

FILED

MAR - 5 2015

BUREAU OF REAL ESTATE

By K. D. Contreras

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
 FELIX CALANO NATNAT,)
)
 Respondent.)
_____)

NO. H-11747 SF

OAH NO. 2014100685

DECISION

The Proposed Decision dated February 4, 2015, 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 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 Respondents.

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

MAR 26 2015

IT IS SO ORDERED

3/5/2015
REAL ESTATE COMMISSIONER



WAYNE S. BELL

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

FELIX CALANO NATNAT,

Respondent.

Case No. H-11747 SF

OAH No. 2014100685

PROPOSED DECISION

Administrative Law Judge Dianna L. Albin, State of California, Office of Administrative Hearings, heard this matter on January 6, 2015, in Oakland, California.

Stephanie K. Sese, Counsel for the Bureau of Real Estate (bureau), represented complainant Robin S. Tanner.

Respondent was present and represented himself.

The matter was submitted for decision on January 6, 2015.

FACTUAL FINDINGS

1. On August 6, 2014, complainant Robin S. Tanner, Deputy Real Estate Commissioner of the State of California, filed an accusation seeking to revoke respondent Felix Calano Natnat's real estate broker's license.

Respondent's license history

2. On April 21, 1998, the bureau issued respondent a real estate salesperson's license.¹ On November 5, 1999, respondent was issued real estate broker's license number 01237577. On September 25, 2003, the real estate broker's license was revoked following an administrative hearing. On January 30, 2006, respondent's petition for reinstatement of the broker's license was denied and a right to a restricted real estate broker's license was

¹ The evidence did not establish if the real estate salesperson's license issued to respondent was assigned a license number; or if the broker's license number issued was the same number as the real estate salesperson's license.

authorized. On March 2, 2007, respondent was issued a restricted real estate broker's license that expired on March 1, 2011. The real estate broker's license was renewed on May 10, 2011. On September 8, 2011, the broker's license was reinstated without restriction.

3. On January 13, 2014, in the Superior Court of the State of California, County of Alameda, respondent was convicted, upon his plea of no contest, of violating Penal Code section 470, subdivision (a) (forgery), a misdemeanor. This offense is substantially related to the qualifications, functions or duties of a real estate licensee. (Cal. Code Regs., tit. 10, § 2910.) Imposition of sentence was suspended and respondent was placed on probation for 36 months on conditions that included serving one day in jail and paying approximately \$300 in fines and fees. Respondent remains on probation until 2017.

4. The evidence did not establish the facts and circumstances surrounding respondent's 2014 conviction.

5. Respondent failed to notify the bureau of his January 13, 2014, forgery conviction.

Respondent's evidence

6. Respondent admits being convicted on January 13, 2014, but does not recall what charges he pled to. Respondent denied that he was convicted of forgery. Respondent could not recall the facts and circumstances of his conviction or the forgery allegations.

7. Respondent stated that in September 2003 his license was revoked for "nothing," and he felt that he was being discriminated against.

8. Respondent stated that he has been a real estate broker for a number of years and is well-versed in real estate law. According to respondent he is good at selling real estate.

9. Respondent's testimony was not credible.

Costs of investigation and enforcement

10. The Bureau has incurred costs in the amount of \$854.40 for real estate counsel's time spent investigating and enforcing this matter. In the absence of evidence to the contrary, these costs are found to be reasonable.

LEGAL CONCLUSIONS

1. Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b),² provide that a license may be suspended or revoked if the licensee has been convicted of a crime that is substantially related to the qualifications, functions and or duties of a real estate license.

California Code of Regulations, title 10, section 2910, subdivision (a)(2), provides that a crime of forgery is substantially related to the qualifications, functions or duties of a real estate licensee. Consequently, respondent's January 2014 conviction for forgery is substantially related to the qualifications, functions and/or duties of a real estate licensee.

By reason of the matters set forth in Factual Finding 3, cause exists pursuant to sections 490, subdivision (a), and 10177, subdivision (b), to suspend or revoke respondent's real estate broker's license.

2. Section 10186.2, subdivision (a)(1)(B), provides that a licensee shall report to the bureau any misdemeanor conviction. Pursuant to sections 10186.2, subdivision (a)(2), and 10186.2, subdivision (b), failure to report a misdemeanor conviction to the bureau within 30 days constitutes cause for discipline.

By reason of the matters set forth in Factual Finding 5, cause exists pursuant to section 10186.2, subdivisions (a)(1)(B), and (a)(2), to discipline respondent's real estate broker's license.

3. After the bureau has established grounds for license discipline, respondent has the burden of demonstrating that he is sufficiently rehabilitated from his conviction so that it would not be contrary to the public interest to allow him to continue to perform the duties of a real estate licensee. California Code of Regulations, title 10, section 2912, sets forth criteria to consider in evaluating the rehabilitation of a licensee including the following: the passage of not less than two years from the most recent conviction that is substantially related to the qualifications, functions or duties of a licensee of the bureau; successful completion of probation; payment of any fine imposed in connection with the conviction; and, a change in attitude from that which existed at the time of the commission of the criminal acts in question. (Cal. Code of Regs., tit. 10, § 2912, subs. (a), (e), (g), and (m).)

Respondent has not met his burden of demonstrating sufficient rehabilitation to support his continued licensure at this time.

One of the most important criteria of rehabilitation is a change of attitude from that which existed at the time of the offense. Respondent has not presented any evidence to show a change in his attitude or any insight into the failings on his part. To the contrary,

² All statutory references are to the Business and Professions Code, unless otherwise noted.

respondent denies that he committed the forgery offense, and does not accept responsibility for his actions. Respondent has not taken steps nor indicated a willingness to modify his behavior in order to assure the bureau that he will not engage in misconduct in the future. Additionally, respondent failed to fulfill his obligation to report the conviction charges and his misdemeanor conviction to the bureau within 30 days. This misconduct raises questions about his ability to fulfill the duties of a real estate broker. Additionally, it has been less than two years since respondent's conviction, and he remains on probation until 2017. Respondent has not paid his fines.

At this time, it would be contrary to the public interest to allow respondent to retain his real estate broker's license.

Cost recovery

4. Section 10106 provides that a licensee found to have violated the real estate licensing laws may be ordered to pay the bureau "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." In determining the extent to which costs will be ordered, the following factors have been considered: whether respondent succeeded in getting the charges dismissed or the severity of discipline reduced; whether respondent presented a "colorable challenge" to the proposed discipline; whether respondent possessed a "subjective good faith belief" in the merits of his position; and whether respondent is financially able to pay such costs. (*Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.) Additionally, under *Zuckerman*, the board must not assess full enforcement costs when to do so would penalize an individual who has committed some misconduct, but who has used the hearing process to reduce the severity of the discipline imposed. (*Ibid.*)

In the instant case, respondent failed to present any evidence of rehabilitation or an inability to pay a cost award. Respondent denied that he was convicted of forgery, he does not accept responsibility for his conduct; and, he presented no evidence of a colorable challenge or a subjective good faith belief in the merits of his position.

It is determined that no cause exists to reduce the bureau's cost recovery. As such, the total cost awarded to the bureau is \$854.40.

ORDERS

1. All licenses and licensing rights of respondent Felix Calano Natnat under the Real Estate Law are revoked.

2. Respondent Felix Calano Natnat shall pay the bureau its costs of investigation and enforcement in the amount of \$854.40. Payment shall be made by certified or cashier's check made payable to the Bureau of Real Estate within 60 days from the effective date of the Decision.

DATED: February 4, 2015



DIANNA L. ALBINI
Administrative Law Judge
Office of Administrative Hearings