

FILED

AUG 15 2014

BUREAU OF REAL ESTATE

By S. Black

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

RAJENDRA NATH,

Respondent.

No. H-11615 SF

OAH No. 2013120784

DECISION

The Proposed Decision dated July 7, 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 one or more real estate licenses.

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.

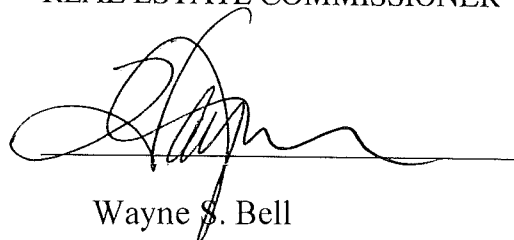
This Decision shall become effective at 12 o'clock noon on _____

SEP 05 2014

IT IS SO ORDERED

8/14/2014

REAL ESTATE COMMISSIONER


Wayne S. Bell

**BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

RAJENDRA NATH,

Respondent.

Case No. H-11615 SF

OAH No. 2013120784

PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter on June 9, 2014, in Oakland, California.

Real Estate Counsel Truly Sughrue represented complainant Robin S. Tanner, Deputy Real Estate Commissioner, State of California.

Respondent Rajendra Nath appeared and represented himself.

The matter was submitted on June 9, 2014.

FACTUAL FINDINGS

1. Respondent Rajendra Nath is licensed or has licensing rights under the Real Estate Law¹ as a real estate salesperson. He was first licensed on August 18, 2007. Respondent's license will expire on August 16, 2017.

2. On November 15, 2013, complainant Robin S. Tanner, acting in her official capacity as a deputy real estate commissioner for the State of California, issued an accusation against respondent. The accusation alleges that respondent has been convicted of a felony, and a crime substantially related to the qualifications, functions or duties of a real estate salesperson. Respondent filed a notice of defense and this hearing followed.

3. On June 26, 2013, in Alameda County Superior Court, respondent was convicted on his plea of guilty of a violation of Penal Code section 487, subdivision (a) (grand theft), a felony. Imposition of sentence was suspended and respondent was placed on formal probation for five years on various terms and conditions, including requirements that

¹ The Real Estate Law is found at Part 1 of Division 4 of the Business and Professions Code, beginning with section 10000.

he serve two days in jail, with credit for time served; pay fines and fees in the approximate amount of \$1,000; and make restitution to Raj Travel in the total amount of \$12,500, by monthly payments of \$350. Respondent states that he has been making monthly payments as required, and that his outstanding balance is about \$9,000.

4. The facts and circumstances leading to this conviction are that, while an employee of Raj Travel and over a period of about one year, respondent embezzled money from the company. Respondent accomplished the thefts through a complicated scheme that he concealed from the company's auditor.

Respondent's evidence

5. Respondent is 46 years old. He and his wife, to whom he has been married for 19 years, have two teenaged children.

6. Respondent started working for Raj Travel in 2008. He had known the couple that owns the company for over 10 years. According to respondent, the company was facing financial difficulties in 2009 so he loaned the owners \$27,000 to save the company. Respondent was having medical problems in 2009; he states that he gave his life savings to the company at a time when he needed it most. By 2010, respondent states, he had been repaid only \$8,000, and the owners did not respond to his demands for payment. In 2011, respondent decided to "take back the money on [his] own." Respondent did not maintain any records of how much money he "paid [himself]." Respondent told his wife about the thefts in June 2012, and then told the owners of Raj Travel what he had done.

7. Respondent states that he understands what he did was wrong, and he is sorry for his actions. He feels that he has changed since he committed the crime. Now, he volunteers more of his time to worthy causes, including his temple and a homeless shelter. In an undated letter, Sushil Dutt, the secretary of the Shree Sanatan Dharma Religious and Cultural Society praises respondent for his financial contributions to the society, his fundraising, and his tireless volunteer efforts. Respondent's wife and his oldest daughter have seen changes in him, and feel that although he made a mistake, he has grown from the experience.

8. Since July 2012, respondent has been working for Commercial Realty Property Management, Inc., as an administrative assistant. The owner of the company, Michael Marr, is a real estate broker who owns many of the properties that the company manages. In an undated letter, Marr writes that respondent has been a very reliable and trustworthy employee, and that he would supervise respondent if he were granted a restricted license. Marr's letter does not demonstrate any knowledge of respondent's conviction or the circumstances that led to that conviction, other than to say that he believes respondent deserves a second chance.

9. In a letter dated May 15, 2014, real estate broker Lisa Jones writes that she has known respondent for one year. She states that she can "substantiate with assurance the

values, trust and confidence in the relationships he has built with his clients." Jones's letter does not reveal that she is aware of respondent's conviction.

10. Respondent is willing to work under a restricted license. He is the family's principal wage earner, and his oldest daughter will be entering college in the fall.

Costs

11. The Bureau has incurred costs of \$1,257.75 in its investigation and enforcement of this case. That amount represents \$390 in investigative costs and \$867.75 in legal costs. These charges are supported by declarations that comply with California Code of Regulations, title 1, section 1042. In the absence of any evidence or argument to the contrary, these costs are found to be reasonable.

LEGAL CONCLUSIONS

1. Business and Professions Code sections 490 and 10177, subdivision (b), provide that a real estate license may be disciplined if the licensee has been convicted of a felony, or a crime that is substantially related to the qualifications, functions or duties of a licensee. Respondent's conviction of grand theft is a felony. The conviction is also substantially related to the qualifications, functions or duties of a real estate licensee. Honesty and integrity are essential characteristics of a real estate licensee. (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.) Under California Code of Regulations, title 10, section 2910, respondent's conviction is substantially related because his crime involved "[t]he employment of . . . fraud, deceit, falsehood or misrepresentation to achieve an end" (subd. (a)(4)), and "[d]oing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator . . ." (subd. (a)(8)). Cause exists under Business and Professions Code sections 490 and 10177, subdivision (b), to take disciplinary action against respondent's license by reason of the matters set forth in Findings 3 and 4.

2. The burden is on respondent to demonstrate that he is sufficiently rehabilitated from his misconduct so that it would not be contrary to the public interest to permit him to retain his real estate license. The Bureau has adopted criteria to assist in the task of evaluating a licensee's rehabilitation. (Cal. Code Regs., tit. 10, § 2912.) In the case of a criminal conviction, these criteria include a demonstration of a change in the licensee's attitude toward his misconduct; the passage of at least two years since the licensee's conviction; the payment of restitution to any person who suffered monetary losses due to the licensee's crime; and successful completion of probation.

It is to respondent's credit that he confessed his crime to the owners of Raj Travel, and that he now understands that what he did was wrong. Respondent's volunteer efforts are also commendable. Respondent's crime, however, which bears closely and directly upon the fiduciary responsibilities of a salesperson, demands a strong showing of rehabilitation. At best, respondent's rehabilitation is in its very early stages. It has been just one year since

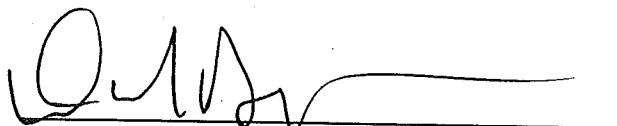
respondent's conviction, and he will be on formal probation for another four years. Respondent has not yet completed his restitution obligation. At this time, it would be contrary to the public interest to allow respondent to retain his salesperson license, even on a restricted basis.

ORDER

1. All licenses and licensing right of respondent Rajendra Nath under the Real Estate Law are revoked.

2. Respondent Rajendra Nath shall pay the Bureau its costs of investigation and enforcement in the amount of \$1,257.75.

DATED: July 7, 2014


DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings