

FILED

AUG 25 2011

DEPARTMENT OF REAL ESTATE
By R. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	NO. H-5554 SAC
JASON PEREIRA,)	
)	OAH NO. 2011050118
Respondent.)	
_____)	

DECISION

The Proposed Decision dated July 21, 2011, 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 the real estate license and/or license rights on grounds of a conviction of a crime.

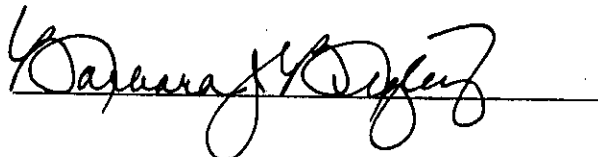
The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

SEP 15 2011 This Decision shall become effective at 12 o'clock noon on _____

IT IS SO ORDERED

8/24/11

BARBARA J. BIGBY
Acting Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. H-5554 SAC

JASON PEREIRA

OAH No. 2011050118

Respondent.

PROPOSED DECISION

On July 7, 2011, Administrative Law Judge Hannah H. Rose, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California.

John W. Barron, Staff Counsel, represented Tricia D. Sommers (complainant), a Deputy Real Estate Commissioner with the Department of Real Estate (Department).

Jason Pereira (respondent) was present and represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on July 7, 2011. Thereafter, the Administrative Law Judge reopened the record and held a conference call with counsel for complainant and respondent. An updated license history for respondent was received at the Office of Administrative Hearings, and was served on respondent, on July 15, 2011. It was admitted into evidence as Exhibit 2-A. The record was closed, and the matter was re-submitted for decision on July 15, 2011.

SUMMARY

The Department filed this Accusation after respondent was convicted of conspiracy to commit grand theft. In September 2010, respondent pled nolo contendere (no contest) to a violation of Penal Code section 182, subdivision (a)(1), conspiracy to commit a crime (grand theft), a felony. The offense was based on respondent having entered into a conspiracy with three other persons, wherein the others stole large quantities of golf balls from commercial establishments in Placer County, and respondent bought them from the thieves and re-sold them on the Internet for profit. Respondent purchased golf balls from the thieves with money and personal prescription drugs. Real estate licensees must be honest, truthful and worthy of the fiduciary responsibilities of their profession. Because the crime is substantially related to respondent's license, and he has failed to demonstrate evidence of his good character, or of mitigation or rehabilitation as defined by law and regulation, respondent's real estate salesperson license must be revoked.

FACTUAL FINDINGS

1. Complainant made and filed the Accusation in her official capacity.
2. Respondent was licensed by the Department as a real estate salesperson on March 23, 2007. His salesperson license is current and renewed to March 22, 2015.
3. Respondent filed a timely Notice of Defense to the Accusation, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing pursuant to Government Code sections 11500 et seq.

Respondent's Conviction

4. On September 7, 2010, in the Superior Court of the State of California, County of Placer, in Case number 62-98989A, respondent was convicted, upon a plea of nolo contendere (no contest), of violating Penal Code section 182, subdivision (a)(1), conspiracy to commit a crime (grand theft), a felony. Respondent was sentenced to serve 90 days in home detention, placed on formal probation for three years, ordered to complete a theft education course, and ordered to pay fines and fees totaling approximately \$3,600. The court also directed that after 18 months respondent would be eligible to petition the court to reduce his conviction from a felony to a misdemeanor. Respondent's probation will end on September 7, 2013.

5. The incidents underlying respondent's conviction occurred in May 2010. Respondent conspired with three co-defendants to commit grand theft. The plan was for the co-defendants to steal golf balls from various stores in Placer County, after which respondent bought the golf balls from his co-defendants for money and for a controlled substance, oxycodone. Respondent then sold the golf balls on the Internet for profit. Respondent testified that he first bought about 20 dozen Titleist Pro V1 golf balls from a seller on Craigslist, who claimed to be liquidating inventory from his uncle's golf shop. Respondent is a golfer, and he lives in a home on a golf course. Respondent testified that while the price for the balls was substantially below full retail, because it was only slightly below the price for the same balls on eBay, he did not question either the low price or the source. Because the price was so attractive, after his first purchase, respondent bought 10 or 12 dozen more balls for the same price. When respondent went to pick up the second purchase, the seller saw respondent's prescription bottle for oxycodone in his car, and asked respondent if he would sell the balls for the pills instead of money. The seller called him many times after that to try to buy pills or sell more golf balls for pills. Respondent uses oxycodone, a controlled substance, to manage pain caused by an injury to his back. Respondent's physician prescribed the medication for him. Respondent made at least one exchange of golf balls for oxycodone.

6. After his second or third purchase of golf balls from one of the thieves, respondent listed some of the balls for sale on eBay. He made arrangements to meet a buyer at Granite Bay Country Club. When respondent arrived at the club, a Placer County Deputy Sheriff, who had posed as the buyer on eBay, scanned the boxes of golf balls. The scan

revealed that the balls were stolen, and respondent was arrested. After his arrest, respondent cooperated with the sheriff's department in setting up another buy from the seller in order to catch the three men who had stolen the golf balls. Respondent testified that he only made two purchases from the thieves, both for money. He denies that he conspired with others to steal the golf balls, or that he had ever traded any golf balls for oxycodone. His testimony is not credible.¹ Respondent gave different versions of the events at his plea and sentencing hearing in superior court, in his Conviction Detail Report prepared for the Department in February 2011, and in his testimony at hearing.

Respondent's Evidence

7. Respondent believes that he is innocent of the charges leading to his conviction. In his Conviction Detail Report, respondent explained that he plead no contest only because he could not afford to pay his lawyer for the cost of a jury trial on the charges. At hearing, respondent explained that he plead no contest because he did not want to risk the possibility that if he went to trial, he might be convicted of two felonies and sentenced to jail or prison for a longer time than he was offered in the plea bargain. These two stated reasons are not consistent. Respondent does not know why he gave different reasons for his plea. Respondent also believes that the deputy sheriff who arrested him, and who promised to put

¹ At the time of his plea and sentencing, the court recited the factual basis for the plea as follows:

The Court: It alleges that you, along with Mr. Chuidian, Borghesi, and Hill, conspired together to commit the crime of grand theft in violation of section 487 of the Penal Code, and then for the purpose of carrying out that conspiracy, you committed the following overt acts in the County of Placer. Number one, that Chuidian, Hill, and Borghesi stole the golf balls from stores in Placer County; number two, Chuidian, Hill, and Borghesi gave the stolen golf balls to you; that you gave them controlled substances in return for the golf balls; and that you sold the stolen golf balls on the Internet. To that charge, what is your plea?

The Defendant: No contest, your Honor.

In his Conviction Detail Report, prepared for the Department, respondent explained the details of the crime as follows:

I was buying golf balls from person (sic) off Craigslist. The approx. (sic) amount was 50 dozen golf balls. Initially he told me they were from his uncles (sic) golf store and they were liquidating them. *I met with this person three times. The third time I met with him I gave him some of my pain medication in exchange for some balls.* The balls turned out to be stolen from all the sports stores in Roseville. (Italics added.)

in a good word for him with the district attorney and the court if he cooperated in the arrest of the other three co-defendants, failed to live up to his word and did not intervene in the court proceedings on his behalf. In addition, respondent believes that the deputy district attorney refused to offer him a more lenient plea bargain because she believed that he was the mastermind of the conspiracy because he lived in a big house on a golf course. Respondent believes the charges would have been reduced or dismissed if the deputy district attorney had not been prejudiced against him, and the deputy sheriff had kept his word.

8. Respondent explained at hearing that his description of the crime in the Conviction Detail Report was different from his testimony because he based the former on the police report, and did not report what really happened, because he "didn't know what to do." He did not recall whether he had purchased a total of 30 dozen or 50 dozen golf balls, and he was making a "guesstimate" each time he listed or testified to the number of balls purchased. Respondent believes that he did nothing wrong. His testimony at hearing was not credible. Respondent's failure to credibly explain the numerous discrepancies between his testimony at hearing and his previous statements of guilt, underscores his failure to accept responsibility for the conduct he described in the Conviction Detail Report and for which he admitted a factual basis at the time of his plea in superior court.

9. Respondent is 33 years old. He graduated from Jesuit High School in 1995. He attended Sacramento State University, but did not earn a degree. Between 2000 and 2005, respondent worked first at United Parcel Service, then as a manager at an automotive high-performance store, and then as the operations manager for a limousine company. In 2005-2006, respondent worked as a loan officer for Security Financial and for California Loan Financing Company. Since he was licensed in 2007, respondent has worked as a real estate salesperson with California Seller Realty. Respondent has also recently begun a mobile auto detailing business, for additional income.

10. Respondent is divorced and he has a nine-year-old daughter. He shares half-time custody of his daughter with his ex-wife, and respondent provides before and after-school child care for her every day. Respondent is a golfer, and he lives with his father, in a home he owns that is on a golf course. He is not close to either his father or his younger brother, who also lives in the Sacramento area, but he has an amicable relationship with his ex-wife and with her parents. Respondent's mother and older brother live in London, England, and he talks with his mother every day.

11. Respondent works at California Seller Realty under the supervision of Kevin Goehring, a licensed real estate broker. Mr. Goehring is willing to supervise respondent if his license is restricted. Respondent has taken the required continuing education courses needed for the renewal of his license. He has not taken any additional educational courses. Respondent has no prior discipline of his real estate license.

12. Respondent is currently in compliance with his criminal probation. He has paid \$1,800 of a total of \$3,600 that is owed in fines and fees. He has not yet enrolled in the court-mandated theft offender program that he must complete as a condition of probation.

13. Respondent has not sought early termination of probation or expungement of his conviction. He is not yet eligible to petition the court to reduce his felony conviction to a misdemeanor. He has not had any therapy or counseling. Respondent does not participate in any community activities. He has no outstanding debt and there are no pending civil court actions against him. He did not submit evidence of his good character or rehabilitation, either through documents or testimony of others. Respondent argues that the Department should consider as mitigation the fact that his recent conviction is his only conviction of a crime other than traffic tickets.

LEGAL CONCLUSIONS

Burden of Proof

1. In an Accusation seeking to revoke, suspend, or otherwise discipline respondent's professional license, the department has the burden 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.) As set forth below, complainant has met her burden to establish that respondent's real estate salesperson license should be disciplined pursuant to Business and Professions Code sections 10177, subdivision (b), and 490, subdivision (a).

Applicable Statutes and Regulations

2. Business and Professions Code section 490 provides, in relevant part:

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.

3. Business and Professions Code section 10177, subdivision (b), in relevant part, states:

The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following ...

[¶]...[¶]

(b) 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. 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)(8) of section 2910, in relevant part, provides that a conviction will be deemed to be substantially related if it evidences:

(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.

Substantial Relationship

5. Respondent's 2010 conviction, as set forth in Factual Findings 4 through 6, involves the commission of an unlawful act with the intent of conferring a financial or economic benefit on the perpetrator when respondent conspired with others to steal, and to sell, stolen goods for personal profit. This was done with the intention to confer an economic benefit upon himself. The conviction therefore is substantially related to the qualifications, functions, and duties of a real estate salesperson under California Code of Regulations, title 10, section 2910, subdivision (a)(8).

Cause for Discipline

6. Cause for discipline of respondent's license and licensing rights was established pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), by reason of Factual Findings 4 through 6, and Legal Conclusion 5, in that respondent was convicted of a crime that is substantially related to the qualifications, functions and duties of a real estate licensee.

Rehabilitation and Fitness for Continued Licensure

7. The determination of whether a person is presently fit for licensure should be made only after consideration of the conduct of the licensee and any factors introduced in justification, aggravation or mitigation. "The licensee, of course, should be permitted to introduce evidence of extenuative circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation." (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.) The Department has developed regulatory criteria for evaluating the rehabilitation of a licensee

who is the subject of an administrative disciplinary proceeding based on a criminal conviction, as set forth in California Code of Regulations, title 10, section 2912.

8. In considering these criteria, it is determined that respondent has sustained a recent conviction that is substantially related to the qualifications, functions and duties of a real estate licensee. His criminal probation will not end until September 7, 2013. Less than one year has passed since his conviction. (Factual Finding 4.) No restitution was ordered as a condition of respondent's probation. However, respondent still owes court-ordered fees and fines. He has not yet completed the court-ordered theft offender class. (Factual Findings 4 and 12.) Respondent has not petitioned for reduction of his felony to a misdemeanor and his conviction has not been expunged. Although respondent has taken mandatory continuing education courses for his license renewal, he has not taken other educational courses since his conviction. (Factual Finding 11.) Although respondent is not close to his family, he cares for his daughter daily, and has a cooperative relationship with his ex-wife and her family. His family life is stable. (Factual Finding 10.) Respondent has no community involvement, and he does not participate in any privately sponsored programs designed to provide social benefits or to ameliorate social problems. He has no outstanding debt and there are no pending civil court actions against him. Respondent's license has never been disciplined. (Factual Findings 11 and 13.)

Respondent has not demonstrated a change in attitude from that which existed at the time of his conviction for conspiracy to commit grand theft. He maintains his innocence, denies responsibility for any crime, and has not demonstrated that he has learned anything from this experience that would protect the public from future similar misconduct. (Factual Findings 7 and 8.) There was neither testimony nor letters of family, professional associates or friends in support of respondent's good character, change in attitude or behavior, or fulfillment of societal responsibilities. (Factual Finding 13.) There have been no further transgressions or convictions that are reflective of an inability to conform to societal rules.

9. It is significant that respondent's conspiracy conviction was a crime of dishonesty, as evidenced by the circumstances of this case. Honesty and trustworthiness are qualities of utmost importance in a real estate licensee, who must frequently act in a fiduciary capacity and is entrusted with the personal and real property of his clients. "Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee." (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.) "If appellant's offenses reflect unfavorably on his honesty, it may be said he lacks the necessary qualifications to become a real estate salesperson." (*Harrington, supra*, at p. 402; *Golde v. Fox* (1979) 98 Cal.App.3d 167, 176.) "The Legislature intended to insure that real estate salespersons will be honest, truthful and worthy of the fiduciary responsibilities which they will bear." (*Harrington, supra*, at p. 402; *Ring v. Smith* (1970) 5 Cal.App.3d 197, 205.)

10. Moreover, respondent will be on criminal probation for more than another two years. While he does not appear to have violated probation, compliance with the law when one is on court-ordered release "does not necessarily prove anything but good sense." (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 473.) When

a person is on criminal probation or parole, rehabilitation efforts are accorded less weight, "[s]ince persons under the direct supervision of correctional authorities are required to behave in exemplary fashion..." (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) Therefore, respondent's good behavior during this time does not demonstrate sufficient rehabilitation.

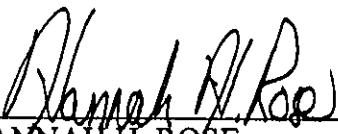
11. Respondent's failure to fully acknowledge the wrongfulness of and the responsibility for his crime is a concern. His desire to have the Department consider as mitigation the fact that he has never before been convicted of anything more serious than a traffic ticket is understandable. However, his failure to explain how he has morally changed since his conviction suggests a lack of both an understanding of the seriousness of the offense and of remorse, and demonstrates insufficient rehabilitation. Fully acknowledging the wrongfulness of one's actions is regarded as an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.)

12. For the reasons stated above, it would be contrary to the public interest to permit respondent to retain his real estate salesperson license, with or without restrictions.

ORDER

The license and licensing rights of respondent Jason Pereira under the Real Estate Law, are revoked by reason of Legal Conclusions 5 through 12.

DATED: July 21, 2011



HANNAH H. ROSE
Administrative Law Judge
Office of Administrative Hearings

1 JOHN W. BARRON, Counsel (SBN 171246)
2 Department of Real Estate
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FILED

FEB 28 2011

DEPARTMENT OF REAL ESTATE

By L. Mat

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 ***

11 In the Matter of the Accusation of)
12)
13 JASON PEREIRA,)
14 Respondent.)

No. H-5554 SAC

ACCUSATION

15
16 The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner
17 of the State of California, for cause of Accusation against JASON PEREIRA, (hereafter
18 "Respondent"), is informed and alleges as follows:

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20 The Complainant makes this Accusation in her official capacity.

21 2

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

25 3

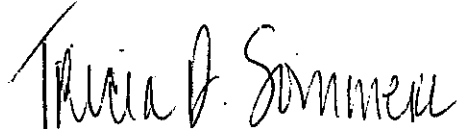
26 On or about September 7, 2010, in the Superior Court of the State California,
27 County of Placer, Case No. 62-98989A, Respondent was convicted of violating Section 182(a)

1 of the California Penal Code (conspiracy to commit crime – grand theft), a felony and a crime
2 which bears a substantial relationship under Section 2910, Title 10, California Code of
3 Regulations, to the qualifications, functions or duties of a real estate licensee.

4 4

5 The facts alleged in Paragraph 3, above, constitute a cause under Sections 490
6 (conviction of crime) and 10177(b) (conviction of crime substantially related to qualifications,
7 functions or duties of real estate licensee) of the Code for suspension or revocation of all licenses
8 and license rights of Respondent under the Real Estate Law.

9 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
10 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
11 action against all licenses and license rights of Respondent under the Code, and for such other
12 and further relief as may be proper under the provisions of law.

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15 TRICIA D. SOMMERS
16 Deputy Real Estate Commissioner

17 Dated at Sacramento, California,
18 this 24th day of February, 2011.
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