

1 BUREAU OF REAL ESTATE
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FILED

OCT 15 2014

BUREAU OF REAL ESTATE

By K. Contreras

8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

10 In the Matter of the Accusation of) NO. H-5952 SAC
11)
12 PIETER KLOOS,) STIPULATION AND AGREEMENT
13) IN SETTLEMENT
Respondent.) AND DECISION AFTER REJECTION

14 It is hereby stipulated by and between Respondent PIETER KLOOS
15 (herein "Respondent"), individually, and the Complainant, acting by and through Stephanie K.
16 Sese, Counsel for the Bureau of Real Estate ("Bureau"), as follows for the purpose of settling
17 and disposing of the Accusation filed on February 1, 2013 in this matter:

18 1. On July 3, 2014, a formal hearing was held on the Accusation in accordance
19 with the provisions of the Administrative Procedure Act ("APA") before Administrative Law
20 Judge Karen J. Brandt ("ALJ Brandt") where, after evidence and testimony were received, the
21 record was closed and the matter was submitted for decision.

22 2. On July 9, 2014, ALJ Brandt issued a Proposed Decision.

23 3. On August 14, 2014, the Commissioner rejected the Proposed Decision.

24 4. The parties wish to settle this matter without further proceedings.

25 5. Respondent, pursuant to the limitations set forth below, hereby admits that
26 the factual allegations in the Accusation filed in this proceeding are true and correct and the
27 Commissioner shall not be required to provide further evidence to prove such allegations.

1 restricted license within 90 days from the effective date of this Decision. The restricted license
2 issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Code and
3 to the following limitations, conditions, and restrictions imposed under 10156.6 of the Code:

4 2. The restricted license issued to Respondent may be suspended prior to hearing
5 by Order of the Commissioner in the event of:

6 (a) Respondent's conviction (including by plea or nolo contendere) to a
7 crime which is substantially related to Respondent's fitness or capacity
8 as a real estate licensee; and,

9 (b) The restricted license issued to Respondent shall be suspended prior to
10 hearing by Order of the Commissioner on evidence satisfactory to the
11 Commissioner that Respondent has violated provisions of the California
12 Real Estate Law, the Subdivided Lands Law, Regulations of the Real
13 Estate Commissioner, or conditions attaching to the restricted license .

14 3. Respondent shall notify the Commissioner in writing within 72 hours of any
15 arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate, Post Office
16 Box 137000, Sacramento, CA 95813-7000. The letter shall set forth the date of Respondent's
17 arrest, the crime for which Respondent was arrested and the name and address of the arresting
18 law enforcement agency. Respondent's failure to timely file written notice shall constitute an
19 independent violation of the terms of the restricted license and shall be grounds for the
20 suspension or revocation of that license.

21 4. Respondent shall not be eligible to apply for the issuance of an
22 unrestricted real estate license nor for removal of any of the conditions, limitations or
23 restrictions of a restricted license until three (3) years has elapsed from the effective date of
24 this Decision.

25 5. Respondent shall, within nine (9) months from the effective date of this
26 Decision, present evidence satisfactory to the Commissioner that Respondent has, since the
27 most recent issuance of an original or renewal real estate license, taken and successfully

1 completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real
2 Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition,
3 Respondent's real estate license shall automatically be suspended until Respondent presents
4 such evidence. The Commissioner shall afford Respondent the opportunity for hearing pursuant
5 to the APA to present such evidence.

6 6. With the application for license, or with the application for transfer to a new
7 employing broker, Respondent shall submit a statement signed by the prospective employing
8 real estate broker on a form approved by the Bureau which shall certify as follows:

9 (a) That the employing broker has read the Decision which is the
10 basis for the issuance of the restricted license; and,

11 (b) That the employing broker will carefully review all
12 transaction documents prepared by the restricted licensee and
13 otherwise exercise close supervision over the licensee's
14 performance of acts for which a license is required.

15 7. Respondent shall pay the sum of \$1,824.30 for the Commissioner's cost,
16 pursuant to Section 10106(a) of the Code, of the investigation and enforcement which led to this
17 disciplinary action. Said payment shall be in the form of a cashier's check or certified check
18 made payable to the Bureau of Real Estate. Said check must be received by the Bureau prior to
19 the effective date of the Order in this matter. All licenses and licensing rights of Respondent
20 shall be indefinitely suspended unless or until payment is made in full.

21
22
23 Oct 2, 2014

DATED

SKS

STEPHANIE K. SESE, Counsel

24 * * *

25 I have read the Stipulation and Agreement. I understand that I am waiving
26 rights given to me by the APA, (including but not limited to Sections 11521 and 11523 of the
27 Government Code), and I willingly, intelligently, and voluntarily waive those rights, including

1 the right to seek reconsideration and the right to seek judicial review of the Commissioner's
2 Decision and Order by way of a writ of mandate.

3
4 9-25-2014

5 Pieter Kloos

6 DATED

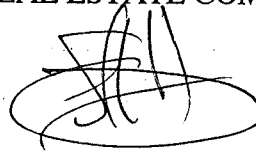
7 PIETER KLOOS, Respondent

8 * * *

9 The foregoing Stipulation and Agreement is hereby adopted as my Decision in
10 this matter and shall become effective at 12 o'clock noon on NOV 4 2014.

11 IT IS SO ORDERED OCT 15 2014.

12 REAL ESTATE COMMISSIONER

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15 By: JEFFREY MASON
16 Chief Deputy Commissioner

slag

FILED

AUG 18 2014

BUREAU OF REAL ESTATE

By S. Black

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BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

PIETER KLOOS,

Respondent.

No. H-5952 SAC
OAH No. 2013110025

NOTICE

TO: PIETER KLOOS, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated July 9, 2014, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated July 9, 2014, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on July 3, 2014, and any written argument hereafter submitted on behalf of Respondent and Complainant.

Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of July 3, 2014, at the Sacramento

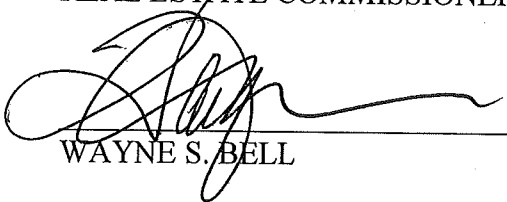
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1 office of the Bureau of Real Estate unless an extension of the time is granted for good cause
2 shown.

3 Written argument of Complainant to be considered by me must be submitted
4 within 15 days after receipt of the argument of Respondent at the Sacramento office of the
5 Bureau of Real Estate unless an extension of the time is granted for good cause shown.

6 DATED: 8/14/2014

7 REAL ESTATE COMMISSIONER

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10 WAYNE S. BELL

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BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

PIETER KLOOS,

Respondent.

Case No. H-5952 SAC

OAH No. 2013110025

PROPOSED DECISION

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on July 3, 2014, in Sacramento, California.

Stephanie K. Sese, Counsel, represented Tricia D. Sommers (complainant), a Deputy Real Estate Commissioner with the Bureau of Real Estate (Bureau),¹ Department of Consumer Affairs, State of California.

Pieter Kloos (respondent) represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on July 3, 2014.

FACTUAL FINDINGS

1. Complainant made and filed the Accusation in her official capacity.
2. On December 3, 2008, a real estate salesperson license was issued to respondent. Respondent's license was in full force and effect at all times relevant to the charges set forth in the Accusation, and will expire on December 2, 2016, unless renewed or revoked. Complainant seeks to discipline respondent's license based upon his conviction described below and his failure to disclose his conviction as required by Business and Professions Code section 10186.2.

¹ On July 1, 2013, the Department of Real Estate became the Bureau of Real Estate within the Department of Consumer Affairs. The term "Bureau" as used herein includes the Department of Real Estate and all actions taken by the Department of Real Estate before it became the Bureau of Real Estate.

Conviction

3. On July 24, 2012, in the Lassen County Superior Court, in Case No. CR028248, respondent, on a plea of guilty, was convicted of violating Penal Code section 476a, subdivision (a), passing checks with non-sufficient funds, a misdemeanor. Respondent was placed on summary probation for five years. He was ordered to pay fines and fees.

4. On August 22, 2013, pursuant to a stipulation between respondent and the Lassen County District Attorney, the Lassen County Superior Court terminated respondent's summary probation as successful. On July 2, 2014, respondent filed a petition with the court seeking dismissal of the criminal action against him under Penal Code section 1203.4. The court had not ruled upon respondent's petition by the time of the hearing in this matter.

5. Respondent described the circumstances underlying his conviction as follows: In or about 2008, respondent purchased property from Carl Parks, a licensed realtor. Respondent intended to refurbish the property, and then have Mr. Parks sell the refurbished property for him. Respondent began refurbishing the property, but when the economy "went bad," he did not have sufficient funds to complete the project. Respondent borrowed about \$22,000 from Mr. Parks. Mr. Parks gave respondent about one year to repay the loan. Respondent paid about one-half of the loan back, but did not have sufficient funds to pay the remaining amount. Respondent gave Mr. Parks three checks totaling \$3,750, and asked Mr. Parks to hold on to them until respondent told Mr. Parks that he had sufficient funds in his bank account to cover them. When respondent took too long to pay Mr. Parks, Mr. Parks brought charges against him. Respondent fully repaid the loan before he was convicted.

Failure to Disclose

6. On January 1, 2012, Business and Professions Code section 10186.2 went into effect. That statute requires real estate salespersons to report a misdemeanor conviction to the Bureau within 30 days after the conviction. Failure to report constitutes cause for discipline.

7. Respondent failed to report his conviction within 30 days. At hearing, respondent testified that he was not aware of this duty to report until it was brought to his attention.

Rehabilitation and Factors in Mitigation and Aggravation

8. Respondent was born in Holland. He came to the United States in 1963. He started working as a busboy and "worked his way up." He attended a musical and dramatic academy in New York. He came to California hoping to pursue music and acting, but experienced "culture shock." He started a home maintenance, repair and refurbishing business in Napa. He had a cooperage business and a furniture factory. He began investing in real estate.

9. Respondent has been a real estate salesperson for about five and one-half years. He works at Century 21 in Napa. He has started to get new listings and sell more properties. His boss has given him additional responsibilities.

10. At hearing, respondent admitted that when he gave Mr. Parks the checks, he did not have sufficient funds to cover them. He did not know at the time that giving someone checks drawn on an account that did not have sufficient funds was illegal. He asserted that he did not intend to defraud Mr. Parks, but recognized that his conduct was illegal. Before his conviction, he re-established his friendship with Mr. Parks. Respondent paid all his fines and fees to the court, and his criminal probation was terminated early.

11. In California Code of Regulations, title 10, section 2912, the Commissioner has adopted criteria of rehabilitation to be considered when reviewing disciplinary action against a real estate salesperson who has been convicted of a crime. The criteria in section 2012 that are relevant to this matter include: (1) the passage of not less than two years from the most recent criminal conviction; (2) restitution to any person who has suffered monetary losses through the acts or omissions of the licensee; (3) expungement of the conviction; (4) successful completion or early discharge from probation; (5) payment of fines; (6) correction of business practices responsible in some degree for the crime; and (7) change in attitude from that which existed at the time of the commission of the criminal acts.

12. It has been about two years since respondent was convicted of passing checks with non-sufficient funds. He has paid restitution to the person who suffered monetary losses as a result of his illegal conduct. He has paid all his fines and fees to the court. He complied with all the terms and conditions of his probation, and received an early discharge. He has petitioned the court for expungement of his conviction under Penal Code section 1204.3. He did not notify the Bureau of his conviction as required by Business and Professions Code section 10186.2, because he was not aware that requirement.

13. At hearing, respondent testified in a direct and candid fashion. He admitted and took responsibility for his illegal conduct and failure to comply with Business and Professions Code section 10186.2. He expressed remorse for his wrongdoing. He demonstrated insight into the circumstances that gave rise to his conviction, and expressed a change in attitude. When all the relevant factors set forth in California Code of Regulations, title 10, section 2912, are considered, it would be consistent with the public interest, safety and welfare to allow respondent to retain his license on a restricted basis upon the terms and conditions set forth below.

Costs

14. Complainant has requested that respondent be ordered to pay costs for the investigative work conducted by their special investigators in the amount of \$1,027.75, and for the enforcement work conducted by their counsel in the amount of \$796.55, for a total of \$1,824.30. Complainant submitted declarations explaining and supporting these costs. From all the evidence, it appears that the time spent by the Bureau's investigators and counsel was

appropriate in light of the allegations and legal issues in this matter, and that the amounts charged were reasonable.

15. Respondent did not object to the amounts billed by the Bureau's investigators and counsel. He testified that he could not fully pay all the costs at one time given his current income, and requested that he be allowed to pay the costs over time in three payments. Complainant's request for costs and respondent's request for time to pay them are addressed in the Legal Conclusions below.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 10177, subdivision (b), a real estate license may be disciplined when the 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 crime substantially related to the qualifications, functions, or duties of a real estate licensee."

2. Pursuant to California Code of Regulations, title 10, section 2910, subdivision (a), a conviction is deemed to be substantially related to the qualifications, functions or duties of a real estate licensee if the underlying crime involved:

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

[¶] ... [¶]

(4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end.

3. Respondent's conviction for passing checks with non-sufficient funds is substantially related to the qualifications, functions and duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivisions (a)(1) and (a)(4). Consequently, it constitutes cause to discipline respondent's real estate salesperson license under Business and Professions Code section 10177, subdivision (b).

4. Business and Professions Code section 10186.2, in relevant part, provides:
(a) (1) A licensee shall report any of the following to the department:

[¶] ... [¶]

(B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.

(2) The report required by this subdivision shall be made in

writing within 30 days of the date of the bringing of the indictment or the charging of a felony, the conviction, or the disciplinary action.

(b) Failure to make a report required by this section shall constitute a cause for discipline.

5. Respondent failed to disclose his misdemeanor conviction to the Bureau within 30 days after the conviction. Respondent's failure to disclose constitutes cause to discipline his license under Business and Professions Code section 10186.2.

6. As set forth in Findings 12 and 13, when all the relevant rehabilitation criteria set forth in California Code of Regulations, title 10, section 2912, are considered, it would be consistent with the public interest, safety and welfare to allow respondent to retain a restricted salesperson license under the terms and conditions set forth below.

7. Business and Professions Code section 10106, which permits the award of costs, in relevant part, provides:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before the department, the commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

8. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of costs sought pursuant to statutory provisions like Business and Professions Code section 10106. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

9. As set forth in Findings 14 and 15, complainant seeks \$1,824.30 in investigation and enforcement costs. When all the *Zuckerman* factors are considered, the requested costs are reasonable. Consequently, respondent should be ordered to pay these costs in full to the Bureau. They may be paid in installments according to a reasonable payment plan approved by the Bureau or its designee.

ORDER

All licenses and licensing rights of respondent Pieter Kloos under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), including his salesperson license, are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Bureau of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until three (3) years have elapsed from the effective date of this Decision.

4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Bureau of Real Estate which shall certify:

(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent

Not Adopted

Not Accepted

presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

6. Respondent shall pay costs to the Bureau in the amount of \$1,824.30. The Bureau may establish a payment schedule for the payment of these costs in installments during the period of respondent's restricted license.

DATED: July 9, 2014



KAREN J. BRANDT
Administrative Law Judge
Office of Administrative Hearings