

FILED

AUG 25 2014

BUREAU OF REAL ESTATE

By S. Black

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of	)	
	)	NO. H-11590 SF
THOMAS GERARD HAURY,	)	
	)	OAH NO. 2013110856
Respondent.	)	
_____	)	

DECISION

The Proposed Decision dated July 24, 2014, 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 penalty 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.

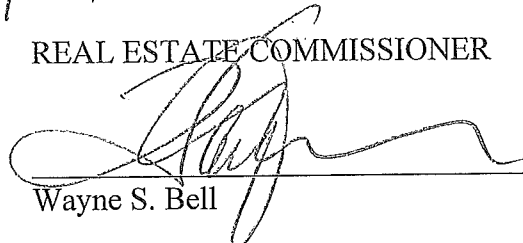
This Decision shall become effective at 12 o'clock noon on _____

SEP 15 2014

IT IS SO ORDERED

8/19/2014

REAL ESTATE COMMISSIONER


Wayne S. Bell

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

THOMAS GERARD HAURY,

Respondent.

Case No. H-11590

OAH No. 2013110856

PROPOSED DECISION

Administrative Law Judge Adrienne J. Miller, State of California, Office of Administrative Hearings, heard this matter on July 15, 2014, in Oakland, California.

Richard K. Uno, Counsel III and Susan Kahng, Legal Intern, represented complainant Robin S. Tanner, a Deputy Real Estate Commissioner of the State of California.

Respondent Thomas Gerard Haury appeared and represented himself.

The matter was submitted on July 15, 2014.

FACTUAL FINDINGS

1. Complainant Robin S. Tanner filed the Accusation in her official capacity as a Deputy Real Estate Commissioner for the Bureau of Real Estate.

2. Respondent Thomas Gerard Haury is 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. Respondent's broker license has been renewed through January 24, 2017.

Cause for Discipline

3. On February 22, 2013, in the Superior Court of California, County of Santa Clara, respondent was convicted by a jury of violating Penal Code 273.5, subdivision (a) (corporal injury to spouse), a misdemeanor. Imposition of sentence was suspended and respondent was placed on formal probation for three years. Conditions of probation included serving 30 days in jail, to be served in a weekend work program, paying fines and penalties

totaling \$1,422, completing a 52-week domestic violence program and performing 20 hours of community service.

4. The facts and circumstances underlying respondent's conviction for corporal injury to his spouse occurred on January 7, 2012, after respondent returned home from a trip to Palm Springs, California, where he assisted a high school friend enter an alcohol and drug treatment program. Respondent's wife was suspicious that respondent was having an extramarital affair and hired a private investigator to follow respondent in Palm Springs. Upon respondent's return from Palm Springs a verbal argument ensued resulting in a physical confrontation. According to the police report, the verbal argument escalated and respondent's wife said that respondent grabbed her by the arms and pushed her into the refrigerator causing her to hit her head against the refrigerator. Respondent's 25-year old twin sons were present and witnessed their parents' argument and called the police. Respondent's son stated that his father punched his mother with a closed fist and she hit her head on the refrigerator. Respondent's wife suffered minor bruises and scratches.

Respondent's Evidence

5. Respondent successfully completed his weekend work program, domestic violence program, community service, and paid his fine. On June 24, 2014, the court modified respondent's probation from formal to informal probation.

6. Respondent admits that a jury found him guilty of corporal injury to his spouse. Respondent is currently appealing the conviction. Respondent and his wife were married for 21 years and had four sons, who are all adults now. Respondent's marriage ended in divorce in June 2014.

7. Respondent does not agree with all of the statements in the police reports, but acknowledges that he could have handled the dispute with his wife differently. He acknowledges that he grabbed his wife to calm her down, but denies that he hit her with a closed fist. He was upset that his wife had hired a private investigator to follow him while he was in Palm Springs and believes that due to a lack of trust, honesty and financial instability in their marriage, their verbal argument on January 7, 2012, got out-of-hand.

8. Respondent completed the 52-week domestic violence program on June 17, 2014. Respondent reports having learned a lot from the program about anger management and how to disengage when involved in a disagreement and how to diffuse a volatile situation rather than escalating the situation in both his personal and business relationships. He has learned to handle stress better, by taking "time-outs," and using "positive self-talk" to solve his problems without getting angry. He knows that there needs to be trust and honesty in a relationship for the relationship to be successful. The incident of January 7, 2012, was totally out of character for respondent.

9. Respondent has been licensed by the bureau as a broker for more than 29 years, and was licensed as a salesperson for two years before that. Respondent has been a commercial real estate agent and investor during his entire real estate career and owns his own commercial real estate development and investment company, Haury Properties, LLC, in Palo Alto, California. There is no history of prior license discipline or consumer complaints regarding his conduct as a real estate licensee.

10. Respondent has a long history of volunteer work in his community. He was a baseball coach for 14 years when his children were young and he has had a long association with Catholic Charities and Second Harvest Food Bank in providing food to the needy. He also was involved in Big Brothers when he was in college in Colorado and he is currently assuming responsibility of his younger autistic brother, who resides in Ohio.

11. Respondent graduated from Colorado State University in 1975 with a degree in marketing. Respondent came to California with his parents and siblings in 1982.

12. Respondent's fiancée, Blanca Hernandez, testified on behalf of respondent. Hernandez is a widow, after 42 years of marriage, and a retired elementary schoolteacher after 32 years. She has known respondent since March 2012 and has lived with him for the last year. She is aware of respondent's conviction and has also read the transcripts from his trial. She stated that respondent is a kind, loving, respectful individual. She is aware of his many charitable sponsorships and donations to the community and testified that respondent donated and sponsored five children from her elementary school to help them attend science camp this year. Ms. Hernandez also confirmed that respondent volunteered his time with Sacred Heart Community Service in San Jose, over and above his court-ordered community service. Hernandez testified that she was attracted to respondent because of his strong faith and good character. She confirmed that respondent attends church every Sunday and that they read the Bible together.

13. Respondent's brother, Edward Haury testified on behalf of respondent. Mr. Haury is a commercial real estate investor. He is aware of respondent's conviction and stated that he and his family were shocked when they heard about the incident that resulted in respondent's conviction. Mr. Haury stated that respondent is not an aggressive person, but a mellow individual who cannot be provoked. He has seen his brother involved in football and track while in college and even under stressful athletic competitions and conditions he was always calm. Mr. Haury also stated that respondent is taking responsibility for their mentally disabled younger brother. Mr. Haury also recounted respondent's involvement with Big Brothers in Colorado.

14. Respondent did not notify the bureau in writing of his conviction within 30 days of his misdemeanor conviction. Respondent did report the misdemeanor conviction on July 10, 2013, when he completed the bureau's confidential interview information statement. Respondent stated that he did not know the law that he required him to notify the bureau of his conviction. He also stated that his attorney for his criminal proceeding was not familiar

with real estate licensing laws and did not advise him of the notification requirement. This reporting law became effective on January 1, 2013. Respondent's conviction was on February 22, 2013. Respondent's testimony was credible in that he did not intentionally fail to report his conviction, but that he was negligent in not knowing the law.

Costs

15. The bureau did not present any evidence of costs of investigation and enforcement in this case.

LEGAL CONCLUSIONS

1. The burden of proof in this matter is on complainant to show by clear and convincing evidence that respondent's license should be suspended or revoked. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856.)

Cause for Discipline

2. Business and Professions Code section 490, subdivision (a), authorizes the suspension or revocation of a license if the licensee has been convicted of a crime that is substantially related to the qualifications, functions or duties of the licensed business or profession. Business and Professions Code section 10177, subdivision (b), which is specific to real estate licenses, authorizes the suspension or revocation of a license if the licensee has been convicted of a crime that is substantially related to the qualification, functions and duties of a licensee of the Bureau of Real Estate.

3. California Code of Regulations, title 10, section 2910, sets forth criteria for determining whether a crime is substantially related to the qualifications, functions or duties of a real estate licensee. A crime is deemed to be substantially related if it involves doing an unlawful act with the intent or threat of doing substantial injury to the person or property of another (subd. (a)(8).) Respondent's conviction for corporal injury to a spouse is 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). By reason of the matters set forth in Findings 3 and 4, the conviction constitutes cause to revoke respondent's real estate broker's license pursuant to Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b).

4. Business and Professions Code section 10177, subdivision (d), authorizes the commissioner to suspend or revoke the license of a real estate licensee who has willfully disregarded or violated the Real Estate Law, or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law.

5. Business and Professions Code section 10186.2, subdivision (a)(1)(B), requires a licensee to report to the bureau any conviction of the licensee, including any

verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor and section 10186.2, subdivision (a)(2) requires that the licensee report in writing within 30 days of the date of the bringing of the indictment or the charging of a felony, the conviction, or the disciplinary action. Failure to make a written report within 30 days authorizes the commissioner to discipline the license of a real estate licensee.

6. Respondent's failure to provide written notification to the bureau of his misdemeanor conviction within 30 days of the conviction, as set forth in Finding 14, constitutes cause to discipline the license of respondent. However, respondent's failure to notify the bureau was not intentional but due to his lack of knowledge of the new law.

Assessment of Rehabilitation

7. California Code of Regulations, title 10, section 2912, sets forth criteria for determining the rehabilitation of a licensee in a disciplinary proceeding. Factors to be considered in evaluating rehabilitation include the following: The passage of two years since the date of the most recent criminal conviction (subd. (a)); the expungement of the conviction (subd. (c)); the successful completion of probation (subd. (e)); the payment of fines imposed in connection with the criminal conviction (subd. (g)); and a change in attitude from that which existed at the time of the conviction (subd. (l)).

8. Respondent's conviction was only a year and a half ago, but respondent's conduct occurred in January 2012, which is over two years ago. Respondent is on court probation until February 22, 2016, however he has complied with all the terms of probation, including paying the fines, completing the domestic violence program, community service and his weekend work program.

9. It is noted that respondent was a real estate broker for 27 years before his criminal conduct that resulted in his conviction, and that he has no prior history of domestic violence or license discipline. At hearing respondent accepted responsibility for his involvement in the incident of January 2012, and appeared to sincerely regret his conduct. He does disagree with the police report stating that he punched his wife with a closed fist, but he takes responsibility for grabbing his wife's shoulders and causing her to hit her head on their refrigerator. Despite this disagreement of how his wife was injured, he has taken responsibility for his failure to manage his own anger and has learned how to handle stressful situations and has acquired the tools to resolve conflicts without anger and violence. Respondent's involvement with his family, his girlfriend, his community, and church also suggests respondent has a very stable lifestyle and good support network. It thus appears unlikely that respondent will engage in criminal conduct in the future. All of these factors support the determination that respondent's conviction does not require revocation of his real estate broker license. However, respondent clearly engaged in serious conduct when he committed corporal injury to his spouse. Therefore, a period of restriction on respondent's license to permit the bureau to monitor respondent's actions appears appropriate.

Costs

10. Complainant requests reimbursement of the costs of investigation and enforcement pursuant to Business and Professions Code section 10106. Section 10106 provides that in any order issued in resolution of a disciplinary proceeding, the commissioner may ask the administrative law judge to direct a licensee found to have committed a violation to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. The complainant did not present any evidence as to costs in this case.

11. The bureau's request for costs is denied for lack of evidence.

ORDER

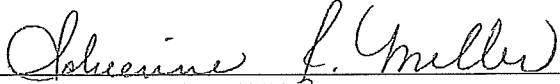
All licenses and licensing rights of respondent Thomas Gerard Haury under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application thereof and pays to the Bureau 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 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, 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.

5. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of respondent's arrest, the crime for which respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

DATED: 7-24-14


ADRIENNE J. MILLER
Administrative Law Judge
Office of Administrative Hearings