

FILED

APR 29 2010

DEPARTMENT OF REAL ESTATE

By K. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
ALBERTO UY KHOO,)
)
Respondent.)
_____)

Case No. H-10816 SF

OAH No. 2009120711

DECISION

The Proposed Decision dated March 25, 2010, 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.

Pursuant to Section 11517(b)(3) of the Government Code, the following correction is made:

Pages 2 and 3, Legal Conclusions 1 of the Proposed Decision should be corrected

to:

1. Pursuant to the Business and Professions Code section 490, subdivision (a), the Commissioner may suspend or revoke the license of a real estate licensee for having been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. As a separate cause for disciplinary action, the Commissioner, pursuant to Business and Profession Code section 10177, subdivision (b), may suspend or revoke a license if the licensee has been convicted of a felony, or a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee.

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Page 3, Legal Conclusions 2 of the Proposed Decision should be corrected to:

2. Pursuant to California Code of Regulations, title 10, section 2912, the Department of Real Estate has adopted nonexclusive criteria for determining rehabilitation of a licensee's conviction as follows: The following criteria have different letters under Section 2912, than they do in Section 2911: Stability of family life (h), should be (j); completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement (i), should be (k); discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligation to others (j), should be (g); new and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought (m), should be (i) and change in attitude (n), should be (m).

The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime, but also grants the right to a restricted real estate salesperson license to Respondent.

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

MAY 20 2010

IT IS ORDERED April 29, 2010

JEFF DAVI
Real Estate Commissioner

William F. Moran

By: WILLIAM E. MORAN, Assistant Commissioner
Enforcement

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

ALBERTO UY KHOO,

Respondent.

Case No. H-10816 SF

OAH.No. 2009120711

PROPOSED DECISION

Administrative Law Judge Dianna L. Albini, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on February 23, 2010.

Department of Real Estate Counsel Richard K. Uno represented Complainant E.J. Haberer, II, Deputy Real Estate Commissioner.

Respondent Alberto Uy Khoo was present and represented himself.

The matter was submitted on February 23, 2010.

FACTUAL FINDINGS

1. On October 17, 2003, the Department of Real Estate (Department) issued Alberto Uy Khoo, respondent, a salesperson license. Complainant filed this Accusation based on respondent's criminal conviction that bears a substantial relationship to the qualifications, functions or duties of a real estate licensee.

2. On February 5, 2009, in Napa County Superior Court, respondent was convicted on a plea of nolo contendere of violating Penal Code section 422 (threats to commit crime resulting in death/bodily injury, (threats of death/bodily injury)), a misdemeanor. Imposition of sentence was suspended and he was placed on formal probation for three years. Conditions of probation included seven days in jail, enrollment and successful completion of a 52 week domestic violence and anger management program, pay fines and fees in the amount of approximately \$1,000. Respondent is currently on probation until February 5, 2012.

3. The facts and circumstances of respondent's conviction are as follows. Respondent and his wife, Filipina, immigrated to the United States from the Philippines approximately 12 years ago. In February of 2009, Respondent, Filipina and their six children lived in Napa County. Prior to respondent's arrest, he and his wife were experiencing

marital conflicts which included: financial instability stemming from a downturn in the economy which significantly affected the real estate market; respondent's home was in foreclosure; and, he suspected that Filipina was having an extra-marital affair.

On January 9, 2009, in response to a 911 call, a responding police officer observed Filipina exiting her home crying, visibly upset and appearing scared. Filipina stated respondent threatened to kill her and then kill himself.

4. Respondent testified at hearing that he had not threatened Filipina and that there were several reasons why respondent pled nolo contendere in his criminal matter. First, he was concerned for his family and their well being. In order for respondent to have his criminal charges dismissed, he would have to attack his Filipina's credibility and integrity. Secondly, it would require respondent's children to testify in the criminal case, as they witnessed the incident. Respondent did not want to put his children in a position of feeling like they were choosing sides between their parents. Had respondent realized that pleading nolo contendere in his criminal matter would jeopardize respondent's real estate license, he would have proceeded to trial. Respondent was credible and emotional when describing the adverse effect on his children of having to testify in a criminal trial. Additionally, when describing the disruption to his family, respondent's demeanor was sincere and genuine.

He is currently living in San Jose with his mother. Respondent is currently employed with AP Mortgage & Realty as a real estate agent. He volunteers through his church, which he attends every Sunday. Respondent and his wife are currently divorced, but their relationship has significantly improved. He does not have a drug or alcohol addiction. Respondent has no prior or subsequent criminal conduct.

5. Respondent has not accepted full responsibility for his conviction and offers excuses and defenses for his actions, asserting it was all a misunderstanding. Respondent denies threatening the life of his ex-wife or the threat of causing her great bodily injury. However, respondent does admit to threaten to speak with Filipina's supervisor and confirm she was not working 16 hour days.

6. Sallie Danenberg LMFT, the program director at New Beginnings Counseling & Consulting, confirmed respondent's participation in a 52-week domestic violence program which emphasizes personal accountability and responsibility. Gerry Vical, respondent's employing broker at American Property Mortgage & Realty, Inc., submitted by letter, a character reference for respondent confirming respondent's embarrassment about his personal life affecting his working environment. Mr. Vical described respondent as generous, "easy going", approachable and trustworthy.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 490, subdivision (a), the Commissioner may deny an application for a real estate salesperson license if the applicant has been convicted of an offense that is substantially related to the qualifications, functions,

or duties of the licensed activity. As a separate cause for denial, the Commissioner, pursuant to Business and Professions Code section 10177, subdivision (b), may deny an application for a real estate salesperson license if the applicant has been convicted of a felony, or a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee.

California Code of Regulations, title 10, section 2910, sets forth criteria to determine whether a conviction is substantially related to the qualifications, functions or duties of a real estate licensee which includes: “[d]oing 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” (subd. (a)(8)).

Respondent’s misdemeanor conviction of threats of death/bodily injury are substantially related to the qualifications, functions or duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivision (a)(8). Respondent’s conviction of this crime therefore constitutes cause to revoke his real estate license under Business and Professions section 490, subdivision (a), as well as, section 10177, subdivision (b).

2. Pursuant to California Code of Regulations, title 10, section 2911, the Department of Real Estate has adopted nonexclusive criteria for determining rehabilitation of an applicant’s conviction as follows: the passage of not less than two years since his most recent conviction (subd. (a)); payment of restitution(subd. (b)); successful completion of probation (subd. (e)); payment of fines and fees of conviction (subd. (g)); stability of family life (subd. (h)); completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement (subd. (i)); discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others (subd. (j)); significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems (subd. (l)); new and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought (subd. (m)); and, change in attitude (subd. (n)).

The burden of proof is on the applicant for a license. (*Martin v. Alcohol Beverage Control Appeals Bd.* (1959) 52 Cal.2d 265.) The purpose of this proceeding is not to further punish respondent for his criminal conduct (*Donaldson v. Department of Real Estate* (2005) 134 Cal.App.4th 948, 958, fn. 10), but to ensure that real estate licensees will be honest, truthful, and worthy of the fiduciary responsibilities they bear (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402).

California Code of Regulations, title 10, section 2910, subdivision (c) provides:

(c) 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.

Respondent has paid all fines and fees from his conviction; he appears to have a stable family life; respondent continues to participate in ongoing real estate courses; he is actively involved in his church. It is noted that less than two years have elapsed since the conviction, and he remains on probation until May of 2012. Nevertheless, the purpose of this proceeding is not to further punish respondent for his criminal conduct (*Donaldson v. Department of Real Estate* (2005) 134 Cal.App.4th 948, 958, fn. 10), but to ensure that real estate licensees will be honest, truthful, and worthy of the fiduciary responsibilities they bear (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402). The public will be adequately protected by the following order which allows respondent's continued licensure as a restricted real estate salesperson, with the requirement that he take and pass the Professional Responsibility Examination.

ORDER

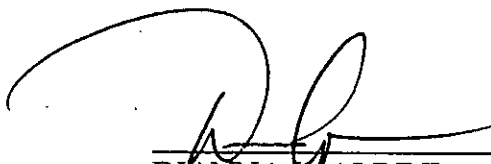
All licenses and licensing rights of respondent Alberto Uy Khoo as a real estate salesperson under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code section 10156.5 if he makes application therefore 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 Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of Business and Professions Code section 10156.6.

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, including by a plea of nolo contendere, of 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 or for the removal of any of the conditions, limitations or restrictions of a restricted license until two 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 Department 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 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.
6. 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 respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: 3/25/10



DIANNA L. ALBINI
Administrative Law Judge
Office of Administrative Hearings

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FILED

DEC - 7 2009

DEPARTMENT OF REAL ESTATE

By K. Mar

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 ALBERTO UY KHOO,) No. H-10816 SF
13 Respondent.) ACCUSATION
14)

15 The Complainant, E. J. HABERER, II, a Deputy Real Estate Commissioner of
16 the State of California, for cause of Accusation against ALBERTO UY KHOO, (Respondent),
17 is informed and alleges as follows:

18 1

19 The Complainant makes this Accusation in his official capacity.

20 2

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

24 3

25 On or about February 5, 2009, in the Superior Court of the State of California,
26 County of Napa, Case No. CR144156, Respondent was convicted of violating Section 422 of
27 the California Penal Code (Threats to Commit Crime Resulting in Death/Bodily Injury), a

1 crime which bears a substantial relationship under Section 2910, Title 10, California Code of
2 the Regulations to the qualifications, functions or duties of a real estate licensee.

3 4

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

7 WHEREFORE, Complainant prays that a hearing be conducted on the
8 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing
9 disciplinary action against all licenses and license rights of Respondent under the Real Estate
10 Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further
11 relief as may be proper under the provisions of law.

12
13 
14 E. J. HABERER, II
Deputy Real Estate Commissioner

15 Dated at Oakland, California,
16 this 30th day of November 2009.