

FILED

MAY 28 2013

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
By [Signature]

* * *

In the Matter of the Accusation of

ROMAN P. KRAVCHENKO,

Respondent.

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NO. H-5792 SAC

OAH NO. 2012060244

DECISION

The Proposed Decision dated April 4, 2013, 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

JUN 17 2013

IT IS SO ORDERED

MAY 24, 2013

REAL ESTATE COMMISSIONER

[Signature]

By: Jeffrey Mason
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ROMAN P. KRAVCHENKO,

Respondent.

Case No. H-5792 SAC

OAH No. 2012060244

PROPOSED DECISION

This matter was heard before Margaret M. Broussard, Administrative Law Judge, Office of Administrative Hearings, State of California, on March 19, 2013, in Sacramento, California.

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

Roman P. Kravchenko (respondent) was present and represented himself.

FACTUAL FINDINGS

1. On October 12, 2000, the department issued Real Estate Salesperson License Number S01297728 to respondent. Respondent's license expires on October 11, 2016, unless renewed or revoked.

2. On March 13, 2012, complainant made and filed the Accusation in her official capacity. Complainant seeks to revoke respondent's real estate salesperson license based on his criminal conviction. On March 26, 2012, respondent filed a Notice of Defense to contest the Accusation. 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.

3. Evidence was received on March 19, 2013. The record was left open to allow respondent to file and serve a copy of the 911 call made the morning of the incident. On March 21, 2013, respondent filed and served a copy of the 911 call, which was marked as Exhibit C and admitted into evidence as administrative hearsay under Government Code

section 11513, subdivision (d) The record closed and the matter was submitted for decision on March 21, 2013

Respondent's Conviction

4. On November 23, 2011, in the Superior Court of California, County of Yolo, in the matter entitled *People of the State of California v. Roman Petrovich Kravchenko*, Case No. CR-11-003669, respondent was convicted, upon a plea of nolo contendere, of violating Penal Code section 148.5, subdivision (a), false report of a crime, a misdemeanor. Imposition of sentence was suspended, and respondent was placed on summary probation for one year, upon the following terms: pay fines and fees of \$710, do not harass, threaten or annoy his ex-wife, Tatyana Kravchenko, and other standard terms and conditions.

5. The facts and circumstances of respondent's conviction are that, on June 3, 2011, an officer with the West Sacramento Police Department was dispatched to the home of Ms. Kravchenko. Respondent had arrived at Ms. Kravchenko's home that morning to pick up his children for a scheduled visitation. When the children were not ready to be released to his custody, respondent called the police department to enforce his court-ordered custody. Before the police could arrive, Ms. Kravchenko was ready to leave for work in her car. As she was leaving, she pulled out of the garage and around respondent's vehicle, which was in the driveway. As she was doing this, respondent was pushing against her car from the back and side. The oldest son observed the incident and made a video from his cell phone. Ms. Kravchenko left for work. When the police arrived, respondent told the officer that his ex-wife had hit his car and his body with her car as she left for work. The officer went inside to interview the children and watched the video. The officer determined at the scene that the video of the incident was inconsistent with respondent's statement. The officer informed respondent that the video showed he was being untruthful and that if he persisted with his demand to file a police report with the false statement, he would be arrested. Respondent told the police officer that he wanted to file the report and that the officer was welcome to arrest him. Respondent was arrested.

Matters in Aggravation or Mitigation

6. The day before the incident at Ms. Kravchenko's home, there was a new custody order put in place by the family court. Pursuant to this order, respondent had arrived at Ms. Kravchenko's home about 6:05 a.m. to pick up some or all of the couples' six children. There was a dispute over how many children respondent was to take and whether respondent would need more than one vehicle. When respondent arrived, the children refused to leave the home and go with him.

7. Respondent testified that it was too early in the morning to call his attorney for advice. He called the police to have them come to the home to assist him in exercising his custodial rights. Respondent was told by the dispatcher that, at the time he called, there was a shift change at the police department and that the police would not be available to come to

the residence for about one to one and a half hours. Respondent testified that he was very frustrated and acting "beyond [his] limits."

8. Ms. Kravchenko had parked her car in the garage and was leaving for work. She is a registered nurse and she started work that day at 6:45 a.m. Respondent had parked his car in the driveway behind her car. Ms. Kravchenko inched her car out of the garage, around respondent's car and out of the driveway.

9. As Ms. Kravchenko was pulling out of the driveway, respondent leaned against her moving car and was pushed by the car. By all accounts, the car was moving at a very slow speed. Both the police and Ms. Kravchenko reported that there was no contact with respondent's vehicle. Respondent maintains to this date that Ms. Kravchenko's car hit the front bumper of his car, causing some paint damage.

10. Respondent and Ms. Kravchenko had been, and remain, in a contentious custody situation and respondent has gone long periods without seeing his children, sometimes by his actions, but mostly because the children have refused to see him. This has clearly caused respondent pain and he reported that on the morning of June 3, 2013, he "felt in my head that I was doing everything in my power to get my kids during my custody time."

11. Respondent testified that there were several reasons he chose to plead no contest in the criminal matter. He did not have the money to pay for representation in a jury trial and he did not want to put his son, who made the video, in the position of having to testify against his father.

12. At hearing, respondent did not dispute the conviction discussed above. The underlying facts of the conviction show that he was convicted of a false statement. Respondent's conviction is substantially related to the qualifications, functions and duties of a real estate salesperson.

Evidence of Rehabilitation

13. It has been only one year and four months since respondent's conviction. Respondent successfully completed his probation in December 2012. He has paid his court fines and fees, although for a period of time he was behind on the payment arrangement he made with the court. He has not had his conviction expunged pursuant to Penal Code section 1203.4. He has not pursued expungement because he does not have the money to pay the fees associated with expungement.

14. Respondent has remarried since the conviction. He has participated in court-ordered family therapy and classes in order to facilitate reunification with his children. He has also participated in a lengthy custody evaluation which determined that he should share both physical and legal custody with Ms. Kravchenko.

15. Respondent is active in the community and his church. For the last 15 years, he has been the President of the Russian Heritage Cultural Center, an organization that holds classes on Saturdays to teach children the Russian language and heritage. He has volunteered for the last 18 months feeding the homeless through his church for four hours a week. He volunteers as a translator at church for services and church events.

16. No family members or friends testified on respondent's behalf to present evidence of a stable home life, respondent's conduct subsequent to his convictions, or respondent's character. No business associates testified on respondent's behalf.

17. Of concern was the absence of any evidence from respondent's employing broker, Mr. Randall Hom. Respondent gave conflicting testimony about Mr. Hom's knowledge of the Accusation and the underlying criminal conviction. When asked when Mr. Hom became aware of respondent's conviction, respondent first said it was about a month after the department sent a letter to respondent. This was well after the conviction and plea in the underlying criminal matter. When questioned further, respondent stated that Mr. Hom was aware of the underlying criminal matter at the time it happened and that he had discussed whether to plead guilty with Mr. Hom. When asked where Mr. Hom was on the day of the hearing, respondent said that Mr. Hom was teaching out of town. Respondent testified that Mr. Hom knew that there was a hearing in March but he was not aware of the actual date. Respondent's testimony regarding Mr. Hom was evasive and contradictory.

18. Respondent presented a report from Dr. Eugene Roeder, Clinical Psychologist. The report is a child custody evaluation performed pursuant to respondent's child custody case. This report shows that since the time of the conviction, respondent has worked to reunify with his children and that his efforts have been often frustrated by Ms. Kravchenko. When asked if he thought he handled the situation correctly on the morning of June 3, 2011, respondent said: "maybe not," and "maybe I should have let it go." When asked if he would have handled it differently, he testified "I would not interfere with the exit of my [*sic*] wife. I should not have precluded her from exit." When asked if he had changed since the incident, respondent answered that he has "stopped calling the cops." None of these statements address the issue of the making of the false report.

19. On February 16, 2012, respondent filled out and signed a Confidential-Interview Statement (Statement) for the department. He signed the Statement certifying, in part that "I hereby admit the truth of all facts and statements contained herein." On that Statement, under employment, there is a requirement to list all jobs held during the last five years. Although respondent testified to working with RDH Diversified Properties since 2000, he listed "None" under the employment section. When asked about this inconsistency, respondent testified that he "assumed the Real Estate Board knew he worked at RDH properties." However, he also failed to list his work at Brightstar Home Health, where he has worked as a registered nurse since September 2011. He currently works two hours per week with them. There was no explanation given for leaving this off of the Statement.

20. Respondent has not shown that he has sufficiently completed rehabilitation. He has not complied with many of the criteria set forth in California Code of Regulations, title 10, section 2911. An insufficient time has passed since the conviction. He lacked candor in the hearing regarding his employing real estate broker. He did not fully and accurately complete the Statement. At no time did respondent admit making the false statement established by his criminal conviction, or show any remorse or concern for the effect his false statement could have had on his children or their mother. When all the evidence is considered, respondent failed to show that he has had a significant change in attitude from that which existed at the time he was involved in criminal conduct. The department relies upon its licensed salespersons to fully and accurately disclose all information that must legally be disclosed to the department and the public. Respondent did not demonstrate that he can be relied upon to make such disclosures. Consequently, license revocation is appropriate in this matter.

Costs

21. The Department introduced two separate Declarations of Costs of investigation and enforcement of this matter, pursuant to the authority of newly enacted Business and Professions Code section 10106. The first Declaration seeks reimbursement for costs related to the department's investigation of this matter. The second Declaration seeks reimbursement for the department's costs for the enforcement of this matter by its legal staff.

In the first Declaration, the department provided details for a total sum of \$525.75 in costs expended in this matter for the services of one Department-employed special investigator, a supervising special investigator, an office technician and another supervising special investigator. The first Declaration has an attachment itemizing the time spent by employee, date and task. The itemization for the special investigator shows a total cost of \$890.65, however, the itemization only supports a total of \$480.50. Therefore, only \$480.50 was included in the calculation of the total sum of \$525.75.

The second Declaration seeks reimbursement in the amount of \$364.90 for 4.10 hours of legal time at a rate of \$89 per hour. Total potential reimbursable costs for both investigative and legal services are thus \$890.65. These costs are reasonable.

LEGAL CONCLUSIONS

Crime Substantially Related to the Qualifications, Functions or Duties of a Licensee

1. The department 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. (Bus. & Prof. Code, § 490, subd. (a).)

2. Business and Professions Code section 10177, subdivision (b), 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.

3. California Code of Regulations, title 10, section 2910, subdivisions (a)(8), (a)(9) and (a)(10), state:

- (a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in Section 480(a)(2) or 480(a)(3) of the Code, the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of Sections 480 and 490 of the Code if it involves:

[¶] ... [¶]

- (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 any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator with the intent or threat of doing substantial injury to the person or property of another.

Substantial Relationship

4. Respondent's November 23, 2011 conviction was for uttering a false statement. Respondent's conduct underlying his conviction indicates that he was not truthful when he alleged that Ms. Kravchenko hit him, and his car, with her car. Even after being warned by the police officer that continuing to make these allegations would expose him to prosecution, he continued. Respondent's conviction bears a substantial relationship to the qualifications, functions, or duties of a real estate licensee as set forth in California Code of Regulations, title 10, section 2910, subdivision (a)(2). The Department did not show that subdivisions (a)(4) or (a)(8) were met.

Cause for Revocation

5. Based upon Legal Conclusion 4, cause for revocation of respondent's real estate license was established pursuant to Business and Professions Code sections 10177, subdivision (b), and 490, subdivision (a), by reason of Factual Findings 4 through 13, and Legal Conclusions 1 through 4. Respondent's convictions are substantially related to the qualifications, functions and duties of a real estate licensee. As a result, grounds exist to revoke respondent's license under Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b).

Matters in Rehabilitation

6. Having established that cause exists to revoke respondent's real estate license, factors that would show rehabilitation of respondent are considered prior to the determination whether respondent's license should be revoked. "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; *Brandt v. Fox* (1979) 90 Cal.App.3d 737, 747.) The criteria to evaluate the rehabilitation of licensee who has a criminal conviction, are set forth in California Code of Regulations, title 10, section 2912.¹

¹ California Code of Regulations, title 10, section 2912, states:

The following criteria have been developed by the department pursuant to Section 482(a) of the Business and Professions Code for the purpose of evaluating the rehabilitation of an applicant for issuance or for reinstatement of a license in considering whether to deny the issuance or reinstatement on account of a crime or act committed by the applicant:

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- (a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the departmental action sought. (A longer period will be required if there is a history of acts or conduct 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 applicant.
 - (c) Expungement of criminal convictions resulting from immoral or antisocial acts.
 - (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 conduct which is the basis to deny the departmental action sought is attributable in part to the use of controlled substances or alcohol.
 - (g) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.
 - (h) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the agency action sought.
 - (i) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.
 - (j) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.
 - (k) Correction of business practices resulting in injury to others or with the potential to cause such injury.
 - (l) Significant or 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 conduct 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 applicant's previous conduct and with his 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 or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

7. Respondent's lack of candor at the hearing regarding both his employing real estate broker and more importantly, his failure to truthfully fill out the Statement, as set forth in Factual Findings 19 and 21, demonstrate a lack of complete rehabilitation. Honesty and trustworthiness are qualities of utmost importance in a real estate licensee, who must frequently act in a fiduciary capacity. (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394.) "If appellant's offenses reflect unfavorably on his honesty, it may be said he lacks the necessary qualifications to become a real estate salesperson." (*Ibid.*; *Golde v. Fox*, (1979) 98 Cal.App.3d 167, 176.) "The Legislature intended to insure that real estate brokers and 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.)

8. Respondent's failure to fully recognize the wrongfulness of his actions and his lack of truthfulness in his statements to the department are particularly troubling facts in this case, because disclosure by a real estate licensee of information known to the licensee that may or may not be known to other parties is an essential element of the fiduciary duty owed by a licensee to clients and to the public. Respondent's evidence, as set out in Factual Findings 15 through 22 and Legal Conclusion 7, established that he has not shown he can remain licensed at this time without harm to the public

Costs

9. Business and Professions Code section 10106 is substantially similar to Business and Professions Code section 125.3 and other previously-existing costs statutes. As such, case law that has analyzed section 125.3 and similar costs statutes is applicable when determining the scope of section 10106. The California Supreme Court in *Zuckerman v. Board of Chiropractic Examiners*,² required the consideration of the following factors in determining the amount of costs to be assessed:

a. A licensing agency must not assess the full costs of investigation and prosecution when to do so will unfairly penalize a licensee who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed.

b. A licensing agency must consider the licensee's subjective good faith belief in the merits of his or her position.

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- (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.

² *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32.

c. A licensing agency must consider whether the licensee has raised a colorable challenge to the proposed discipline.

d. A licensing agency must determine that the licensee will be financially able to make later payments.

e. A licensing agency may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation to prove that a licensee engaged in relatively innocuous misconduct.

10. The factors required by *Zuckerman*, as well as the standards set for adducing evidence and the requirements for proof of such costs claims set forth in the California Code of Regulations, title 1, section 1042, particularly subdivision (b)(1), under all of the facts and circumstances, were used to evaluate and assess the reasonableness of the costs claim set forth in the Costs Factual Findings above.

11. The cost of the investigation and enforcement is not disproportionate to the work required to investigate and prove the violation. The violation is not trivial. Respondent had very little in the way of a colorable defense to the allegations.

12. There was no evidence regarding respondent's ability to repay a costs assessment. That is a matter to be undertaken between respondent and the department at some future point in time, in the event that the department may wish to accept a payment plan, in its discretion.

13. Therefore, legal cause exists pursuant to Business and Professions Code section 10106 to order recovery of reasonable costs of investigation and enforcement in this action. The department prevailed on the sole cause of action. As set forth in Factual Findings 23 and 24, the reasonable costs of investigation and enforcement were \$890.65. Such costs are recoverable from respondents as part of the disciplinary Order below.

Conclusion

14. For the reasons set forth above, it would be contrary to the public interest, safety, and welfare to allow respondent to continue to hold real estate salesperson license, with or without restrictions.

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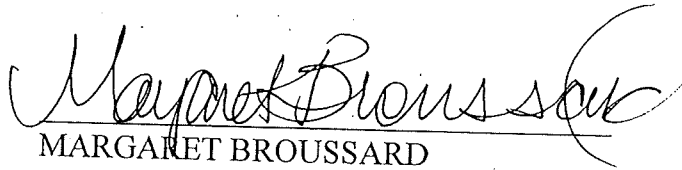
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ORDER

1. The real estate salesperson license of respondent Roman P. Kravchenko is REVOKED, pursuant to Legal Conclusion 5.

2. Respondent shall, within 90 days of the effective date of this decision, reimburse the department its recoverable costs of investigation and enforcement in the amount of \$890.65, as set forth in the legal conclusions.

DATED: April 4, 2013

A handwritten signature in cursive script, reading "Margaret Broussard", written over a horizontal line.

MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings