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NOV 24 2014

BUREAU OF REAL ESTATE

By K. Contreas

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation:)
)
 SOUTH HALL INVESTORS, INC.,)
)
 NORMAN TIMMINS THOMPSON, and)
)
SERGIO MARTIN ARREGUIN,)
)
 Respondents.)

NO. H-5960 SAC
 OAH No. 2013030607
 (As to ARREGUIN, Only)

DECISION

The Proposed Decision dated October 27, 2014, 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.

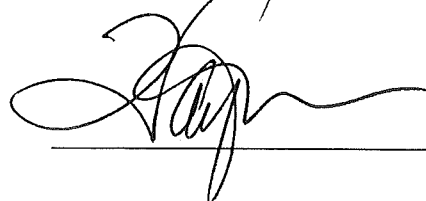
The Decision suspends or revokes one or more real estate licenses for ARREGUIN only.

The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a since 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 DEC 15 2014.

IT IS SO ORDERED 11/24/2014.

REAL ESTATE COMMISSIONER



BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

SOUTH HALL INVESTORS INC.,
NORMAN TIMMINS THOMPSON, and
SERGIO MARTIN ARREGUIN,

Respondents.

Case No. H-5960 SAC

OAH No. 2013030607

PROPOSED DECISION

This matter was heard before Administrative Law Judge Dian M. Vorters, State of California, Office of Administrative Hearings (OAH), on September 24 and 25, 2014, in Sacramento, California.

Stephanie K. Sese, Counsel, Bureau of Real Estate (Bureau), represented Tricia D. Parkhurst, a Deputy Real Estate Commissioner, State of California (Complainant).

Paul Chan, Attorney at Law,¹ represented Sergio M. Arreguin, who was present.

On or about January 8, 2014, the Bureau Dismissed the Accusation filed February 25, 2013, as to respondents South Hall Investors, Inc. and Norman T. Thompson only. The hearing on the Amended Accusation filed August 5, 2014, proceeded as to Sergio M. Arreguin (respondent) only.

SUMMARY

In August and September 2012, respondent, a licensed real estate salesperson, entered into a dual agency relationship with a seller and a prospective buyer of real property located in Sacramento. The residential property was listed as a short sale, meaning the bank would not recoup the full loan amount. Respondent received numerous purchase offers on the listing. However, respondent only informed the seller of two purchase offers: the lowest offer and the offer made by the buyer he

¹ Paul Chan, Attorney at Law, Capitol Law Offices, 2311 Capitol Avenue, Sacramento, California 95816.

represented. Respondent did not inform the seller of other purchase offers, all of which were higher than his buyer's offer. The seller accepted the offer submitted by respondent's buyer. Shortly thereafter, the seller discovered that respondent had rejected higher offers that had not been disclosed to her.

After learning that the Bureau was investigating his activities, respondent created a false document and presented it to the seller for her signature. The document stated that the seller knew about the higher offers when she accepted the lower offer. The seller refused to sign the document. Finally, in November 2013, respondent was arrested for theft of retail items. For the reasons stated herein, respondent's conduct violates the real estate law, presents a risk to the public, and warrants discipline of his license and licensing rights.

FACTUAL FINDINGS

1. Complainant made and filed an original Accusation in her official capacity on February 25, 2013. The Accusation relative to respondents South Hall Investors, Inc. and Normal Timmins Thompson was dismissed prior to hearing, leaving only respondent Arreguin. On August 5, 2014, the Department filed an Amended Accusation as to respondent Arreguin. Prior to hearing, the parties submitted their Stipulation by which respondent admitted the truth of the allegations pertaining to him in the original Accusation including cost recovery. (Exhibit 1(a).)

License History

2. Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code as a real estate salesperson. The Bureau originally issued respondent's salesperson license on December 19, 2002. His salesperson license will expire on April 10, 2015, unless renewed or revoked.

3. Since May 2005, respondent's license has been activated under the employ of South Hall Investors, Inc. (SHI), a licensed real estate brokerage.²

Short Sale Activity

4. Rose Zahn owned a home on Hawkcrest Circle, Sacramento (Hawkcrest). She owed more than the home was worth and sought a short sale of the property. She telephoned SHI and spoke to respondent, a salesperson in the office. On August 2, 2012, respondent met Ms. Zahn at SHI and she signed a listing agreement. Her property was listed at \$339,000. Respondent held an open house on August 4, 2012, which yielded several purchase offers.

² South Hall Investors, dba Keller Williams Realty.

5. One of the offers came from Sharon Moody. Ms. Moody had previously sold property through respondent and Michael Soares, a broker at SHI. Ms. Moody went to the Hawkcrest open house on August 4, 2012, and liked the house, however, she could not afford the list price of \$339,000. Ms. Moody agreed to allow respondent to represent her as the buyer's agent. This created a dual buyer-seller agency with both Ms. Moody and Ms. Zahn. On Ms. Moody's behalf, respondent submitted to Ms. Zahn a purchase offer of \$325,000. This was \$14,000 below the list price.

6. After the open house, several real estate professionals submitted purchase offers to respondent on or before 3:00 p.m., on August 7, 2012. The offers were: 1) Offer from Cheryl States for \$303,000, 2) Offer from Cara Heagy for \$353,500, 3) Offer from Rickie Kinley for \$339,000, 4) Offer from Sterling Royal for \$339,000, 5) Offer from Phillip Todd for \$355,000. Mr. Todd's offer was \$16,000 over the list price for the Hawkcrest property.

7. Ms. Zahn met respondent at his office to review offers on the afternoon of August 7, 2012, after 3:00 p.m. Respondent presented her with only two offers: the lowest offer of \$303,000 and the offer of \$325,000 from the buyer he was representing. Ms. Zahn accepted the \$325,000 offer from Ms. Moody (Moody offer).

8. Approximately two weeks after accepting the Moody offer, Ms. Zahn was at a garage sale at the home of a friend in the neighborhood. Also at the garage sale was real estate salesperson Phillip Todd. Through the friend, it was discovered that Mr. Todd's offer of \$355,000 had been rejected unbeknownst to the seller, Ms. Zahn. Ms. Zahn later obtained a hard copy of the \$355,000 purchase offer from Mr. Todd.

9. Ms. Zahn contacted the Bureau about the impropriety. She stated that had she known of other offers, she would have accepted the highest in order to yield the bank as much money as possible on this short-sale.

10. On September 12, 2012, respondent learned that the Bureau was investigating the Hawkcrest transaction. He subsequently called Ms. Zahn and told her he needed her to sign some additional documents. He presented her with a letter he had written, but purporting to be written by Ms. Zahn. The letter stated that the offer she had accepted was not based solely on sales price but on other factors specific to the buyer. Attached to the letter were at least three other offers that Ms. Zahn had not previously seen. Ms. Zahn refused to sign the letter because she had, in fact, accepted the Moody offer of \$325,000 based solely on price. She told respondent she would keep the letter to think about it.

11. Respondent later contacted Ms. Zahn and told her a complaint had been filed involving the Hawkcrest property. Without first seeking approval from Ms.

Zahn, respondent emailed Mr. Todd and other realtors informing them that the Hawkcrest property was back on the market and he was accepting offers. Respondent subsequently left a message for Ms. Zahn stating that Ms. Moody could not afford the house but he had another offer of \$366,000. By this time, Ms. Zahn had decided she did not want to work with respondent because she had caught him being unethical. She canceled her listing with him on October 11, 2012.

12. The prospective buyer, Ms. Moody, was interviewed by the Bureau in November 2012. She denied that she was unable to afford the house at her original offer of \$325,000. Respondent asked Ms. Moody to sign papers cancelling her purchase contract so that another offer could be accepted. Respondent told her that a complaint had been filed by someone who had submitted a higher offer. Ms. Moody signed the cancellation as requested by respondent.

13. Bureau investigators interviewed respondent in December 2012. Respondent stated that this was the only time he had failed to present all offers to a seller. He denied being motivated by the prospect of making more money on the deal. He stated that he wanted to help Ms. Moody get a home because she had been a good client and her husband had just passed away. He stated he did not know what he was doing was unethical. He felt there were a lot of grey areas in short sale transactions. After doing some research, he now knows that withholding offers is unethical.

14. Cara Heagy's clients submitted the initial offer of \$353,500 on August 6, 2012. When it was rejected, they continued to look at other homes. On October 4, 2012, respondent contacted Ms. Heagy to tell her the Hawkcrest home was back on the market. Her clients placed another offer of \$360,000. They increased their offer because they assumed their previous offer had been outbid. On October 12, 2012, Ms. Heagy received an email from respondent stating that the seller was withdrawing the listing. Hence, respondent's conduct had the immediate effect of artificially inflating the market on the Hawkcrest home.

Criminal Conviction

15. On May 5, 2014, in the Superior Court of California, County of Yolo, in Case No. CRM 130004802, respondent was convicted on his plea of no contest of violating Penal Code section 484, petty theft, a misdemeanor. The court sentenced respondent to 12 months' searchable probation, and ordered him to serve five days in jail, pay court fines/restitution, and stay away from Bel Air market in Woodland.

16. The offense date was November 8, 2013. According to the arrest report, Police were called to the Bel Air grocery market in Woodland at 8:30 p.m. Store security observed respondent on closed circuit cameras as he walked to a store aisle, selected items and placed them in his vest pockets, then proceeded to another

aisle where he grabbed a pack of beer and then walked past registers toward the exit. He was stopped outside the store and detained inside until officers arrived.

17. Woodland police interviewed respondent at the scene and took the following statement:

[Respondent] does not live in Woodland. He came to Woodland to meet a woman for a "blind date."

[Respondent] was supposed to meet the woman at the Starbucks Coffee shop in the Bel Air parking lot.

[Respondent] arrived a little early so he decided to go into Bel Air and "steal some beer." [Respondent] stated he did not have any money or methods of paying for any of the merchandise. [Respondent] did not even have his wallet on him. Once inside, [respondent] decided to steal a couple of other things. [Respondent] stated he has never done this before and he had never been arrested prior to today.

18. The stolen property relinquished by respondent at the scene consisted of hair spray, bar soap, teeth whitening strips, and a 30-pack of Bud Light. The total value was just over \$80.00.

Respondent's Testimony

19. Respondent is 38 years of age. He has been licensed for 12 years and has worked for Keller Williams (KW) the entire time. He works primarily with buyers for properties in Sacramento and Yolo Counties. Prior to becoming a real estate agent, he worked in sales at Verizon Wireless and managed a pizza store. In addition to taking the real estate examination, respondent has attended training on topics including marketing, ethics, leadership, and personality types.

20. At hearing, respondent was asked about his involvement with the Hawkecrest property. He stated that Ms. Zahn needed a short sale because she could no longer afford her home. Respondent has been involved in 14 to 15 short sales. He described a "short sale" as when the owner has no equity and owes more than the home is worth. The owner may be in default meaning behind on their mortgage payment. The seller must contact the mortgage holder to tell them they are going to list the property as a short sale and obtain paperwork. He stated more paperwork is involved with short sales because "we need buy in from the mortgage holder."

21. When respondent gets an offer on a short sale property, he must present it to the bank to see if they will accept it. Proceeds in a traditional equity sale go to the seller. However, in a short sale, the seller receives nothing. The short sale offer is "subject to approval of the mortgage holder," who incurs the loss and receives any

proceeds. Respondent recalled that the Hawkcrest property had two mortgage holders so the difference between the loan balance and the value of the home was "significant." Respondent, as listing agent, charges a commission of five percent of the total sales price if escrow closes. He stated this was the industry standard.

22. To market the Hawkcrest property, respondent performed "standard" tasks of listing it in the Multiple Listing Service (MLS), reaching out to social media outlets, and having an open house on August 4, 2012. Respondent contacted Ms. Moody from the open house and told her he was listing the Hawkcrest property. Ms. Moody had engaged respondent's services before Ms. Zahn. Respondent stated that this "dual-agency" was "fairly common" involving one third of all transactions. He explained that the benefit is that the agent receives the entire commission. The alternative is that the commission is split between the buyer's and seller's agents.

23. Ms. Moody came to the open house and loved the property. After the open house respondent received several offers ranging from \$303,000 to \$355,000. His client, Ms. Moody, offered \$325,000. In spite of having received higher offers, respondent presented this offer to the seller, Ms. Zahn, along with the lowest offer of \$303,000. Respondent stated that he did this because he "took a liking to [Ms. Moody] and wanted her to get the property." At hearing, respondent admitted that his ethical obligation was to present all offers to the seller, but added that "in short sales, there is a lot of confusion."

24. When asked why he did not present the other offers to Ms. Zahn, respondent testified that he had been "struggling" with the answer for the last two years. He stated, "I am not going to sit here and say there was not a financial consideration. I wanted to capitalize on that." He also took a liking to Ms. Moody and she was not in a financial situation to compete with the other offers. He conceded that he knew what he was doing was wrong. The transaction never closed because the Bureau investigation began after the paperwork was submitted to the bank.

25. Respondent learned about the Bureau investigation through his supervisor, Michael Soares. Respondent stated that he panicked and created a false document to present to the seller, Ms. Zahn, in hopes he could make this "go away." The document purported to be an acknowledgement by Ms. Zahn that she had reviewed all offers and intentionally selected a lower offer. She refused to sign it.

26. At this point, respondent decided he needed "broker guidance." He also decided to tell other agents that their offers were still wanted. He went to his supervising brokers, Tim Thompson and Mike Soares. He told his management that he had failed to submit all offers to the seller and had created a document for the seller to sign after the fact. He was informed that his continued employment with the company was uncertain.

27. Respondent subsequently met with Bureau Investigator Kyle Jones. Respondent brought in a signed statement indicating that he had been trained and knew he was supposed to submit all offers to the seller when acting as a co-listing agent and that he needed to be "especially diligent when there is a dual agency relationship." He absolved Mr. Soares and SHI of any knowledge of his actions on the Hawkcrest transaction.

28. Respondent stated it was a "mutual decision" to terminate his agency with the seller, Ms. Zahn. As for the buyer, Ms. Moody, she was not happy about losing the home. Respondent ultimately found another home for Ms. Moody.

29. After some deliberation, respondent's supervisors informed him that his conduct was cause for termination. However, based on his character over the prior 10 years, they were going to retain him but place restrictions on his practice, as follows: 1) require respondent to take continuing education in ethics and agency, 2) restrict his access to the MLS, 3) require him to copy office manager Marcie Merlino on client correspondence, and 4) require respondent to submit to Ms. Merlino the California Purchase Agreement on all offers made and accepted. Respondent did not submit a written employment agreement containing the terms of his restrictions at KW.

30. Respondent stated that he used this as a teachable moment. He completed on-line courses in ethics and agency on September 19, 2013. Respondent submitted his certificates of completion in evidence. In October 2013, respondent taught an in-house session on "ethical pitfalls" to new and seasoned real estate agents. Since October 2013, respondent has been involved in over 80 real estate transactions. He understands that a dual agency relationship must be disclosed to both buyer and seller. He has learned that financial gain for the agent should not outweigh public trust.

31. KW has a proprietary email system. However, respondent does not use his KW domain email account. Instead, he continues to use his personal "Gmail" account for real estate transactions. He stated that this was because the attachment capabilities were greater with Gmail until a few months ago when KW upgraded the domain accounts. Respondent stated that he has been compliant with the management restrictions. He stated that he copies Ms. Merlino on transaction-related emails such as offers rejected or accepted. He does not copy her on general or scheduling emails such as when he is arranging to meet a client.

32. Respondent stated that he and his wife of 10 years were having marital problems in 2012. They filed for divorce in 2013. He stated that the split was due to "irreconcilable differences" and the decision was "mutual." He appeared before the Bureau for an administrative hearing on October 28, 2013. Because of an apparent conflict of interest by in-house counsel for KW, the matter was continued. Respondent ended up without counsel and stated that he felt abandoned and alone. He experienced stress over financial and legal concerns.

November 2013 Theft Offense

33. At the time of his theft offense, respondent was still going through a divorce. He met a girl on-line and they arranged to meet at a Starbucks in Woodland on the evening of November 8, 2013. He testified that he arrived at the coffee shop and waited for his date, however, "She was a no show. I waited. I was distraught and upset. I was emotional." He subsequently went to a Bel Air market in the same center. He wanted to buy some alcohol and do some shopping. He did not realize he did not have his wallet when he entered the store. He testified that it was not until he picked up some salami that he realized he did not have his wallet. Respondent testified that he stole beer, whitening strips, and "salami to make a sandwich." When asked why he did not simply leave the stuff and walk out, respondent stated, "I was not in my right state of mind and made a foolish decision to walk out." He added that if his wallet was not at his office, he would have to drive home and come back.

34. Respondent's version of events is not credible. His testimony at hearing contradicts his statement to police that he arrived "early" for his date and decided to enter Bel Air to steal some beer. Hence, he intended to steal the alcohol prior to entering the store. Further, he did not steal sandwich meat. Salami was not one of the items confiscated from him outside the store. He constructed this version of events on the witness stand. Further, respondent lived and worked in Natomas which is several miles west of Woodland. His statement that he would have to drive home and come back to Woodland with his wallet to buy beer is not reasonable. Respondent's lack of candor under oath surrounding the facts and motivations of this offense demonstrates a continuing lack of honesty, integrity, and rehabilitation.

35. Regarding the Hawkcree transaction, respondent stated that his conduct was "not right." He has experienced a loss of clients and the trust of his broker and the community. Respondent stated he has learned a lot from his mistake and has the support of his company. Regarding the store theft, he feels the associated costs and humiliation far outweighed the cost of the items. He stated that his offense went against what he teaches his teenage daughter. He stated he takes full accountability for his actions and shares his experience so that others are not faced with the same mistakes.

36. When asked at hearing who he saw as victims of his real estate misconduct respondent initially named only the seller because he had a fiduciary duty to her. He conceded that the lender was put in a position of having to take a larger loss than they needed to. As for the prospective buyer Ms. Moody, he stated that he helped her find another house but he could see how she could be viewed as a victim. It seemed that respondent had not contemplated this question to any great extent. His answers demonstrated a lack of insight. It is noted that the other prospective buyers whose higher offers respondent rejected were also victims of his misconduct.

Character Evidence

37. Marci Merlino has been a licensed real estate salesperson since 2006. She has been employed by KW as an office manager for seven years. Her duties include oversight of files, contracts, and disclosures. Ms. Merlino testified on respondent's behalf. She became aware of the Bureau investigation at the outset because she was responsible for compiling the file for investigators. After a management meeting, it was determined that some restrictions would be placed on respondent. Respondent's access to the MLS was limited and any time he emailed a client he was required to copy her. Respondent has a KW domain email account but he is not required to use it. Ms. Merlino admitted that if respondent used his personal Gmail account and did not copy her, she would not have knowledge of that. Respondent attends monthly compliance classes with other agents. She is aware of him teaching a class on how to get new clients. She is not sure of other classes he may have taught.

In her opinion, respondent is a hard worker, there every day, and very involved with clients. She feels he made a mistake and does not judge him. She has noticed that respondent attends more classes and helps other agents on how to be compliant. Ms. Merlino learned respondent was arrested for theft when she received a letter from the Bureau in August 2014. Soon after that, respondent told her he was arrested for theft of retail items. In her opinion he seemed sad and embarrassed. It does not change Ms. Merlino's opinion of respondent personally or professionally. She stated he is competent and very professional with his clients. She thinks he made a mistake and will not make it again.

38. Jessica Attia is a loan officer for Land Home Financial Services. In this capacity she associates with real estate agents and brokers. Ms. Attia testified and wrote a letter on respondent's behalf. She has known respondent since 2006. They refer business to each other. Respondent gives her approximately three leads a month and she completes one to two transactions a month involving respondent. She has received positive feedback about respondent from loan clients. Though she has not read the Accusation, Ms. Attia understands that respondent was accused of not submitting all offers on a particular listing. Her reaction was of shock and disappointment because she had a lot of faith in respondent. She stated the incident was "unfortunate" and made her sad. It did change her opinion of respondent, but she does not feel it is a "defining moment for anyone," and she is still confident sending buyers to him.

Ms. Attia wrote a character letter for respondent dated December 10, 2013. When respondent asked Ms. Attia to write the letter, he did not tell her about his recent theft arrest. Respondent disclosed his theft conviction to her one week prior to hearing. Her reaction again was "shock." She does not want to judge anyone and knows he was going through a hard time. She conceded that his theft conviction did not demonstrate integrity and hard times do not excuse theft or dual-agency

misconduct. But she believes the theft was "totally out of character" and he has learned from his errors. She still considers him professional.

39. Respondent submitted three character letters from colleagues Chris Okumara, Michael Soares, and Rick Barker.

Mr. Okumara is the team leader and manager of the KW Natomas office. He wrote a letter on November 26, 2013. Mr. Okumara has known respondent for 11 years. He met respondent when they both worked for Verizon before becoming real estate agents. He described respondent as professional and dedicated. Mr. Okumara mentioned that respondent had used this "unfortunate event as a 'teaching moment' not only for new agents entering the industry but seasoned agents as well." It is evident that Mr. Okumara was unaware of respondent's theft offense when he wrote this letter. Mr. Okumara did not testify at hearing.

Mr. Soares is a broker with over 22 years of experience. He wrote a letter dated September 8, 2014. He met respondent in 2003 when respondent first joined KW. Mr. Soares was respondent's supervisor at KW during the Hawkcrest incident. Mr. Soares mentioned respondent's work ethic and customer service skills. He stated, "[respondent] genuinely earned my trust by the high level of integrity and ethical standards he represented." Mr. Soares clearly knew about respondent's dual-agency misconduct. He wrote, "That incident goes against everything I stand for in all aspects of life and real estate... He now reaches for proper broker guidance and has open lines of communication with Stacey Hall, our broker of record. His practices show transparency so that he does not repeat his mistake." Though his letter indicates knowledge of respondent's real estate misconduct, there is nothing in Mr. Soares letter acknowledging respondent's theft offense. Mr. Soares did not testify at hearing.

Rick Barker has known respondent since 2007, when respondent started working at the KW Roseville office. Mr. Barker was co-manager of that office. He wrote a letter dated December 4, 2013. Mr. Barker considered respondent to have an "honorable reputation" in business dealings. When he learned about respondent's conduct he was "shocked." He believes respondent is "extremely repentant" and is sure that respondent will "never intentionally violate the trust of his clients, the real estate community or the laws of CA." Mr. Barker's letter demonstrates an awareness of respondent's real estate misconduct, but not the theft he committed just one month prior to the date of this letter. Mr. Barker did not testify at hearing.

Because none of the character letters submitted indicate that the authors knew of respondent's 2013 arrest or 2014 conviction for theft, they are of limited value in assessing respondent's character for integrity and honest dealing.

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Factual Analysis

40. The evidence is clear that respondent knowingly violated the real estate law for personal gain. After his violation was discovered, he continued his bad acts by lying to the seller about why the deal fell through and attempting to get her to sign a false statement. Respondent was not confused by any "grey area" in the law. In August 2012, respondent was motivated by profit to submit the offer from the buyer he represented. In November 2013, respondent was arrested for theft of alcohol and personal hygiene products. He told Ms. Attia about the theft only a week prior to her testifying at hearing. Other character references did not know about respondent's theft offense when they drafted their letters. Hence, little weight is given to their opinions of respondent's character.

Respondent's conduct in withholding legitimate offers and attempting to cover up his misconduct with a false document demonstrated dishonesty and a lack of integrity essential to any professional with fiduciary responsibilities. The hearing presented an opportunity for respondent to demonstrate rehabilitation, honesty, public confidence, and trust. Unfortunately, a year later, respondent committed a theft offense. Then at hearing, respondent was plainly dishonest about the circumstances of his crime. (Factual Findings 17, 33 & 34.) Rehabilitation not shown, respondent remains a risk to the public welfare as a real estate licensee.

Costs

41. Complainant requested costs of investigation and enforcement. (Bus. & Prof. Code, § 10106.) Complainant submitted a Statement of Costs and Declaration of counsel in support of legal and enforcement costs. As of September 10, 2014, the Bureau incurred \$2,675 in investigative costs. As of September 3, 2014, legal counsel billed \$2,643.30 in prosecution costs. Tasks included evidence and trial preparation, travel, research, and pleading the case. The total costs of investigation and prosecution in the amount of \$5,318.30 are reasonable. Respondent did not contest the amount of the billed costs or offer evidence of his ability to pay.

LEGAL CONCLUSIONS

Applicable Laws

1. In addition to any other action that a board is permitted to take against a licensee, 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. (Bus. & Prof. Code, § 490.)

2. The commissioner may investigate and discipline a real estate licensee who has been guilty of any of the following:

- (a) Making any substantial misrepresentation.
- (b) Making any false promises of a character likely to influence, persuade, or induce.
- (c) A continued and flagrant course of misrepresentation or making of false promises through real estate agents or salespersons.

[¶]...[¶]

- (i) Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

(Bus. & Prof. Code, § 10176, subs. (a), (b), (c), & (i).)

3. The commission may suspend or revoke the license of a real estate licensee who has engaged in any of the following acts:

- (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,...

[¶]...[¶]

- (d) Willfully disregarded or violated the Real Estate Law or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law.

[¶]...[¶]

- (g) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.

[¶]...[¶]

- (j) Engaged in any other conduct, whether of the same or a different character than specified in this section that constitutes fraud or dishonest dealing.

(Bus. & Prof. Code, § 10177, subs. (b), (d), (g), & (j).)

4. When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, ... the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Bureau within the meaning of Sections 480 and 490 of the Code if it involves:

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

[¶]...[¶]

(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.

(Cal. Code Regs., tit. 10, § 2910, subds. (a)(1), (8).)

5. If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or acts were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee. (Cal. Code Regs., tit. 10, § 2910, subd. (c).)

Cause for Discipline

6. The Bureau met its burden of establishing legal cause for disciplinary action against respondent's license by clear and convincing evidence, by reason of the matters set forth in Factual Findings 4 through 18.

7. Respondent's theft conviction is substantially related to the qualifications, functions, and duties of a real estate licensee. (Cal. Code Regs., tit. 10, § 2910, subds. (a)(1), (8).)

8. Cause for revocation of respondent's real estate salesperson license exists pursuant to Business and Professions Code sections 490; 10176, subdivisions (a), (b), (c), & (i); and 10177, subdivisions (b), (d), (g), & (j); in conjunction with California Code of Regulations, title 10, section 2910, subdivision (a)(1) and (8), by reason of Factual Finding 40 and Legal Conclusions 6 and 7.

9. There is an "affirmative duty to treat each party to the transaction honestly and fairly, as expressed in [Civil Code] section 2079.16." (*Holmes v. Summer* (2010) 188 Cal.App.4th 1510, 1525 and 1528.) Where there is a duty to disclose, the disclosure must be full and complete, and any material concealment or misrepresentation will amount to fraud..." (*Wilson v. Lewis* (1980) 106 Cal.App.3d 802, 808.)

10. Respondent demonstrated fraud in his dual-agency transaction, fraud in response to the Bureau investigation, fraud in stealing merchandise, and fraud at hearing when he made inconsistent statements under oath. (Factual Finding 40.) It is a fundamental "requirement that a real estate licensee possess the qualifications of honesty and integrity." (*Golde v. Fox* (1979) 98 Cal.App.3d 167, 177.) This is because the real estate licensee acts in a confidential and fiduciary capacity and "those pursuing it should have in a particular degree the qualifications of 'honesty, truthfulness and good reputation.'" (*Ibid.*)

Cost Recovery Analysis

11. 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. (Bus. & Prof. Code, § 10106.)

Zuckerman v. Board of Chiropractic Examiners (2002) 29 Cal.4th 32, sets forth factors to be considered in determining a reasonable cost assessment for disciplined licensees. Factors to be considered include whether the licensee had a "subjective good faith belief" in the merits of his or her position, whether the licensee raised a "colorable challenge" to the proposed discipline, and the extent of the licensee's financial ability to make later payments. Further, full costs may not be assessed when a "disproportionately large investigation" was conducted given the circumstances of the case. Finally, the Board should consider the public interest in regulating the targeted conduct.

By reason of the matters set forth in Factual Finding 41, in conjunction with an analysis pursuant to the factors set forth in *Zuckerman, supra*, it is determined that a cost assessment in the amount of \$5,318.30, is reasonable to impose on respondent. Respondent shall reimburse the Bureau in this amount.

Conclusion

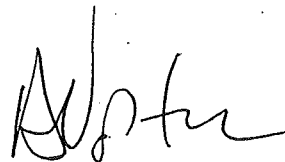
12. Based on the totality of evidence, it would be contrary to the public interest to permit respondent to retain his real estate license, with or without restrictions.

ORDER

All licenses and licensing rights of Sergio Martin Arreguin under the Real Estate Law are REVOKED.

Respondent shall pay to the Bureau, costs of investigation and prosecution in the amount of \$5,318.30.

DATED: October 27, 2014



DIAN M. VORTERS
Administrative Law Judge
Office of Administrative Hearings