kraft has never had any complaints from clients about respondent's real estate activities. He believed that it was reasonable to remove the firearms for safekeeping in this instance.

10. In 2007, William Segerstrom recruited respondent to work for Coldwell; he rates respondent as one of Coldwell's top agents. Mr. Segerstrom has known respondent's family for many years and has never heard any complaints about respondent as a broker. He believed that respondent's conviction resulted from miscommunication and that his conduct was not intentional. He described respondent as "chagrined" by the conviction. Mr. Segerstrom does not consider respondent to be a threat to the public. Coldwell has never required its employees to take any continuing education courses on landlord tenant laws and REO foreclosures.

11. *Respondent's Support Letters:* Respondent submitted 16 letters of support which were admitted and considered to the extent permitted by Government Code section 11513, subdivision (d). Collectively, these letters portray respondent as a man of integrity and honesty who is a good friend, neighbor, family man, and an involved community citizen. Sasha Farkas' letter corroborates respondent's testimony regarding his participation with the Tuolumne County Farm Bureau as its forestry representative at the State level. Letters from Tracy Hoyle and the Henleys corroborate respondent's testimony regarding his involvement as a T-ball coach for the Jamestown 49er Little League baseball program. Other letters reflect respondent's involvement in his Home Owner's Association. Many of those recommending respondent have utilized and praised his knowledge and skills in real estate as well as in the timber business.

Respondent told his friends about his arrest and conviction; he did not discuss the details about the removal of the firearms.

12. Respondent was never charged with or convicted of attempted theft of the guns and complainant did not allege these acts as a basis for its Accusation. Respondent's conduct regarding the property was an isolated incident that was caused by his ignorance of law regarding the rights of tenants in a bank foreclosure. Respondent has paid the ordered fine and a year has passed since the issuance of the order for his one-year summary probation.

It is concerning that respondent did not complete a personal property inventory and that he initially denied having taken the guns or hoping that he would ultimately be able to keep them if they were abandoned. Respondent consistently left his business card, with personally identifying contact information, for the tenants. This conduct is inconsistent with any intent to steal the guns. The removal of the guns for safekeeping was not unreasonable under the circumstances. Respondent's testimony regarding concerns for the safety of his family when contacted at his home by an unknown person who he believed to be manufacturing drugs at the property was credible. The evidence as a whole does not support a finding that respondent would pose a danger to the public in his transactions as a real estate licensee.

LEGAL CONCLUSIONS

1. In an Accusation seeking to revoke, suspend, or otherwise discipline respondent's professional license, the complainant has the burden of proof to establish the allegations in the Accusation by "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App. 3d 853, 856.) The burden of proof of establishing an affirmative defense is on the respondent. (*Whetstone v. Board of Dental Examiners* (1927) 87 Cal.App. 156, 164.) The standard of proof for establishing an affirmative defense is proof by a preponderance of the evidence. (Evid. Code, § 115.)

2. Pursuant to section 490, subdivision (a), 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." The conviction may be based either upon a plea of guilty or following a plea of nolo contendere. (§ 490, subd. (c).)

The board "may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question." (§ 493.) If the crime is substantially related, the context in which the crime was committed "shall go only to the question of the weight to be accorded to the crime in considering the action to be taken with respect to the applicant or

licensee.” (Cal. Code Regs., tit. 16, § 2910, subd. (c).)

3. Pursuant to section 10177, subdivision (b), the Real Estate Commissioner may suspend or revoke the license of a real estate licensee who has:

entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

4. Respondent’s conviction is substantially related to the qualifications, functions, and duties of a real estate licensee. California Code of Regulations, title 16, section 2910, subdivision (a), identifies criteria for determining whether a crime or act is substantially related, and includes the “[d]oing 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.” (Cal. Code Regs., tit. 16, § 2910, subd. (a)(8).) As set forth in Factual Findings 6 and 12, respondent did not willfully intend to violate the tenants’ rights by entering their home, locking them out, and removing their personal property. Respondent’s conduct was the result of his ignorance of the law. However, respondent acted deliberately, with the intent of conferring economic benefit upon himself by effectuating his client’s wishes. In doing so, respondent acted in an uninformed and criminally negligent manner and caused substantial injury to the property’s tenants. As noted in other contexts, the real estate law is designed to protect the public not only from conniving licensees, but also from those who are uninformed, negligent, or unknowledgeable. (see: *Manning v. Fox* (1984) 151 Cal.App.3d 531, 542 [“Section 10177, subdivision (d), is designed ‘to protect the public not only from conniving real estate salesmen but also from the uninformed, negligent, or unknowledgeable salesman.’”].)

5. As set forth in the Factual Findings and Legal Conclusions as a whole, complainant has met its burden of proof that respondent’s license should be suspended or revoked based upon his conviction, as authorized by sections 490 and 10177, subdivision (b).

6. California Code of Regulations, title 16, section 2912 identifies rehabilitation criteria to be considered 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. ⁴ These criteria have been considered.

Respondent has only recently been released from summary probation and it is less than two years since his conviction. There was no evidence that respondent was discharged early or that he has attempted to expunge his conviction. No restitution was ordered or required. Respondent paid the ordered fine. Substance abuse was not involved. There was no evidence of previous or subsequent criminal conduct. Respondent did provide testimony regarding some change in his business practices to avoid a repetition of this situation; however, he has not taken any courses regarding tenants' rights in the context of foreclosure proceedings. Respondent's testimony about his community involvement was corroborated by supportive letters. These letters and the testimony of his witnesses established that he has a very positive reputation as a realtor and is considered a man of integrity and honesty.

⁴ Rehabilitation criteria set forth in section 2912 are:

- (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. . .
- (b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee.
- (c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action.
- (d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.
- (e) Successful completion or early discharge from probation or parole.
- (f) Abstinence from the use of controlled substances or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance or alcohol.
- (g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.
- (h) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.
- (i) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.
- (j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.
- (k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.
- (l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.
- (m) Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by any or all of the following:
 - (1) Testimony of applicant.
 - (2) Evidence from family members, friends or other persons familiar with the licensee' 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.

The evidence establishes that the interest and welfare of the public would be adequately protected by respondent's continued licensure, subject to the terms and conditions set forth below.

ORDER

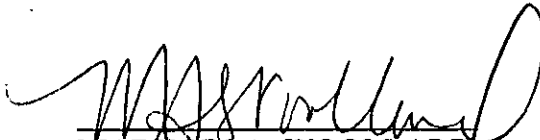
All licenses and license rights of respondent Shaun L. Crook are suspended for one (1) year from the effective date of this Decision; provided, however, that the suspension shall be stayed upon the following terms and conditions:

- a. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California.
- b. Within six months of the date of this Decision and subject to pre-approval by the Commissioner, respondent shall enroll in and complete a continuing education program addressing foreclosures and the rights of tenants during foreclosure. The course shall be of a maximum duration of ten (10) hours. Costs of the course shall be respondent's responsibility.

The Commissioner may, in his discretion, vacate and set aside the stay order if evidence that respondent has taken a course satisfactory to the Commissioner is not timely presented pursuant to this order, or as provided for in a subsequent agreement between respondent and the Commissioner.

- c. If a final subsequent determination is made after hearing or upon stipulation, that cause for disciplinary action occurred during the term of the suspension provided for herein, the Commissioner may vacate and set aside any stay order imposed. Should no order vacating the stay be made pursuant to this condition or condition "b," the stay imposed herein shall become permanent.

DATED: January 7, 2010


MARILYN A. WOOLLARD
Administrative Law Judge
Office of Administrative Hearings

1 KENNETH C. ESPELL, Counsel (SBN 178757)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789
5 -or- (916) 227-0868 (Direct)

FILED

MAY 12 2009

DEPARTMENT OF REAL ESTATE

By K. Mar

8
9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

11 In the Matter of the Accusation of) H-5217 SAC
12)
13)
13 SHAUN L. CROOK,) ACCUSATION
14)
15)
15 Respondent.)

16
17 The Complainant, JOE M. CARRILLO, in his official capacity as a Deputy
18 Real Estate Commissioner of the State of California, for cause of Accusation against
19 SHAUN L. CROOK (hereinafter "Respondent"), is informed and alleges as follows:

20 1

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

24 2

25 On or about November 20, 2008, in the Tuolumne County Superior Court, State
26 of California, in case number CRN 28350, Respondent was convicted of violating Section 602.5
27 (a) of the California Penal Code (Unauthorized Entry of a Dwelling House) a, misdemeanor

1 which bears a substantial relationship under Section 2910, Title 10, California Code of
2 Regulations to the qualifications, functions, or duties of a real estate licensee.

3 3

4 The facts alleged in Paragraph 2, above, constitute cause under Sections 490 and
5 10177(b) of the Code for suspension or revocation of all licenses and license rights of
6 Respondent under the Real Estate Law.

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

12
13 
14 _____
15 JOE M. CARRILLO
16 Deputy Real Estate Commissioner

17 Dated at Sacramento, California,
18 this 11 day of May, 2009.
19
20
21
22
23
24
25
26
27