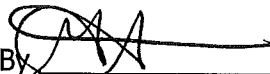


FILED

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

October 2, 2012

DEPARTMENT OF REAL ESTATE
BY 

In the Matter of the Accusation of

MICHAEL FEDELE CISTERNINO,

Respondent.

CASE NO. H-11323 SF

OAH NO. 2012021018

DECISION

The Proposed Decision dated August 20, 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 the real estate license and/or license rights; however, the right to a restricted real estate 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 OCT 23 2012

IT IS SO ORDERED

9/27/2012

Real Estate Commissioner



By WAYNE S. BELL
Chief Counsel

FILED

BEFORE THE
DEPARTMENT OF REAL ESTATE **September 21, 2012**
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation Against:

MICHAEL FEDELE CISTERNINO,

Respondent.

By  _____

Case No. H-11323 SF

OAH No. 2012021018

PROPOSED DECISION

Administrative Law Judge Paul Slavitt, Office of Administrative Hearings, State of California, heard this matter on August 6, 2012, in Oakland, California.

Richard K. Uno, Counsel, represented complainant E. J. Haberer, Deputy Real Estate Commissioner of the State of California.

Respondent Michael Fedele Cisternino represented himself.

The matter was submitted on August 6, 2012.

FACTUAL FINDINGS

1. Complainant E. J. Haberer, Deputy Real Estate Commissioner, filed this accusation in his official capacity.
2. Michael Fedele Cisternino (respondent) has been licensed by the Department of Real Estate (department) as a real estate salesperson since September 13, 2005. The license will expire on September 12, 2013, unless renewed.
3. On January 18, 2011, in the Los Angeles County Superior Court, respondent was convicted on his plea of nolo contendere to a felony violation of Health and Safety Code section 11366 (maintaining a place for the sale of a controlled substance).

Respondent received a suspended sentence, and was placed on three years formal probation, with conditions that included two days in county jail, with credit for two days already served; 40 days of community service; payment of fines and fees; registration as a narcotics offender, and other related terms of probation.

On July 21, 2011, the felony was reduced to a misdemeanor, and probation was modified to unsupervised probation.

4. The facts underling the conviction are that on September 17, 2010, an undercover police officer with the Los Angeles Police Department reviewed a public message board for "budtrader.com", and found an advertisement for marijuana for sale. The officer responded to the advertisement, and thereafter was contacted by respondent. In a series of emails and telephone calls, respondent arranged to meet the officer to sell him a pound of "medical grade" marijuana for \$3,600. Eventually, the officer and respondent met in the San Fernando Valley where the officer provided an initial payment of \$1,000 in marked currency towards the purchase of the marijuana. After respondent had received the money, and provided a small sample of the marijuana to the undercover officer, respondent was arrested and charged.

5. Complainant did not submit evidence of the investigative and enforcement costs incurred in bringing this action.

Respondent's Evidence

6. Respondent is married and has one young child; the family lives in Orinda. Respondent is active in his local church.

He has no prior criminal problems or administrative disciplinary issues.

7. With reference to his conviction, respondent stated that he believed the marijuana sale to be legal under medical marijuana laws. He stated that had he understood otherwise, he would not have involved himself in the transaction. Respondent explained that he had researched the issue of medical marijuana in California, and reviewed the website for budtrader.com. When he placed himself on the budtrader.com website, he provided the website with his personal information and medical marijuana qualifications.

Respondent did not consult with an attorney about medical marijuana, medical marijuana cooperatives, or the like before becoming involved with the website. Respondent did not have a marijuana dispensary permit when he engaged in the sale to the undercover officer.

Notwithstanding his belief about the legality of the transactions, respondent entered his negotiated plea because he had a new baby at home, and under the circumstances did not want to take the risks and cost burden associated with a trial.

8. Respondent stated that the arrest and conviction, the 40 days he spent performing graffiti removal as part of probation, and registration as a drug offender have been humbling experiences. He has learned to understand the consequences of his acts, and completely removed himself from the medical marijuana community.

9. Respondent promptly completed all requirements of his probation; and as a result, his probation was terminated early, and on June 18, 2012 his record was expunged.

10. Respondent has worked for Marcus & Millichap for several years, specializing in commercial real estate. He handled nearly \$10 million in sales transactions last year. He

estimates that he will exceed that total this year. Respondent is a senior mentor in the Oakland office, providing guidance to less experienced agents.

Marcus & Millichap's regional manager Jeff Mishkin submitted a letter in support of respondent. He stated that respondent is "capable, competent [and] honest," and is called upon to provide guidance to other agents. Mishkin states that respondent is well regarded by his clients and peers. His office is willing to provide additional oversight should the department grant a probationary license to respondent.

11. On November 10, 2011, respondent provided the department with an interview information statement in which he disclosed tax liens owing to the IRS and Franchise Tax Board. Respondent attributes these debts to a real estate transaction in which his partner in the deal absconded with the proceeds, leaving respondent with a tax burden.

Respondent has arranged for installment payment of the IRS obligation, and is current with the payments. He further plans to submit an offer in compromise to reduce the debt. As to the state tax debt, he anticipates being able to pay that obligation in full in the near future.

12. Finally, and as further mitigation, respondent dedicates himself solely to his work and family, and lives what he describes as a quiet life.

LEGAL CONCLUSIONS

1. Based on the provisions of Business and Professions Code section 490, subdivision (a), and section 10177, subdivision (b) [basis for discipline], and California Code of Regulations, title 10, section 2910, subdivision (a)(1) [substantial relationship], cause for discipline exists based on the matters set forth in Finding 3 and 4.

2. In California Code of Regulations, title 10, section 2911, the department has established criteria to be considered when evaluating an applicant's rehabilitation from the acts or crime that form the basis for discipline. In pertinent part, these include:

(a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the departmental action sought. (A longer period will be required if there is a history of acts or conduct substantially related to the qualifications, functions or duties of a licensee of the department.). . . .

(c) Expungement of criminal convictions resulting from immoral or antisocial acts. . . .

(e) Successful completion or early discharge from probation or parole.

(f) Abstinence from the use of controlled substances or alcohol for not less than two years if the conduct which is the basis to deny the departmental action sought is attributable in part to the use of controlled substances or alcohol.

- (g) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.
- (h) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the agency action sought.
- (i) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.
- (j) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others. . . .
- (l) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems. . . .
- (n) Change in attitude from that which existed at the time of the conduct in question as evidenced by any or all of the following
 - (1) Testimony of applicant.
 - (2) Evidence from family members, friends or other persons familiar with applicant's previous conduct and with his subsequent attitudes and behavioral patterns. . . .
 - (5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

3. Since it has been less than two years since respondent's arrest and conviction, the passage of time is not a persuasive basis for finding rehabilitation. However, other factors weigh in respondent's favor.

- a. All court-ordered fees and fines have been paid.
- b. Respondent completed the terms of his probation promptly, and achieved early termination of his probation and expungement of the conviction.
- c. Since his arrest, respondent has ceased his involvement with medical marijuana, and the medical marijuana community.
- d. Respondent appears to have a stable family life, and shows renewed commitment to his wife and young child.
- e. Respondent is involved with his church.
- f. He is taking steps to address and discharge his tax indebtedness.
- g. There is a demonstrable change in attitude from the time of the offense in that he apparently has reflected on his actions, learned from them, and taken steps to avoid recurrence; this is supported by his testimony concerning the humbling effect of his conviction and probation, and efforts to focus on career and family.

4. Respondent's criminal conviction, involving the sale of a significant quantity of drugs, is very worrisome. Real estate salespersons are fiduciaries that should be honest and act with the highest level of integrity. While California does have laws that permit the possession and sale of marijuana for certain medical purposes, it is difficult to understand how, specifically, respondent determined that the transaction he engaged in could have been legal. Respondent's testimony on the point was not specific, and did little to explain this.

However, from the evidence presented, it does appear that respondent's criminal conviction is an isolated and uncharacteristic episode. Respondent has no other criminal or disciplinary problems in his real estate career; and significantly, has the support of his regional manager, who is willing to provide additional oversight if required. On balance, it is determined that the public interest will be protected by issuance of a restricted license.

5. Business and Professions Code section 1016, subdivision (a) provides that the complainant may request an award of the reasonable costs of investigation and enforcement. Pursuant to Business and Professions Code section 1016, subdivision (c), such a request is to be supported by a certified copy, or a good faith estimate of the costs. In this case, no evidence was submitted, such that no award of investigative or enforcement costs can be made.

ORDER

Respondent Michael Fedele Cisternino's real estate salesperson's license is revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to of Business and Professions Code section 10156.5, if respondent makes application therefor and pays to the department 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 (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 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 two years have elapsed from the effective date of this decision.

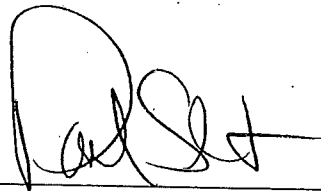
4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the department, which shall certify:

(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 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 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.

DATED: August 20, 2012



PAUL J. SLAVIT
Administrative Law Judge
Office of Administrative Hearings