

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

FILED

JUL 20 2012

DEPARTMENT OF REAL ESTATE

By *[Signature]*

In the Matter of the Accusation of

KATIA BONILLA,

Respondent.

)
) NO. H-11265 SF

)
) OAH NO. 2012010337

DECISION

The Proposed Decision dated June 19, 2012, 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, but the right to a restricted license is granted 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 AUG 09 2012.

IT IS SO ORDERED

7/20/2012

Real Estate Commissioner

[Signature]
By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

KATIA BONILLA,

Respondent.

Case No. H-11265 SF

OAH No. 2012010337

PROPOSED DECISION

Administrative Law Judge Kirk E. Miller, State of California, Office of Administrative Hearings, heard this matter on March 27 and May 23, 2012, in Oakland, California.

Jason Lazark, Counsel, represented complainant E.J. Haberer, II.

Frank M. Buda, Attorney at Law, represented respondent Katia Bonilla, who was present at hearing.

The matter was submitted for decision on May 23, 2012.

FACTUAL FINDINGS

1. E.J. Haberer, II, made the accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California.
2. Katia Bonilla (respondent) is currently licensed and has license rights under the Real Estate Law as a real estate salesperson. Her license will expire on July 30, 2015, unless renewed.
3. On February 23, 2011, in the United States District Court, Northern District of California, respondent was convicted, upon a plea of nolo contendere, of a single count of violating Title 18 United States Code sections 1012 and 2 (false statements to Department of Housing and Urban Development and aiding and abetting), a misdemeanor and a crime substantially related to the qualifications, functions or duties of a real estate licensee.

Respondent was placed on two years of probation, fined \$5,000 and required to pay a special assessment fee of \$25. Respondent has paid the fine and fee, and was granted early termination of probation on March 9, 2012.
4. The facts underlying the conviction arise out of respondent's work as a realtor, while employed at Pinnacle Homes and Estates. There she began working with a client by the name of Alex Machado Pinheiro, who she represented in more than one "short sale"

transaction.¹ The transaction at issue involved a house located on the 1200 block of Alcatraz Avenue in Berkeley, California, and was owned by Pinheiro's brother, Elvecio Machado. The purported buyer of the property was an individual named Joao Junior. Respondent prepared or at least facilitated the execution of the purchase agreement and her broker received a commission of approximately \$17,000 for the transaction. Respondent never met Junior, who lived in Brazil, but spoke to him on the phone at which time he advised her that he had authorized Pinheiro to sign his name on the transaction documents.

5. Pinheiro signed Junior's name on the purchase agreement. Respondent acted as the real estate agent for both the purported buyer and the seller of the Alcatraz Avenue property, apparently knowing that Pinheiro was signing documents in Junior's name without any written authorization to do so. In reality, Junior was at most a "straw man"; the real owner after the transaction was concluded was Pinheiro. As the real estate agent, respondent facilitated the transaction.

6. Pinheiro also obtained a loan in Junior's name to purchase the Alcatraz Avenue property. He signed, in Junior's name, a certification which falsely stated that Junior was purchasing the Alcatraz Avenue property as his primary residence. The purchase agreement also falsely indicated that the property would be Junior's primary residence. Using the property as a primary residence was a condition of loan approval.

7. Although respondent did not participate in the loan application process or submit documents to any lender, she facilitated Pinheiro's fraudulent loan application by including false information in the purchase agreement. Her plea agreement states she understood that if a truthful statement had been made to the lender regarding the actual parties to the transaction, the transaction may not have been completed, because the loan may not have been approved.

8. Respondent does not dispute the facts underlying her conviction and accepts full responsibility for her actions. Although she discussed the transaction with her broker, and he advised that it was "fine" and that he knew the parties, she does not blame him for the outcome. She expresses great remorse for her conduct and constantly asks herself the question: "What was I thinking?"

9. On June 25, 2010, Respondent was arrested, in the presence of her young daughter, by the Moraga Police Department. Two days later she was interviewed by the Federal Bureau of Investigation (FBI) with whom she cooperated throughout its investigation. At the time of sentencing, the Assistant United States Attorney who handled

¹ A "short sale" occurs when a mortgage holder agrees to remove its lien on a property even though the borrower is selling the home for less than what is owed on the mortgage and even though the mortgage will not be completely paid off at the conclusion of the transaction. In this case, the existing debt on the property at issue was approximately \$699,000 at the time of the short sale, and the selling price of the property was approximately \$350,000, resulting in a loss to the lender of approximately \$349,000.

the case recommended to the court a "downward variance" to the sentencing guidelines. This recommendation was based upon the substantial, voluntary information she provided to the FBI during its investigation, together with her age, her responsibility as the sole caregiver for her daughter and her absence of prior convictions. The sentencing memorandum describes her as "truthful and candid."

10. In her request for early termination from probation, respondent again acknowledged the serious nature of the offense as well as her efforts to cooperate with the government. The early termination request was not opposed by the prosecuting attorney and was granted by the court.

11. -- Respondent is now and has in the past been involved in numerous community and professional activities. She is vice chair of a local branch of the National Association of Hispanic Real Estate Professionals, where she helps plan events and meetings to educate the Hispanic community about real estate issues; she is active in her church; she is active in the Young Professionals Network, a division of the West Contra Costa Association of Realtors; she works with the Omega Boys Club as a mentor; and she has volunteered with the Street Soldiers, an anti violence group, and has done so since she was a sophomore in high school.

12. Respondent has taken real estate classes from the Five Star Institute and received awards from her broker agency, Century 21.

13. Respondent submitted character letters from friends, family and real estate colleagues, speaking to matters ranging from a difficult home environment while growing up to her present community work. Her sister writes: "Katia has told me about the problems she is in. When I first heard of this, I was shocked and couldn't believe it. I understand she made a mistake, and she has definitely matured and grown into being a wiser person and professional. She tells me all the time to think before making decisions and [sic] what the consequences will be. I know she has learned a valuable lesson from this situation." Marjorie Birky, a mortgage broker who has worked with respondent, states: "I am thankful I get to work with Katia; she is not only a true professional, but she is also very passionate about helping others. There is no doubt in my mind, that she has learned from her past mistake, she shows it daily, in her work, the way she handles herself, clients, in every single transaction."

14. Respondent's current employing broker is Brian Baniqued.² He has been a licensed realtor since 1991, a broker since 1999, and has previously supervised agents whose licenses have been restricted. He has known respondent for three years, and if she is granted a restricted license, he will continue to serve as respondent's employing broker. Before agreeing to do so, he had an extensive conversation with respondent regarding the circumstances of her conviction. He strongly believes she is an honest and capable professional, and also believes she did not receive the guidance she needed in her prior job.

² Baniqued was not the broker responsible for supervising respondent's work on the Alcatraz Avenue transaction.

Baniqued testified to her integrity at the hearing, and also submitted a letter stating: "I believe that I can provide Katia Bonilla the professional guidance to see to it that no further questionable acts are repeated in the future. I believe that I can provide Katia the direction to make her an outstanding example for other real estate agents." Respondent described Baniqued as a very detailed orientated broker who follows up closely on all matters.

15. Respondent testified she has learned and changed by virtue of this experience. She stated she takes nothing for granted; thinks before she acts; thinks more about the future; does not make exceptions and takes time to analyze; seeks more information; is willing to ask "dumb" questions; and looks at the leaders around her who make good decisions.

16. Much of the evidence presented by the department was contained in reports prepared by a federal investigator, which rely heavily on information obtained from unidentified, confidential informants.

LEGAL CONCLUSIONS

1. Cause for suspension or revocation of respondent's license exists pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), in that respondent has been convicted of a crime that is substantially related to the qualifications, functions or duties of a real estate broker. Respondent's conviction for making false statements and aiding and abetting (set forth in Factual Findings 3 through 5) is substantially related to the qualifications, functions, or duties of a real estate licensee because it involved a misrepresentation to achieve an end. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(4).)

2. The most reliable evidence presented at hearing is that respondent's act was an isolated incident that was out of character. The department asserted that respondent was involved in an ongoing scheme of misconduct that went beyond the facts supporting her conviction. Complaint's evidence on this issue, consisting only of documents containing "double hearsay," does not establish such misconduct. A legal finding cannot be based this evidence.

3. In California Code of Regulations, title 12, section 2912, the department has established criteria to be evaluated in determining whether to deny issuance of a license because of a criminal conviction.³ The evidence established that respondent's arrest, conviction and punishment has had the intended beneficial impact on her attitude and approach to assure she follows proper business practices. In addition, her current employing broker is willing to supervise respondent and will provide a far more demanding and detail

³ The relevant criteria include: the time that has passed since any criminal conviction; expungement of the conviction; early discharge from probation; payment of any fine imposed; correction of business practices; new social or business relationships; stability of family life; continuing education; community service and change in attitude.

oriented working environment than was previously the case. Respondent has a good reputation in the community, as demonstrated by her character references. Friends and real estate colleagues testified or provided character letters supporting respondent's work ethic, commitment to the profession and integrity. Respondent has taken real estate classes since obtaining her license, and has taken a leadership role in community service organizations. Respondent provides the sole support for her eight year old daughter and is active in her daughter's life. Respondent has paid the fine that was imposed and no restitution was ordered. While less than two years have passed since the conviction, it has been more than two years since the transaction occurred. A federal court conviction cannot be expunged, but the United States Attorney did not oppose and the court granted early termination of her probation. The evidence establishes respondent's rehabilitation efforts are broad-based and substantial.⁴

5. The statutes relating to licensing are designed to protect the public from dishonest, untruthful and disreputable licensees. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 451.) These statutes typically authorize disciplinary proceedings as a means of accomplishing this objective. Such proceedings are not for the primary purpose of punishing an individual. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.) Rather, in issuing and disciplining licenses the Commissioner is primarily concerned with protection of the public, maintaining the integrity and high standards of the profession, and preserving public confidence in licensure. (*Ibid.*) After considering all of the evidence, including evidence of rehabilitation, and the testimony of respondent's employing broker, it is determined that respondent has rehabilitated herself to the extent, following a term of suspension, it would not be against the public interest to permit her to hold a restricted real estate license. A suspension is warranted in this case to emphasize the imperative of consistently following scrupulous business practices.

⁴ Department's counsel cited *In re Menna* 11 Cal.4th 975 (1995) as a basis for considering the length of time and extraordinary steps required to demonstrate rehabilitation in "egregious" cases. This case can, however, be readily distinguished on its facts. *Menna* involved an attorney who had been disbarred for life in Florida and sought admission to the California Bar. In determining *Menna* had failed to demonstrate sufficient rehabilitation, the court described his prior conduct in Florida to include repeated criminal acts over a period of three years, including misappropriation of funds from 19 different clients, abuse of his fiduciary trust in obtaining a large loan from an elderly client, attempted manufacture of methamphetamine to offset his debts, willful failure to pay \$535,000 in past taxes and minimal efforts to make restitution. His application to the California Bar followed a prison term and time in a half-way house. Unlike *Menna*, this case involved an isolated incident of very poor judgment, a misdemeanor rather than a felony and clear subsequent efforts of rehabilitation.

ORDER

All licenses and licensing rights of respondent Katia Bonilla 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 respondent 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 the authority of section 10156.6 of that Code:

1. Any restricted real estate license issued to respondent pursuant to this decision shall be suspended for 30 days from the date of issuance of said restricted license.
2. The restricted license issued to respondent may be suspended prior to hearing by order of the 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.
3. The restricted license issued to respondent may be suspended prior to hearing by order of the 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.
4. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any conditions, limitations or restrictions of a restricted license until three years have elapsed from the effective date of this decision.
5. Respondent shall submit with any application for licensure 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 which shall certify:
 - a. That the employing broker has read the decision which is the basis for the issuance of the restricted license; and
 - b. That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a real estate license is required.

6. Respondent shall, within nine months from the effective date of this decision, present evidence satisfactory to the commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirement 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.

DATED: June 19, 2012

Kirk E. Miller
KIRK E. MILLER
Administrative Law Judge
Office of Administrative Hearings