

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

NOV 28 2011

DEPARTMENT OF REAL ESTATE

By R. Jones

In the Matter of the Accusation of)
)
MARIA C. COMFORT,)
)
Respondent.)
_____)

NO. H-11073 SF

OAH NO. 2011040615

DECISION

The Proposed Decision dated October 25, 2011, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on DEC 19 2011

IT IS SO ORDERED 11/22/11

BARBARA J. BIGBY
Acting Real Estate Commissioner

Barbara J. Bigby

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MARIA C. COMFORT,

Respondent.

Case No. H-10703 SF

OAH No. 2011040615

PROPOSED DECISION

Administrative Law Judge Dianna L. Albin, State of California, Office of Administrative Hearings, heard this matter on August 18, 2011, in Oakland, California.

Kenneth C. Espell, Real Estate Counsel, represented Complainant E. J. Haberer II, Deputy Real Estate Commissioner.

Respondent Maria C. Comfort appeared and represented herself.

The record was held open until September 29, 2011, to allow the submission of additional documents. No additional documents were received. The record was closed and the matter submitted on September 29, 2011.

FACTUAL FINDINGS

1. Respondent Maria C. Comfort 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 salesperson.

2. On December 16, 2010, in the United States District Court for the Northern District of California, respondent was convicted, on her plea of guilty, of violating title 18 of United States Code section 1344 (bank fraud), a felony. Imposition of sentence was suspended and respondent was placed on formal probation for three years. As a term of her probation she was assessed \$100. Respondent remains on probation until December 16, 2013. The terms and conditions of respondent's probation did not include incarceration or restitution. No monetary losses resulted from respondent's conduct.

3. The facts and circumstances surrounding respondent's conduct were not clearly established at hearing. In May of 2007, respondent was employed as a real estate salesperson representing a client (identified as J.V.¹) in the purchase of a home. Respondent referred J.V. to United Investments (United) to assist J.V. in obtaining a loan. Employees at United were licensed as loan officers and mortgage brokers. United obtained funding for J.V.'s loan from Wells Fargo Bank based on false loan documentation. The false load documentation was discovered when J.V. attempted to refinance his mortgage.

4. Respondent accepts responsibility for her conviction. However, she stated she does not understand what she did wrong, as respondent did not assist J.V. in preparing his "stated" income loan application nor was she aware J.V. falsely claimed on his application that he earned \$11,578 per month and possessed an E*Trade account with a balance of \$43,091.50.

Respondent was not able to articulate what conduct resulted in her bank fraud conviction. She admits it was wrong for her client to apply for a stated income home loan when respondent knew he was unable to qualify for a fully documented loan. Respondent stated that she did not receive any money related to J.V.'s loan, or the loan of any other client respondent referred to United. Respondent stated she knew that J.V. would be living with his mother and sister at the residence and that they would be contributing to the mortgage. Respondent stated that J.V. could afford the mortgage payment with their contribution. Additionally, respondent stated that J.V.'s mother and sister were listed on the title of the residence. No independent evidence of this fact was submitted at hearing.

5. There is no dispute that all of J.V.'s mortgage payments were made to Wells Fargo Bank and that Wells Fargo Bank sustained no losses related to J.V.'s mortgage.

6. Respondent was not employed by United and did not participate in preparing or processing J.V.'s loan application. Respondent is not a licensed loan agent or broker. On advice of counsel, respondent pled guilty to bank fraud, because she could not afford the cost of a criminal matter and she could not qualify for a public defender.

7. Respondent states that her conviction has been life altering and in some ways a positive experience. She has sought counsel and been actively involved in her church.

8. Several letters originally submitted during her sentencing hearing were provided by respondent. The common theme of the letters is that respondent made an uncharacteristic mistake and is an honest and trustworthy person.

¹ Respondent's client will be identified by initials to maintain privacy rights.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 10177, subdivision (b), the Commissioner may suspend or revoke a real estate salesperson license on the ground that the licensee was convicted of a felony.

Pursuant to Business and Professions Code section 490, subdivision (a), the Commissioner may suspend or revoke a license on the ground that a licensee has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the licensed real estate salesperson.

Pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(1), bank fraud is substantially related to the qualifications, functions or duties of a real estate salesperson licensee. For the reasons set forth in Findings 2 and 3, cause to revoke or suspend respondent's license exists pursuant to Business and Professions Code 490, subdivision (a). As set forth in Finding 2, cause to suspend or revoke respondent's license also exists pursuant to Business and Professions Code section 10177, subdivision (b), because of her felony bank fraud conviction.

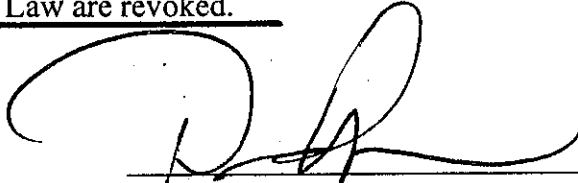
2. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) The evidentiary significance of an applicant's misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) A candid admission of misconduct and the full acknowledgment of wrongdoing are but a necessary first step in demonstrating rehabilitation. (*In re Trebilcock* (1981) 30 Cal.3d 312, 315.)

Respondent's conviction occurred less than one year ago and she remains on probation until 2013. There has not been a sufficient amount of time that has elapsed for respondent to sustain her burden of demonstrating sufficient rehabilitation to warrant continued licensure. When all the facts are considered and weighed, at this time, it would be contrary to the public interest to permit respondent to retain her real estate salesperson license.

ORDER

All licenses and licensing rights of respondent Maria C. Comfort as a real estate salesperson under the Real Estate Law are revoked.

DATED: 10/25/11



DIANNA L. ALBINI
Administrative Law Judge
Office of Administrative Hearings

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

KENNETH C. ESPELL, (SBN 178757)
Real Estate Counsel II
California Department of Real Estate
P. O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-0789
-or- (916) 227-0868 (Direct)

FILED

MAR - 8 2011

DEPARTMENT OF REAL ESTATE

By K. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	H-11073 SF
)	
)	
MARIA C. COMFORT,)	<u>ACCUSATION</u>
)	
)	
Respondent.)	
)	

The Complainant, E. J. HABERER II, in his official capacity as a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against MARIA C. COMFORT (hereinafter "Respondent"), is informed and alleges as follows:

1

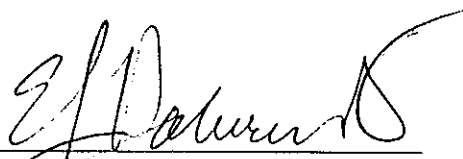
Respondent is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (hereinafter "the Code") as a real estate salesperson.

2

On or about December 16, 2010, in the United States District Court for the Northern District of California (San Francisco), case number 3:10-cr-00062-SI-1, Respondent was convicted of violating Section 18 U.S.C. 1349 of the United States Code (Bank Fraud) a

1 felony which bears a substantial relationship under Section 2910, Title 10, California Code of
2 Regulations, to the qualifications, functions, or duties of a real estate licensee and constitutes
3 cause for revocation of all licenses and license rights of Respondent under Sections 490 and
4 10177(b) of the California Business and Professions Code.

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

10
11 
12 _____
13 E. J. HABERER II
14 Deputy Real Estate Commissioner

15 Dated at Oakland, California,
16 this 4th day of February, 2011.
17
18
19
20
21
22
23
24
25
26
27