

FILED

OCT 21 2015

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

BUREAU OF REAL ESTATE

By H. Contreras

In the Matter of the Accusation of

LINO B. AMARANTE,

Respondent.

No. H-11800 SF

OAH No. 2015030785

DECISION

The Proposed Decision dated September 11, 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.

Pursuant to Section 11517(c)(2)(C) of the Government Code, the following corrections are made:

On Page 8, Paragraph 5, at Line 3: "Post Office Box 187000, Sacramento, CA 95818-7000. ..." shall read: "Post Office Box 137000, Sacramento, CA 95813-7000. ...".

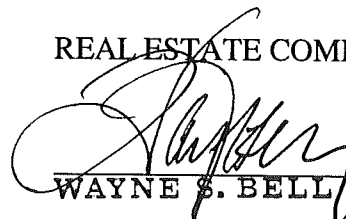
The Decision suspends or revokes the real estate broker license and/or license rights; however, the right to a restricted real estate salesperson license is granted to Respondent.

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 NOV 10 2015.

IT IS SO ORDERED 10/15/2015

REAL ESTATE COMMISSIONER


WAYNE S. BELL

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

LINO B. AMARANTE,

Respondent.

Case No. H-11800 SF

OAH No. 2015030785

PROPOSED DECISION

Administrative Law Judge Adrienne J. Miller, State of California, Office of Administrative Hearings, heard this matter on August 13, 2015, in Oakland, California.

John W. Barron, Counsel, represented complainant Robin S. Tanner.

Respondent Lino B. Amarante appeared and represented himself.

The record was kept open until August 27, 2015, for the respondent to submit character letters and evidence of payment of his fines and completion of his court ordered classes. Complainant was given until August 31, 2015 to file a response to respondent's evidence. On August 25, 2015, respondent submitted 10 character letters, marked as Exhibit A, payment receipts, canceled checks, and a completion certificate, marked as Exhibit B, confirmation of completion of community service, marked as Exhibit C, confirmation of completion of weekend work program, marked as Exhibit D, Hemet Facility Treatment confirmation, marked as Exhibit E. Complainant did not file a response; accordingly all the exhibits were admitted in evidence.

The record closed and the matter was submitted on August 31, 2015.

FACTUAL FINDINGS

1. Complainant Robin S. Tanner, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California, filed an accusation against respondent.
2. Respondent Lino B. Amarante is licensed and has licensing rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) as a real estate broker with the Bureau of Real Estate (bureau). Respondent's license is current and will expire on January 12, 2017.

Causes for Discipline

CONVICTION

3. On March 20, 2014, in the Superior Court of California, County of Santa Clara, case number C1368223, respondent was convicted on his plea of nolo contendere, of violating Penal Code section 273.5, subdivision (A) (infliction of corporal injury on a spouse), a misdemeanor. Imposition of sentence was suspended and respondent was placed on three years' court probation. Terms and conditions of probation included serving 10 days in county jail, with four days credit for time served, paying a fine in the amount of \$864, completing a 52-week domestic violence class, and completing 20 hours of community service.

4. The facts and circumstances underlying respondent's conviction occurred on October 20, 2013. Respondent's wife awoke in the morning with a black eye, which she said she received the night before when respondent hit her in the face during an argument. Respondent's wife had been drinking alcohol the night before and took a sleeping aid medication prior to going to bed. In the morning respondent saw his wife's black eye and called his adult children to take care of their mother and then he left the residence to go to work. Later in the day respondent was arrested.

REPORTING OF CONVICTION

5. Pursuant to Business and Professions Code section 10186.2, subdivision (a)(1)(B), effective January 1, 2012, a licensee must notify the bureau in writing of any misdemeanor conviction within 30 days of the conviction.

6. Respondent did not notify the bureau in writing within 30 days of his misdemeanor conviction. Respondent testified credibly that he was under tremendous stress regarding his wife's alcohol and drug addiction, and admits that he failed his duty to notify the bureau, but it was an oversight and he did not intentionally try to hide his conviction.

Respondent's Evidence

7. Respondent is a 60-year-old married man with three adult children. Since the incident on October 30, 2013, he has been living with his sister. Respondent's wife of 41 years is living in their family home. Respondent is currently providing financial support for his wife.

8. Respondent immigrated to the United States with his parents and his 11 siblings when he was 12 years old. He completed his high school education and then married when he was 19 years old. Respondent has worked hard to raise his three children and educate them. Over the years respondent has purchased a family home, and several

income properties, including his own office building and a Santa Clara University student rental property.

9. Respondent was originally licensed as a real estate salesperson in May 1980. In January 1993, respondent received his broker's license. He has had no prior discipline of his license and is very respectful of the real estate industry and would not do anything to jeopardize his license or his real estate business.

10. Respondent is involved in several local business and non-profit organizations in his community. He has served as the president and has been on the board of St. Anthony Society and the Portuguese fraternal organization, Sociedade do Espirito Santo (SES). Respondent has donated thousands of hours of time and money to his Portuguese charitable organizations. Respondent is also fluent in English, Portuguese and Spanish and uses his lingual skills to help others interpret legal documents and appear at legal hearings. For the last two years respondent has also helped the Philippine community by sponsoring Christmas food donations for the homeless and raising money to help the poor and aged in the Philippines.

11. Respondent testified credibly when he described that the incident of October 20, 2013, was the culmination of his wife's 15-year addiction to alcohol and pain medication. Respondent denies that he hit his wife and believes that she fell during the night or early morning and injured herself without having any memory of how she was injured. Respondent pleaded no contest to the domestic violence charge to avoid a long, expensive and difficult court proceeding for himself and his children. Respondent did not want to bring any more humiliation or pain to his family and hopes that his wife will receive the medical treatment she needs to overcome her addictions. Respondent intends to pay for his wife's detoxification treatment program with Hemet Facility.

12. Respondent completed the court ordered 52-week domestic violence program on May 20, 2015. He completed the court ordered 20 hours of community service in October 2014, through the Sociedade Filamonica União Portuguesa de Santa Clara, which is a non-profit organization that teaches both children and adults to play musical instruments in the Portuguese/Catholic parades and festivals all over the United States and abroad. On April 4, 2014, respondent paid his fines. Respondent's court probation will end on March 20, 2017.

13. Respondent's son, Jason Lino Amarante (JLA) testified on behalf of respondent and confirmed that his father is a hardworking family man who loves his family and his community. JLA also confirmed that his mother's 15-year battle with alcoholism and addiction to pain medication has been very stressful for the entire family. JLA testified credibly that it has been difficult for the family to help his mother seek the proper treatment because of her own denial of her addiction. He believes that his father did not strike his mother on October 20, 2013, and has never seen his father strike his mother. JLA believes that his mother probably injured herself, but did not realize it because of her intoxication. In conclusion, JLA testified that it is the intent of the family to admit their mother to a detoxification treatment program at Hemet Valley Recovery Center as soon as possible.

14. Respondent submitted a letter, dated August 24, 2015, from Aleida Jones, the group facilitator of the domestic violence program respondent attended. Ms. Jones states in her letter that respondent "... participated actively in sessions and completed the program diligently with no misses. He has shown Empathy and respect for his classmates. During his participation in the program he has helped others in need and has been a positive role model for the younger attendees. [Respondent] has also gain[ed] the respect and trust of acquaintances because of his integrity, strong character in his faith, family values and humbleness."

15. Respondent submitted an additional 9 character letters. Lisa Amarante, an acquaintance for the past nine years, states in her letter that she has never met "... a man more dedicated to his family, career and community. [Respondent] is a man you can always count on when help is needed. He is always looking out for people's best intentions and genuinely wants the best for others." Cheryl Javier, Sales Manager of CBC Realty, states in her letter, dated August 20, 2015, that she has known respondent for over 26 years and that respondent abides to the highest ethical standards of all of the bureau's ethics, rules and regulations. Myron Von Raesfeld, a licensed real estate agent has known and worked with respondent since 1980, and states in his letter dated August 20, 2015, that respondent is "... a broker that another agent can count on him to be honest and helpful in putting a transaction together. He is an excellent advocate for his clients and always been fair to all parties." Randy Martin, a licensed real estate agent, who has worked under respondent's broker's license for the last 15 years, states in his letter, dated August 20, 2015, that respondent "... follows not only the letter of the law but emphasizes honesty and integrity practices when conducting business." Stephen Aggarwal, respondent's son-in-law, states in his letter dated August 20, 2015, that, "Having been a member of [respondent's] family for nearly 10 years, I can unequivocally state this charge is completely contrary to the typical integrity with which [respondent] conducts every aspect of his business activities as well as his personal life in general." Lisa M. Gillmor, managing broker of Gillmor & Associates, states in her letter dated August 21, 2015, that she has known respondent for nearly three decades and that she considers respondent "... one of the premier real estate professionals in Santa Clara. Like me, he runs a small office; however, his knowledge of the Santa Clara and surrounding market is phenomenal. [He] has a solid reputation in the community and it has always been a pleasure to work with him." The remainder of respondent's character letters reiterate respondent's honesty and good character in the community and with his family and colleagues.

Costs

16. Complainant request reimbursement for the costs of investigation of this matter in the amount of \$640.50. In support of the request for investigative costs, complainant submitted a certified declaration. In the absence of evidence to the contrary, this amount is found to be reasonable.

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.)

Causes 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 March 20, 2014 conviction for domestic violence is substantially related to the qualifications, functions or duties of a real estate licensee. By reason of the matters set forth in Findings 3 and 4, the conviction constitutes cause to discipline 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 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 Factual Finding 5, constitutes cause for discipline. The evidence demonstrated, however, that respondent's failure was not intentional. It was caused by the stress of dealing with his wife's alcohol and drug addiction.

Assessment of Rehabilitation

7. Respondent must demonstrate 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 broker. 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)).

5. Respondent's conviction was less than two years ago, and his court probation will not terminate until March 20, 2017, but he has nonetheless met many of the rehabilitation criteria. Respondent has completed the domestic violence program on May 20, 2015, he completed his court ordered community service in October 2014, and he paid his fines on April 20, 2014.

6. It is noted that respondent has had a real estate salesperson license for over 35 years and his broker's license for over 22 years and he has no prior history of license discipline. He is well respected in the real estate community. At hearing respondent accepted the serious nature of his conviction and appeared to sincerely regret his behavior. However, respondent denies that he hit his wife; he asserts that to save his his family further embarrassment and an emotional and time consuming trial, he pled no contest to the charges of domestic violence. Since the incident respondent has not lived with his wife, however he continues to provide financial support for her and is paying for her medical treatment for her alcohol and pain medication addictions.

The purpose of this proceeding is not to further punish respondent for his criminal conduct, but to ensure that real estate licensees will be worthy of the fiduciary responsibilities they bear. Although it would be against the public interest to allow respondent to hold an unrestricted real estate broker license at this time, it would not be against the public interest to grant respondent a restricted real estate salesperson license, under appropriate terms and conditions. These terms and conditions shall be in force for three years. This period of restriction is appropriate given that respondent will not complete his court probation until March 20, 2017. This will protect the public as respondent continues with his rehabilitation.

Costs

7. 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.

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 did not establish a basis for reducing the costs.

ORDER

All licenses and licensing rights of respondent Lino B. Amarante, under the Real Estate Law, are revoked; 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 therefor 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 the provisions of Business and Professions Code section 10156.7, 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 nor for the removal of any of the conditions, limitations or restrictions of a restricted license until three 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 bureau which shall certify:

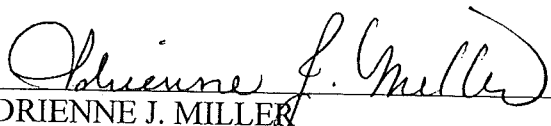
(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

(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 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.
6. Respondent shall pay the bureau's costs associated with its investigation and enforcement pursuant to Business and Professions Code section 10106, in the amount of \$640.50.

Respondent shall be permitted to pay these costs in a payment plan approved by the bureau. Respondent's failure to make payments in accordance with any formal agreement entered into with the bureau or pursuant to any Decision by the bureau 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: 9-11-15


ADRIENNE J. MILLER
Administrative Law Judge
Office of Administrative Hearings