

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

FEB 16 2012

DEPARTMENT OF REAL ESTATE

By *[Signature]*

In the Matter of the Accusation of)
)
 ROY ROGER CERVANTES,) NO. H-5542 SAC
)
 Respondent.) OAH NO. 2011070013
)
 _____)

DECISION

The Proposed Decision dated January 17, 2012, 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 07 2012.

IT IS SO ORDERED 2/13/12

BARBARA J. BIGBY
Acting Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ROY ROGER CERVANTES,

Respondent.

Case No. H-5542 SAC

OAH No. 2011070013

PROPOSED DECISION

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on December 28, 2011, in Sacramento, California.

Jason D. Lazark, Counsel, represented Tricia D. Sommers (complainant), a Deputy Real Estate Commissioner with the Department of Real Estate (Department).

Leland B. Altschuler, Attorney at Law, represented Roy Roger Cervantes (respondent), who was present.

Evidence was received, the record was closed, and the matter was submitted for decision on December 28, 2011.

FACTUAL FINDINGS

1. Complainant made and filed the Accusation in her official capacity.
2. On August 19, 2009, respondent was issued a real estate salesperson license. Complainant seeks to revoke respondent's salesperson license based upon his criminal conviction described below.
3. On October 1, 2010, in the United States District Court for the Northern District of California, in Case No. CR-10-00064-001 SI, respondent, upon a plea of guilty, was convicted of violating 18 U.S.C. section 1349, conspiracy to commit mail fraud, a felony. Respondent was placed on probation for three years under both standard and special probationary terms. The special terms of probation required respondent, among other things,

to: (a) perform 200 hours of community service as directed by his probation officer; (b) provide his probation officer with access to any requested financial information, including tax returns, and authorize the probation office to conduct credit checks and obtain copies of income tax returns; (c) not open any new lines of credit or incur new debt without the prior permission of his probation officer; (d) participate in a mental health treatment program as directed by his probation officer; and (e) participate in a financial counseling program as directed by his probation officer. Respondent was also ordered to pay a \$100 assessment fee, and a Forfeiture Judgment in the amount of \$45,768.

4. On June 25, 2010, before respondent was sentenced, he signed a Plea Agreement, which described the circumstances underlying his conviction, in relevant part, as follows:

In 2006 I worked at California Real Estate Services (CRES) in Pleasanton, CA, and my job duties included assisting clients submit applications for mortgage and mortgage-related loans to financial institutions and other lenders. While working at CRES, I met an individual, D.G., who I knew created false documents for CRES employees to submit in support of loan applications in order to defraud lenders by making CRES clients appear to qualify for loans when, in fact, the clients did not qualify. After being introduced to D.G., and beginning no later than February 2008, I obtained false documents from him in order to submit those false documents to lenders on behalf of CRES clients in order to make the clients appear qualified to obtain loans that they would not have been able to obtain without providing the false information to the lenders. I typically paid D.G. \$150-\$200 for fake documents.

In the Plea Agreement, respondent admitted that he had obtained false documents in four loan transactions, and that he had "derived" proceeds of \$45,768 from these transactions.

5. There were some differences between respondent's statements in the Plea Agreement and his testimony at the hearing. Respondent testified that his wrongdoing occurred in 2008. At the time, he was employed as a "loan processor" by WSM Realty and Loans, and not by CRES. He testified that in one transaction, he obtained an altered W-2 statement that reflected that the borrower had income that was higher than that reflected on the original W-2 statement. For the other three borrowers, he obtained falsified pay stubs. According to respondent, he paid \$100 for each falsified document. Respondent denied that he had personally received \$45,768 in proceeds from the four loan transactions.

6. At the hearing, respondent expressed remorse and accepted responsibility for his illegal conduct. He recognized the wrongfulness of his behavior. He asserted, however, that no one had suffered any losses as a result of his conduct - the banks that lent the money were "safe" because the four subject loans were still performing, and the borrowers got the opportunity to help themselves through the loans they received.

7. Respondent was not a licensed salesperson at the time he engaged in the illegal conduct underlying his criminal conviction. He obtained his real estate license after he engaged in the illegal conduct, but before he was convicted. There was no evidence to indicate that respondent has engaged in any illegal conduct since he has been licensed as a real estate salesperson.

8. Respondent submitted a letter from Jennifer Hutchings, his U.S. Probation Officer, which was admitted as administrative hearsay, and has been considered to the extent permitted under Government Code section 11513, subdivision (d).¹ According to Ms. Hutchings, respondent is currently in compliance with the conditions of his criminal probation. Respondent paid the \$100 assessment fee. He is paying \$300 per month towards the \$45,768 Forfeiture Judgment against him. He is providing monthly reports of his probation compliance to his probation officer. He is engaging in community service by volunteering with Reason to Dream, a non-profit organization that raises funds and conducts events for homeless families. In a letter dated December 5, 2011, Bev Carter, from Reason to Dream, stated that respondent has "proven to be instrumental in various fund raising drives and ideas for the future." According to Ms. Carter, respondent "has always been available on short notice to lend a hand where needed."

9. Respondent has completed approximately 100 hours of the 200 hours of community service ordered by the federal court. He still has approximately \$39,000 to pay of the \$45,768 Forfeiture Judgment. His criminal probation is scheduled to end in October 2013.

10. Since 2009, respondent has worked as a licensed salesperson for Select Realty Investments. When he first started as a salesperson, he handled both real estate transactions and loan modifications. Currently, he works only on real estate transactions. On July 20, 2010, respondent completed five online Department-approved continuing education courses (Ethics, Agency, Trust Fund, Risk Management, and Fair Housing.)

11. Respondent lives with his fiancé and their son, who is currently in middle school.

¹ Government Code section 11513, subdivision (d), in relevant part, provides:

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.

12. Respondent called four witnesses to testify:

- (a) Rosemary S. Costa is a Sentencing Consultant. Respondent retained Ms. Costa to provide a "sentencing analysis" during the course of the criminal proceedings against him. Ms. Costa has been a Sentencing Consultant for five years. Before becoming a Sentencing Consultant, she worked for 21 years as a probation officer for the federal district court. As a Sentencing Consultant, she assessed respondent's "amenability to probation." Ms. Costa opined that, considering respondent's family background, absence of substance abuse, absence of prior criminal record, "unblemished professional record since his conviction," familial obligations, and "model supervision record," respondent posed "no risk in re-offending, i.e., causing any harm to his present or future real estate clients." Because there was no showing that Ms. Costa has any experience assessing the compliance of real estate salespersons with the Real Estate Law,² Ms. Costa's opinion was given little weight.
- (b) John Zent, Jr., was employed by the FBI as an agent and supervisor from 1971 to 1997. In the 1980's, he worked on white collar criminal matters, and managed a financial crimes program. Mr. Zent's daughter is married to respondent's brother. Based upon his reading of the indictment against respondent and his FBI experience, Mr. Zent opined that respondent was just a "tangential part" of a larger conspiracy. At the hearing, Mr. Zent admitted that he had not participated in the investigation of the case or read any case documents other than the indictment. In light of Mr. Zent's familial relationship to respondent and the fact that he retired from the FBI 13 years before respondent was indicted, Mr. Zent's opinion was given little weight.
- (c) Cesar Cervantes is respondent's brother. He was an auditor for the San Francisco Police Department for 25 years. He now works part time as an accountant. Mr. Cervantes testified that respondent was "raised in the church" and was not in trouble as a child. He described respondent as an "excellent father" to his son, and a "role model" for his nieces and nephews.
- (d) Carolyn Pacheco has been the owner and broker of Select Realty Investments in Dublin, California for three years. She first met respondent in 2005, when she worked with him at the same company. She hired respondent in 2009, and has worked with him since then on a daily basis. She testified that, since 2009, she has heard of no issues with any of respondent's transactions, and has received no complaints

² Part 1 of Division 4 of the Business and Professions Code.

from any customers. Respondent promptly told Ms. Pacheco about the criminal indictment against him. Ms. Pacheco works closely with respondent and supervises him. According Ms. Pacheco, respondent puts his clients first. If respondent's license were restricted, Ms. Pacheco would be willing to supervise him. On cross-examination, when asked about what respondent told her about his conviction, Ms. Pacheco testified that respondent did not provide her with any details, and she did not think it was her right to "delve" into "something so personal" to respondent.

13. In California Code of Regulations, title 10, section 2912, the Department has set forth the criteria to be applied when reviewing whether a real estate license should be revoked when the licensee has been convicted of a crime.³

³ 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

14. At the hearing, respondent submitted some evidence of rehabilitation. He is currently complying with the terms and conditions of his criminal probation. He appears to have a stable family life and is fulfilling his parental and familial responsibilities. He is gainfully employed as a real estate salesperson. He is participating in community service and has completed online continuing education courses. He recognized the nature of his

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'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.

wrongdoing and expressed remorse. There was no evidence to indicate that he has engaged in any illegal conduct other than that underlying his criminal conviction.

15. But when all the factors set forth in California Code of Regulations, title 10, section 2912 are considered, respondent did not present sufficient evidence of rehabilitation to demonstrate that it would be consistent with the public interest, safety and welfare to allow him to retain his salesperson license. Less than two years ago, respondent was convicted of conspiracy to commit mail fraud, a federal felony. His probation is not scheduled to end until October 2013. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099 [rehabilitation engaged in when a person is on criminal probation is accorded less weight “[s]ince persons under the direct supervision of correctional authorities are required to behave in exemplary fashion...”].) He still owes approximately \$39,000 towards the Forfeiture Judgment against him, and has yet to perform almost half of his court-ordered community service.⁴ Most importantly, less than four years ago, respondent engaged in conduct that is reprehensible for a real estate salesperson – he purchased fraudulent documents in order to obtain real estate loans for four clients. The fact that respondent was not yet a licensed salesperson when he engaged in this illegal conduct is irrelevant. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 779 [licensees may be disciplined based upon wrongful conduct that precedes issuance of the license].) It is also irrelevant that the subject loans are still performing. Respondent’s testimony that no one has been injured by his illegal conduct was not correct. The entire real estate industry suffers in the eyes of the public when its licensees engage in the type of fraudulent conduct underlying respondent’s criminal conviction. When all the evidence is considered, particularly the serious nature of respondent’s wrongdoing, it would be contrary to the public interest, safety and welfare to allow respondent to retain his real estate salesperson license. Consequently, respondent’s license must be revoked.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 490, a real estate salesperson license may be revoked “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.”

2. Pursuant to Business and Professions Code section 10177, subdivision (b), a real estate salesperson license may be revoked if a real estate 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

⁴ At the hearing, respondent disputed that the \$48,678 Forfeiture Judgment was either “restitution” under California Code of Regulations, title 10, section 2912, subdivision (b), or a “fine” under California Code of Regulations, title 10, section 2912, subdivision (g). Respondent’s argument was without merit. Respondent was ordered to pay \$48,678 as a result of his illegal conduct. This Forfeiture Judgment, together with the fact that respondent still owes approximately \$39,000, may be considered when assessing respondent’s rehabilitation.

crime substantially related to the qualifications, functions, or duties of a real estate licensee...”

3. In California Code of Regulations, title 10, section 2910, the Department has set forth criteria for determining whether a conviction is substantially related to the qualifications, functions or duties of a licensee. Subdivision (a) of section 2910, in relevant part, provides that a conviction will be deemed to be substantially related if it evidences:

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

(2) Counterfeiting, forging or altering of an instrument or the uttering of a false statement.

[¶] ... [¶]

(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.

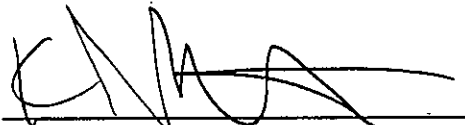
4. Respondent’s conspiracy to commit mail fraud conviction is substantially related to the qualifications, functions and duties of a real estate licensee under California Code of Regulations, title 10, section 2912, subdivisions (a)(1), (2), (4), and (8). It therefore constitutes cause to revoke his salesperson license under Business and Professions Code sections 490 and 10177, subdivision (b).

5. When all the evidence is considered, complainant submitted clear and convincing evidence to revoke respondent’s real estate salesperson license. As set forth in Findings 14 and 15, while respondent demonstrated some rehabilitation, given the serious nature and recency of his wrongdoing, respondent did not establish that he has engaged in sufficient rehabilitation to allow him to retain his real estate salesperson license. Consequently, respondent’s license must be revoked.

ORDER

All licenses and license rights of Roy Roger Cervantes under the Real Estate Law, Business and Professions Code section 10000 et seq., including his real estate salesperson license, are REVOKED.

DATED: January 17, 2012



KAREN J. BRANDT
Administrative Law Judge
Office of Administrative Hearings

FLG

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187007
3 Sacramento, CA 95818-7007
4 Telephone: (916) 227-0791

FILED
JUN 13 2011
DEPARTMENT OF REAL ESTATE
By [Signature]

7 BEFORE THE DEPARTMENT OF REAL ESTATE
8 STATE OF CALIFORNIA

9 * * *

10 In the Matter of the Accusation of

11 ROY ROGER CERVANTES

12 Respondent.

NO. H-5542 SAC

13 ORDER VACATING DEFAULT DECISION

14 On April 21, 2011, a Default Order was filed as to Respondent ROY ROGER
15 CERVANTES. Thereafter, on May 2, 2011, a Decision was rendered revoking the real estate
16 salesperson license of Respondent ROY ROGER CERVANTES, effective June 14, 2011.

17 On June 1, 2011, good cause was presented to set aside the Default Order of
18 April 21, 2011, and to vacate the Decision of May 2, 2011, and to have the matter remanded to
19 the Office of Administrative Hearings as a contested matter.

20 NOW, THEREFORE, IT IS ORDERED THAT THE Default Order of April 21,
21 2011 is set aside and the Default Decision of May 2, 2011 is vacated and that the Matter of the
22 Accusation filed on January 31, 2011 is remanded to the Office of Administrative Hearings.

23 This Order shall be effective immediately.

24 DATED: 6/10/2011

25 BARBARA J. BIGBY
Acting Real Estate Commissioner

26 [Signature]
27

By WAYNE S. BELL
Chief Counsel

FILED

MAY 24 2011

DEPARTMENT OF REAL ESTATE

By *R. M. [Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
 ROY ROGER CERVANTES,) NO. H-5542 SAC
)
 Respondent.)
_____)

DECISION

This Decision is being issued in accordance with the provisions of section 11520 of the Government Code, on evidence of compliance with section 11505 of the Government Code and pursuant to the Order of Default filed on April 21, 2011, and the findings of fact set forth herein, which are based on one or more of the following: (1) Respondent's express admissions; (2) affidavits; and (3) other evidence.

This Decision revokes a real estate license on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate license 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.

FINDINGS OF FACT

1

On January 25, 2011, TRICIA D. SOMMERS, made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent, and Notice of Defense were mailed, by regular and certified mail, to Respondent's last known mailing address on file with the Department on January 31, 2011.

On April 21, 2011, no Notice of Defense having been filed herein within the time prescribed by section 11506 of the Government Code, Respondent's default was entered herein.

2

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

3

On or about November 1, 2010, in the United States District Court for the Northern District of California, Case Number CR 10-0064-001 SI, Respondent was convicted of violating Title 18 United States Code section 1349 (conspiracy to commit mail fraud), a felony 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.

DETERMINATION OF ISSUES

1

Cause for disciplinary action against Respondent exists pursuant to sections 490 and 10177(b) of the Code.

2

The standard of proof applied was clear and convincing proof to a reasonable certainty.

ORDER

All licenses and licensing rights of Respondent ROY ROGER CERVANTES, under the provisions of Part I of Division 4 of the Code are revoked.

This Decision shall become effective at 12 o'clock noon on JUN 14 2011

DATED: 5/2/11

BARBARA J. BIGBY
Acting Real Estate Commissioner


BY: Barbara J. Bigby

FILED

APR 21 2011

DEPARTMENT OF REAL ESTATE

By: 

1 Department of Real Estate
2 P. O. Box 187007
3 Sacramento, CA 95818-7007
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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of
ROY ROGER CERVANTES,
Respondent.

No. H-5542 SAC
DEFAULT ORDER

Respondent, ROY ROGER CERVANTES, having failed to file a Notice of Defense within the time required by section 11506 of the Government Code, is now in default. It is, therefore, ordered that a default be entered on the record in this matter.

IT IS SO ORDERED APRIL 21, 2011

JEFF DAVI
Real Estate Commissioner

By:


PHILLIP IHDE
Regional Manager

1 JASON D. LAZARK, Counsel (SBN 263714)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007
5 Office: (916) 227-0789
6 Direct: (916) 227-0822

FILED
JAN 31 2011
DEPARTMENT OF REAL ESTATE
By L. Frost

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12) No. H-5542 SAC
13 ROY ROGER CERVANTES,) ACCUSATION
14 Respondent.)
15)

16 The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner
17 of the State of California, acting in her official capacity, for cause of Accusation against ROY
18 ROGER CERVANTES (herein "Respondent"), is informed and alleges as follows:

19 1.

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 (the Code) as a real estate
22 salesperson.

23 2.

24 On or about November 1, 2010, in the United States District Court for the
25 Northern District of California, San Francisco Division, Case No. CR 10-0064-001 SI,
26 Respondent was convicted of violating 18 U.S.C. section 1349 (conspiracy to commit mail

27 ///

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

3 3.

4 The facts alleged above in Paragraph 2 constitute grounds under sections 490 and
5 10177(b) of the Code for suspension or revocation of all licenses and license rights of
6 Respondent under Part 1 of Division 4 of the Code (herein "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, and for such other and further relief as may be proper under the provisions of law.

11
12 
13 TRICIA D. SOMMERS
14 Deputy Real Estate Commissioner

15 Dated at Sacramento, California,
16 this 25th day of January, 2011.

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