

**FILED**

NOV 26 2014

BUREAU OF REAL ESTATE

By B. Contreras

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of

JEFFREY DELL ENSLEN,

Respondent.

No. H-11690 SF

OAH No. 2014050851

DECISION

The Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings dated October 21, 2014, 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 DEC 26 2014.

IT IS SO ORDERED NOV 25 2014

REAL ESTATE COMMISSIONER

Thomas L Pool

By: THOMAS POOL  
Assistant Commissioner

BEFORE THE  
BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

JEFFREY DELL ENSLEN,

Respondent.

Case No. H-11690 SF

OAH No. 2014050851

**PROPOSED DECISION**

Administrative Law Judge Adrienne J. Miller, State of California, Office of Administrative Hearings, heard this matter on October 6, 2014, in Oakland, California.

John W. Barron Counsel, represented complainant Robin S. Tanner, a Deputy Real Estate Commissioner of the State of California.

Respondent Jeffrey Dell Enslen appeared and represented himself.

The record was held open until October 13, 2014, for respondent to submit character reference letters and for the complainant to respond by October 20, 2014. Respondent submitted three character letters on October 10, 2014, which were marked as Exhibit B and received in evidence. Complainant did not submit an objection by October 20, 2014, and the matter was submitted.

**FACTUAL FINDINGS**

1. Robin S. Tanner (complainant) made the accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California.
2. Jeffrey Dell Enslen (respondent) has had a real estate salesperson's license since 1986. Respondent's real estate salesperson's license expires November 16, 2016.
3. On May 14, 2013, in the Superior Court of the State of California, County of Santa Clara, respondent was convicted of violating Penal Code section 484/487, subdivision (B) (3)(grand theft by employee, agent or servant), a misdemeanor. Imposition of sentence was suspended and respondent was placed on informal probation for two years with terms that included serving 20 days in a weekend work program, performing 160 hours of

volunteer work, paying various fines and fees, and paying restitution to the City of San Jose in the amount of \$9,719.35.

4. The facts and circumstances underlying respondent's conviction for grand theft by an employee occurred between September 2009 and January 2012, when respondent was employed as a police officer for the City of San Jose. An internal audit revealed missing hours on respondent's timesheet. Respondent recorded regular hours on his timesheet when he was actually absent from duty. There were 65 erroneous entries (64 different days) for a total of 178.25 missing hours with an estimated loss to the City of San Jose of \$9,719.35.

#### *Respondent's Evidence*

5. On May 23, 2014, respondent petitioned the court and the court granted early termination of respondent's probation pursuant to Penal Code section 1203.3 and cleared his record pursuant to Penal Code section 1203.4. Respondent paid all his fines and fees, completed his community service and weekend work program. Respondent also paid \$9,719.35 in restitution to the City of San Jose.

6. Respondent has been in law enforcement for 22 years. Immediately after graduating from high school respondent volunteered as a reserve police officer for Mountain View Police Department. In 1995 respondent became a full-time police officer for the City of Mountain View. In 1997 respondent became a police officer for the City of San Jose. Until 2011 respondent had always received "above standards" evaluations and one "exceptional" evaluation for his job performance. Prior to and during his employment as a police officer respondent always maintained his real estate salesperson's license. In June 2014 the San Jose Police Department offered respondent probation for three years and a 200-hour suspension as discipline for his timesheet discrepancies. Respondent decided to resign his position as a police officer instead of accepting the probation and suspension.

7. Since 2008 respondent has been affiliated with Intero Real Estate company in Discovery Bay, as a real estate salesperson. Respondent has maintained his real estate license for over 28 years and hopes to focus his career in real estate now that he is no longer a full-time employed police officer.

8. Respondent owns his own home and six additional rental properties. Respondent has never been married and has no children. He has been in a stable relationship with his girlfriend, who is a licensed real estate salesperson, for over six years, and has been living with her, in his home, since last year.

9. Respondent has been involved in community activities including volunteering his services at the Discovery Bay Yacht Club and at his golf club. He is also a mentor for foster children at the Royal Family Kids Camp. Respondent became involved in the Royal Family Kids Camp during his court probation when he performed his court ordered community service at the camp. Respondent stated that his experience at the Royal Family

Kids Camp truly transformed him and he intends to continue to mentor foster children and help them become productive individuals in their communities.

10. Respondent submitted three character letters on his behalf. The first letter, undated, is from William A. Russell, a broker and owner of First Class Realty. Russell has known respondent for over six years and states in his letter that respondent "... has shown nothing but integrity in all his actions, and in particularly in his employment in the Real Estate field." Russell further states that respondent "... has always wanted to know the correct and ethical way to act and conduct himself in his real estate profession." The second letter, dated October 7, 2014, is from Manuel M. Jurado, a retired San Jose Police Officer and currently the Deputy Chief of Police for the Defense Logistics Agency Police Department, Department of Defense in Tracy, California. Jurado has known respondent for 15 years as a co-worker at the San Jose Police Department. Respondent was also Jurado's real estate agent. Jurado states in his letter that respondent is "... a man of integrity, high moral values, reliable and extremely dedicated to his family and to his profession as a real estate agent ..." The third letter, dated October 7, 2014, is from Bryan Hogge, the Managing Broker and Owner of Discovery Bay Properties, Inc., doing business as Intero Real Estate. Hogge states in his letter that he "... became aware of the events and accusations that unfolded last year concerning 'time card fraud' with the San Jose police department. [Respondent] was forthcoming throughout the process and followed all guidelines set forth through the process set down by the courts." Hogge further states that respondent has "... been employed by our brokerage for 5 [five] years and throughout the course of his employment never have I had direct complaint or DRE issue." Hogge has also known respondent on a personal level and can attest to respondent's loyalty and trustworthiness as a friend. Hogge further states that he would have "... no issue pursuing a friendship with or without employment with me."

11. Respondent stated that his current broker, Bryan Hogge agrees to be the broker who would supervise him if he were to be granted a restricted real estate salesperson license.

12. Respondent testified credibly and sincerely that due to his lack of attention to detail he made errors in his timesheets with the police department and he is solely responsible for those errors. He accepts his responsibility and understands that he was correctly held accountable for his actions regarding his timesheets. Due to respondent's change in attitude complainant does not oppose the issuance of a restricted license to respondent.

#### *Costs*

13. The bureau reasonable incurred \$1,332 in the costs of investigation and enforcement of this matter.

## LEGAL CONCLUSIONS

1. 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 licenses, 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 and duties of a licensee of the Bureau of Real Estate.

2. California Code of Regulations, title 10, section 2910, sets forth criteria or determining whether a crime is substantially related to the qualifications, functions or duties of a real estate license. A crime is deemed to be substantially related if it involves the fraudulent taking, obtaining appropriating or retaining of funds or property belonging to another person (subd. (a)(1)), and the employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end (subd. (a)(4)), and doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another (subd. (a)(8)).

Respondent's conviction for grand theft by employee is substantially related to the qualifications, functions or duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivisions (a)(1), (4), and (8). By reason of the matters set forth in Findings 3 and 4, the conviction constitutes cause to discipline respondent's real estate salesperson license pursuant to Business and Professions Code section 490, subdivision (a), and 10177, subdivision (b).

3. California Code of Regulations, title 10, section 2912, sets forth criteria for determining the rehabilitation of a licensee in a disciplinary proceeding. These criteria have been considered. Respondent was convicted of a misdemeanor in May 2013. In light of his full compliance with probationary conditions, his probation was terminated after one year in May 2014. Respondent completed his weekend work program, community service and paid all his fines and restitution. (Factual Finding 5.)

While respondent's conviction is evidence of serious misconduct, respondent accepts full responsibility for his actions and acknowledges that he did not maintain his timesheets correctly. (Factual Finding 12.) The wrongdoing appears to be out of character when weighed against his lengthy work in law enforcement and his character letters. Respondent has a stable relationship with his girlfriend and is involved in his community. (Factual Findings 8 through 10.) Respondent also has a real estate broker who is willing to supervise him if he is granted a restricted real estate salesperson's license. (Factual Finding 11.)

### *Costs*

4. Business and Professions Code section 10106 provides, in pertinent part, that the bureau may request that the licensee be ordered to pay a sum not exceeding the reasonable costs of investigation and enforcement upon a finding that the licensee violated

the Real Estate Law. The bureau requests reimbursement of fees and costs in the amount of \$1,332. The bureau's fees and costs were reasonable. (Factual Finding 13.)

In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth guidelines for determining whether the costs should be assessed in the particular circumstances of each case. Respondent has not established a basis to reduce or eliminate the costs in this matter.

### ORDER

All licenses and licensing rights of respondent Jeffrey Dell Enslen under the Real Estate Law are revoked by reason of Legal Conclusions 1 through 3; 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 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 submit with any application for license under an employer 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 Bureau of Real Estate 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 employer 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 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.

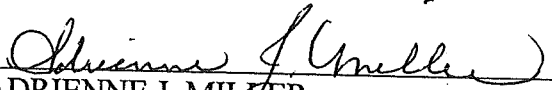
6. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Bureau of Real Estate including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of respondent's license until respondent passes the examination.

7. 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 137007, Sacramento, CA 95813-7007. 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.

8. Respondent shall pay to the Bureau of Real Estate costs associated with its investigation and enforcement pursuant to Business and Professions Code section 10106 in the amount of \$1,332. Respondent shall be permitted to

pay these costs in a payment plan approved by the bureau, with payments to be completed no later than three months prior to the end of the restriction on his license.

DATED: 10-21-14

  
ADRIENNE J. MILZER  
Administrative Law Judge  
Office of Administrative Hearings