

FILED

AUG 24 2010

DEPARTMENT OF REAL ESTATE

By H. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of	)	DRE Case No. H-10787 SF
	)	OAH Case No. 2009110242
MICHAEL RIZ,	)	
	)	
Respondent.	)	
	)	

DECISION AFTER REJECTION

Karen E. Reichmann, Administrative Law Judge ("ALJ") Office of
Administrative Hearings, State of California, heard this matter on March 4, 2010 in Oakland,
California.

John W. Barron, Counsel for the Department of Real Estate (Department),
represented Tricia D. Sommers, Deputy Real Estate Commissioner (Complainant).

Edgardo Gonzalez, Esq. represented MICHAEL RIZ (Respondent), was present
and testified at hearing.

Oral and documentary evidence was received. The record was closed and the
matter was submitted for decision on March 12, 2010. On April 8, 2010 the ALJ issued a
Proposed Decision, which I declined to adopt as my Decision on May 1, 2010.

Pursuant to Section 11517(c) of the Government Code of the State of California,
Respondent was served with notice of my determination not to adopt the Proposed Decision of

1 the ALJ along with a copy of said Proposed Decision. Respondent was notified that I would
2 decide the case upon the record, the transcript of proceedings held on March 4, 2010, and upon
3 written argument offered by Respondent and Complainant. Respondent submitted argument on
4 June 11, 2010. Complainant submitted argument on June 25, 2010.

5 I have given careful consideration to the record in this case, including the
6 transcript of proceedings of March 4, 2010. I have also considered the arguments submitted by
7 Respondent and by Complainant. The following shall constitute the Decision of the Real Estate
8 Commissioner ("Commissioner") in this proceeding:

9 FINDINGS OF FACT

10 1. Complainant filed the Accusation in her official capacity on October 24, 2009.
11 Respondent timely submitted a Notice of Defense, which contained a request for a hearing.

12 2. Respondent is licensed by the Department as a real estate broker. He has no
13 other record of discipline.

14 3. On April 24, 2009, in Superior Court of the State of California, County of
15 San Mateo, Respondent was convicted of violating Section 484 of the California Penal Code
16 (Theft) with an enhancement of violation of Section 490.5 of the California Penal Code
17 (Property is Merchandise/Victim is Merchant), a misdemeanor.

18 4. The facts and circumstances of that offense are that on August 12, 2008,
19 Respondent went into the JC Penny store at the Tanforan Mall in San Bruno carrying a
20 Macy's bag (even though there is no Macy's store in that particular mall). When confronted
21 by the police, Respondent denied doing anything wrong. He told the officer that he had a
22 duffel bag in the Macy's shopping bag that he had purchased earlier. Respondent told police
23 that the Macy's bag was in his car and he put the shirts he was returning to JC Penny inside it
24 so he did not have to carry them. However, the security cameras inside JC Penny very clearly
25 show Respondent removing the price tags off of 2 shirts and a jacket inside the store. He then
26 took that merchandise up to a sales counter and requested credit be put on his store account
27 for the value of those items. After reviewing the security tapes, the police officer confronted

1 Respondent and informed him of what he had seen on the tape. Respondent continued to deny
2 that he had done anything wrong. At that point, the officer arrested Respondent.

3 5. Respondent was placed on one year formal probation on the condition
4 that he pay fees/fines of \$160 and restitution in the amount of \$124.47.

5 6. Respondent met all terms and conditions of his probation, which was
6 terminated early.

7 7. Respondent's conviction was expunged from his record pursuant to Section
8 1203.4 of the California Penal Code on February 4, 2010.

9 8. Respondent has no other convictions.

10 9. Respondent claims he has taken responsibility for his behavior. He has
11 received counseling from the pastor of his church and testified that he is an active participant in
12 his church community.

13 10. Respondent is presently working as a real estate broker and mortgage broker
14 under his own license.

15 11. Respondent is licensed by the California Department of Insurance. On
16 July 23, 2009, the Department of Insurance filed an Accusation against Respondent based on his
17 theft conviction. However, that Accusation was dismissed by the Department of Insurance on
18 February 8, 2010.

19 12. Respondent is employed at Duggan's Sierra Mortuary.

20 13. Respondent provided a letter of support from his pastor, who stated that
21 Respondent has been regularly attending church services and actively participating in the church.
22 The pastor is aware of Respondent's petty theft conviction which was not typical for
23 Respondent, and he believes it was a cry for help related to Respondent's divorce and child
24 custody battles.

25 14. Respondent has been licensed since 1988 and has had no discipline issues
26 involving his real estate practice.

27 15. Less than two years have passed since Respondent's conviction.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27

2
3
4
5
6

7
8
9
0
1
2
3
4
5
6
7

28
29
30
31
32
33
34
35
36
37

1 involvement in the community. In fact, Respondent testified that while he helps where he can,
2 he cannot make long-term commitments.

3 The facts of this case raise significant doubts regarding Respondent's claim that
4 his actions were the result of being distraught over his divorce and child custody fight. Instead,
5 the evidence demonstrates that Respondent acted with unquestioned pre-mediation and in a
6 clear-minded fashion in an attempt to steal clothing and obtain credit for its value from the store.

7 As the facts demonstrate, Respondent went to the Tanforan Mall on
8 August 12, 2008, with a very well-thought-out plan in mind. He went into JC Penny with a bag
9 from Macy's to use to carry the stolen merchandise, along with a receipt for purchases he made
10 days earlier. Respondent removed the price tags from the JC Penny merchandise, put the items
11 in the bag he was carrying and took them to a salesperson. He then asked the salesperson to
12 credit his JC Penny store account for the value of the merchandise he had taken. Obviously, the
13 evidence shows Respondent's explanation of the cause of his acts simply does not ring true. His
14 acts were pre-meditated and not the result of a man overcome by emotion.

15 Ultimately, Respondent was convicted of a theft crime a little over a year ago.
16 He continues to blame family problems for his actions, which shows a true lack of taking
17 responsibility and remorse. In other words, as recently as the hearing on March 4, 2010,
18 Respondent continued to blame his circumstances for his criminal activity. When combined
19 with a recent theft conviction, Respondent's failure to meet all of the criteria for rehabilitation –
20 especially in terms of a lack of a change in attitude – is sufficient to warrant the revocation of
21 Respondent's real estate broker license. However, it would not be against the public interest to
22 permit Respondent to be licensed as a real estate salesperson under appropriate terms and
23 conditions.

24 ///

25 ///

26 ///

27 ///

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7

3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7

4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7

8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7

5
6
7
8
9
0
1
2
3
4
5
6
7

0
1
2
3
4
5
6
7

5
6
7

6
7

7

1 4. With the application for license, or with the application for transfer to a new
2 employing broker, RIZ shall submit a statement signed by the prospective employing
3 real estate broker on a form approved by the Department which shall certify as follows:

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

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

10 5. Respondent shall, within nine months from the effective date of this
11 Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has,
12 since the most recent issuance of an original or renewal real estate license, taken and
13 successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of
14 the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this
15 condition, the Commissioner may order the suspension for the restricted license until the
16 Respondent presents such evidence. The Commissioner shall afford Respondent the
17 opportunity for a hearing pursuant to the Administrative Procedure Act to present such
18 evidence.

19 This Decision shall become effective at 12 o'clock noon on

20 SEP 14 2010

21 IT IS SO ORDERED

22 8/23/2010

23 JEFF DAVI
24 Real Estate Commissioner

25 

26 BY: Barbara J. Bigby
27 Chief Deputy Commissioner

FLAG

FILED

MAY - 5 2010

DEPARTMENT OF REAL ESTATE

By K. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

MICHAEL RIZ,

Respondent.

No. H-10787 SF

OAH No. 2009110242

NOTICE

TO: MICHAEL RIZ, Respondent, and EDGARDO GONZALEZ, Esq., counsel of record.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated April 8, 2010, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated April 8, 2010, 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 March 4, 2010, 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 March 4, 2010, at the

///

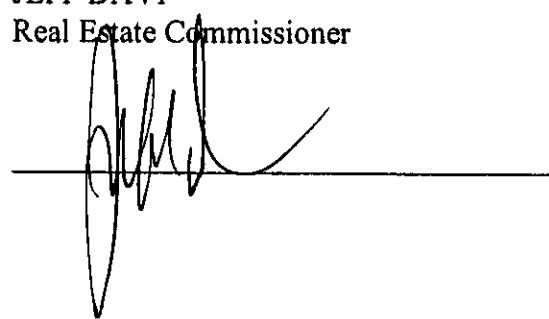
1 Sacramento office of the Department of Real Estate unless an extension of the time is granted for
2 good cause shown.

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 Department of Real Estate unless an extension of the time is granted for good cause shown.

6 DATED: 5-11-2010

7
8 JEFF DAVI
Real Estate Commissioner

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

A handwritten signature in black ink, appearing to read 'Jeff Davi', is written over a horizontal line. The signature is stylized with loops and a long horizontal stroke at the end.

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

MICHAEL RIZ,

Respondent.

Case No. H-10787 SF

OAH No. 2009110242

PROPOSED DECISION

Administrative Law Judge Karen E. Reichmann, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on March 4, 2010.

John W. Barron, counsel, represented complainant.

Edgardo Gonzalez, Esq., represented respondent Michael Riz, who was present at the hearing.

Submission of the matter was deferred until March 12, 2010 for receipt of a certified copy of the San Mateo Superior Court's Order of Dismissal, which was marked as Exhibit D. This document was submitted by respondent on March 11, 2010, and has been entered into evidence.

FACTUAL FINDINGS

1. Tricia D. Sommers made the accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California.
2. Respondent Michael Riz is presently licensed and has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code, as a real estate broker.
3. On April 24, 2009, in the Superior Court of California, County of San Mateo, respondent was convicted of violating California Penal Code section 484 (petty theft), a misdemeanor and a crime which is substantially related to the duties, qualifications and functions of a real estate licensee.

On August 12, 2008, respondent removed tags from clothing in a department store and attempted to return the items for credit using the receipt from a prior purchase. After his arrest, respondent spent a weekend in jail awaiting his initial court appearance.

Respondent was sentenced to one year informal probation on the condition that he pay a fine of \$160 and restitution in the amount of \$124.47. Respondent met all the terms and conditions of his probation and his probation was terminated early. On February 4, 2010, the Superior Court granted an order of dismissal pursuant to Penal Code section 1203.4.

4. Respondent has no other convictions.

5. Respondent has taken responsibility for his behavior. He has been receiving counseling from his pastor and is an active participant in his church community. At the time of the offense, respondent was extremely distraught. He was in the midst of divorce proceedings. His estranged wife moved to Canada with his three minor children without his consent. He sought assistance from the district attorney to return his children to California. He was angry and frustrated by the district attorney's refusal to assist him. Counseling has helped him understand his actions and has taught him how to come to terms with events outside of his control rather than acting out his emotions. Respondent is ashamed of his behavior and insists that he will not engage in this sort of conduct again.

6. Respondent is currently working as a real estate broker and mortgage broker under his own license. He is also licensed by the California Department of Insurance and is employed by Duggan's Sierra Mortuary. Between these two jobs, respondent works seven days a week.

7. Respondent provided a letter from his pastor noting that respondent has been regularly attending church services and actively participating in the life of the church. The pastor notes that the divorce proceedings were very hard on respondent. The pastor is aware of respondent's petty theft conviction and believes that respondent's conduct was a cry for help and not typical of respondent.

8. Respondent has been licensed since 1988 and during this time he has had no prior discipline involving his real estate practice. He has completed the required continuing education coursework. Although fewer than two years have passed since respondent's conviction, the evidence demonstrates his sincere efforts towards rehabilitation. It would not be against the public interest to allow respondent to have a restricted license.

LEGAL CONCLUSIONS

1. By reason of the matters set forth in Finding 3, cause for disciplinary action exists pursuant to Business and Professions Code section 10177, subdivision (b), and 490 by reason of his conviction for petty theft, an offense which is substantially related to the qualifications, functions, or duties of a real estate licensee. The offense is substantially related to the qualifications, functions, or duties of a real estate licensee because it involved the fraudulent taking of funds or property belonging to another person, the uttering of a false statement, and was done with the intent of conferring economic benefit upon respondent. (Cal. Code Regs., tit. 10 § 2910, subd. (a)(1),(2),(8).) Therefore, cause exists to suspend or

revoke respondent's real estate broker license pursuant to Business and Professions Code section 11077, subdivision (b), read in conjunction with Business and Professions Code section 490, subdivision (a).

2. In California Code of Regulations, title 10, section 292, the Department has established criteria to be used in evaluating the rehabilitation of a licensee who has committed a criminal offense. Respondent has paid restitution to the victim of his crime, received early discharge from probation, successfully expunged the conviction, and has paid all fines in connection to the conviction. In addition, respondent maintains significant involvement with his church, engages in counseling with his pastor, and testified sincerely as to his efforts to understand the causes of his behavior and ensure that he does not engage in such conduct again. Respondent has presented sufficient evidence of rehabilitation to warrant her licensure as a restricted real estate broker. A requirement of the restricted licensure will be the taking and passing of the Professional Responsibility Examination.

ORDER

All licenses and licensing rights of respondent Michael Riz under the Real Estate Law are revoked; provided, however, a restricted real estate broker 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 Department 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 one year has elapsed from the Effective date of this Decision.
4. 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

*Not
Adopted*

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

5. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of respondent's license until Respondent passes the examination.

DATED: 4/8/2010

Karen E. Reichmann

KAREN E. REICHMANN
Administrative Law Judge
Office of Administrative Hearings

1 JOHN W. BARRON, Counsel (SBN 171246)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007
5 Telephone: (916) 227-0792
6
7
8

FILED

OCT 24 2009

DEPARTMENT OF REAL ESTATE

By K. Mas

9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 ***

12 In the Matter of the Accusation of	)	
	)	No. H-10787 SF
13 MICHAEL RIZ,	)	
	)	<u>ACCUSATION</u>
14 Respondent.	)	
15	)	

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

20 1

21 The Complainant makes this Accusation in her official capacity.

22 2

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

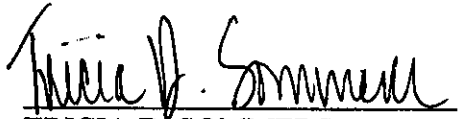
26 ///

27 ///

On or about April 24, 2009, Respondent was convicted in the Superior Court of the State of California, Case No. NM378315, for violating Section 484 of the California Penal Code (Theft) with enhancement of violation of Section 490.5 of the California Penal Code (Property is Merchandise/Victim is Merchant), a misdemeanor and a crime that bears a substantial relationship under Section 2910 of the Regulations to the qualifications, functions or duties of a real estate licensee.

The facts alleged in Paragraph 3, above, constitute a cause under Sections 490 and 10177(b) of the Code for suspension or revocation of all licenses and license rights of Respondent under the Real Estate Law.

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


TRICIA D. SOMMERS
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 22nd day of October, 2009.