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FILED

MAR 20 2018

BUREAU OF REAL ESTATE

By B. Nicholas

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) CalBRE No. H-12081 SF
MICHAEL ALAN LITTMAN,) OAH No. 2017100441
Respondent.)

ORDER DENYING RECONSIDERATION

On, February 05, 2018, a Decision was rendered in the above-entitled matter. The Decision was to become effective on February 27, 2018, and was stayed by separate Order to March 22, 2018.

On February 15, 2018, Respondent petitioned for reconsideration of the Decision of February 05, 2018.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of February 05, 2018, and reconsideration is hereby denied.

IT IS SO ORDERED March 20, 2018.

WAYNE S. BELL
REAL ESTATE COMMISSIONER

Daniel J. Sandri

By: DANIEL J. SANDRI
Chief Deputy Commissioner

FILED

February 20, 2018

BUREAU OF REAL ESTATE

By 

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

*** * ***

In the Matter of the Accusation of) CalBRE NO. H-12081 SF
MICHAEL ALAN LITTMAN,) OAH NO. 2017100441
Respondent(s).)

ORDER STAYING EFFECTIVE DATE

On February 5, 2018, a Decision was rendered in the above-entitled matter to become effective February 27, 2018.

IT IS HEREBY ORDERED that the effective date of February 27, 2018, is stayed for a period of 30 days to consider Respondent's petition for reconsideration.

The Decision of February 5, 2018, shall become effective at 12 o' clock noon on March 22, 2018.

DATED: February 20, 2018.

**WAYNE S. BELL
REAL ESTATE COMMISSIONER**

By: 
**DANIEL J. SANDRI
Chief Deputy Commissioner**

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

FILED

FEB 06 2018

BUREAU OF REAL ESTATE

By B. Nicholas

In the Matter of the Accusation of

MICHAEL ALAN LITTMAN,

Respondent.

) CalBRE No. H-12081 SF

) OAH No. 2017100441

DECISION

The Proposed Decision dated January 11, 2018, 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.

Pursuant to Government Code Section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Bureau's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first.

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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 Sections 11521 and 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 **FEB 27 2018**

IT IS SO ORDERED 2/5/18

WAYNE S. BELL
REAL ESTATE COMMISSIONER

A handwritten signature in blue ink, appearing to read "Daniel J. Sandri", is written over a horizontal line.

By: DANIEL J. SANDRI
Chief Deputy Commissioner

BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MICHAEL ALAN LITTMAN,

Respondent.

Case No. H-12081 SF

OAH No. 2017100441

PROPOSED DECISION

Administrative Law Judge David Benjamin, State of California, Office of Administrative Hearings, heard this matter on November 20, 2017, in Vacaville, California.

Real Estate Counsel Kyle T. Jones represented complainant Robin S. Tanner, Supervising Special Investigator, State of California.

Respondent Michael Alan Littman represented himself.

The record was left open to December 22, 2017, to allow respondent to submit evidence that he notified the Bureau of his convictions as required, and to January 5, 2018, to allow complainant to respond. No evidence was submitted. On December 18, 2017, respondent filed a request to leave the record open to September 15, 2018, to submit any such evidence. Respondent's request was denied by Order dated January 3, 2018, and the record closed and the matter was deemed submitted on that date.

FACTUAL FINDINGS

1. At all times relevant to this proceeding, respondent Michael Alan Littman was licensed or had licensing rights under the Real Estate Law (Bus. & Prof. Code, § 10000 et seq.) as a real estate broker and as the designated officer of Key Properties Financial Inc., a real estate corporation. He was first licensed as a broker in 1983. Respondent's broker license has been previously disciplined pursuant to a Stipulation and Agreement effective May 13, 2013. The license was suspended for 15 days, and the suspension was stayed for two years, for failure to timely notify the Bureau of Real Estate (Bureau), in writing, of pending felony charges.

2. On January 24, 2014, in the Superior Court of the State of California, County of Contra Costa, respondent was convicted by jury verdict of a violation of Penal Code

section 192, subdivision (a) (voluntary manslaughter), a violation of Penal Code section 245, subdivision (a)(1) (assault by force likely to produce great bodily harm), and a violation of Penal Code section 646.9, subdivision (a) (stalking), all felonies. On September 12, 2014, respondent was committed to state prison for a term of four years and eight months, and ordered to pay certain fines, fees and assessments. In its decision filed December 8, 2016, the court of appeal affirmed the judgment of conviction.

Respondent's convictions arose out of a long-standing dispute between respondent and his neighbors, Victor and Doris Penico, regarding use of a shared driveway between their homes in Alamo. In the words of the court of appeal, the relationship over a period of seven or eight years was marked by "animosity, slights real or perceived, tit for tat retaliations – and unrelenting bitterness." On August 27, 2012, respondent was filming Doris Penico as she was backing out of her driveway, as he had done many times before. She called her husband on her cell phone and Victor Penico came out of the house while respondent was filming and demanded that he stop. Respondent struck Victor Penico repeatedly and, according to the court of appeal, the evidence established that respondent either struck Doris Penico, causing her to fall, or pushed Victor Penico into his wife, causing her to fall. Doris Penico fell and struck her head on the concrete walk, and died as a result of her injuries.

3. A real estate licensee who is convicted of a felony must notify the Bureau of the conviction, in writing, within 30 days of the conviction. (Bus. & Prof. Code, § 10186.2, subds. (a)(1)(B) & (a)(2).) Respondent did not give the Bureau timely written notice of his convictions as required by section 10186.2.

Respondent's evidence

4. Respondent states that, since he was first licensed, he has worked at the highest professional level of any real estate professional he has met. Until the events of August 2012, respondent had never been the subject of disciplinary action by the Bureau.

5. Respondent maintains that he is completely innocent of all the charges that were brought against him. He claims that Victor Penico was the aggressor. Respondent expresses no remorse for the death of Doris Penico, which he maintains was an accident, and he accepts no responsibility for it. Respondent feels that his convictions should have no bearing on his real estate license, because the convictions did not involve financial matters or "defrauding or misleading someone."

6. Respondent has given talks to fellow inmates about real estate. He serves as a literacy tutor in prison and encourages inmates to pursue their high school and college education. Respondent himself is taking colleges classes while he is incarcerated.

Cost recovery

7. The Bureau has incurred costs of \$2,374.75 in its investigation and enforcement of this case. That amount represents \$2,219.00 in investigative costs and \$155.75 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.

With respect to the Bureau's request for cost recovery, respondent states that he is still defending himself in a wrongful death action brought by Victor Penico, and that he has to pay his attorneys' fees. He argues that the Bureau should waive cost recovery because he is innocent.

LEGAL CONCLUSIONS

1. The standard of proof applied in making the factual findings set forth above is clear and convincing evidence to a reasonable certainty.

2. 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 crime that is substantially related to the qualifications, functions or duties of a licensee. Section 10177, subdivision (b), further provides that a license may be disciplined if the licensee has been convicted of a felony whether or not the crime is substantially related. Under California Code of Regulations, title 10, section 2910, a crime is deemed to be substantially related if it involves "[d]oing of any unlawful act with the intent . . . or threat of doing substantial injury to the person or property of another . . ." (subd. (a)(8)). Respondent's convictions of a violation of Penal Code section 192, subdivision (a), Penal Code section 245, subdivision (a)(1), and Penal Code section 646.9, subdivision (a), are felonies, and they are also crimes substantially related to the qualifications, functions or duties of a licensee. 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 Finding 2.

3. Business and Professions Code section 10177, subdivision (d), provides that a real estate license may be disciplined if the licensee has willfully disregarded or violated any provision of the Real Estate Law. Business and Professions Code section 10186.2, subdivision (a), requires a real estate licensee to report any conviction to the Bureau within 30 days of the conviction. Under subdivision (b) of that section, failure to timely report a conviction is cause for discipline. Cause exists under Business and Professions Code section 10177, subdivision (d), as that section interacts with section 10186.2, to take disciplinary action against respondent's license by reason of the matters stated in Findings 2 and 3.

4. The burden is on respondent to demonstrate that he is sufficiently rehabilitated from his criminal convictions 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 the strength of a licensee's rehabilitation. (Cal. Code Regs., tit. 10, § 2912.) The Bureau's criteria have been considered.

It is acknowledged that respondent is encouraging other inmates to take advantage of their educational opportunities, and that he is helping them to achieve their goals. Evidence of rehabilitation, however, must be measured against the severity of the crime: the more serious the crime, the stronger the showing of rehabilitation must be. Respondent's crimes could not be more serious, and therefore a compelling showing of rehabilitation is required. Respondent's showing falls far short, as there is no evidence of personal rehabilitation. Since he committed the crimes in 2012, there has been no change in respondent's attitude towards his conduct. Despite jury verdicts of guilty and a judgment against him that was affirmed by the court of appeal, respondent maintains that he is innocent. He accepts no responsibility for his crimes, and expresses no remorse for the tragic death of Doris Penico. It would be contrary to the public interest to allow respondent to retain his real estate license, even on a restricted basis.

Cost recovery

5. Business and Professions Code section 10106 provides that a licensee found to have violated the licensing laws may be ordered to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. As set forth in Finding 7, it was established that complainant has incurred \$2,374.75 in actual and reasonable costs in connection with the investigation and enforcement of this matter.

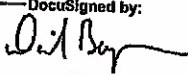
6. The case of *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, sets forth certain standards by which a licensing board must exercise its discretion to reduce or eliminate cost awards to ensure that licensees with potentially meritorious claims are not deterred from exercising their right to an administrative hearing. Those standards include whether the licensee has been successful at hearing in getting the charges dismissed or reduced, the licensee's good faith belief in the merits of his position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. None of these considerations supports a reduction in the Bureau's cost recovery.

ORDER

1. All licenses and licensing rights of respondent Michael Alan Littman under the Real Estate Law are revoked.

2. Respondent Michael Alan Littman shall pay the Bureau its costs of investigation and enforcement in the amount of \$2,374.75.

DATE: January 11, 2018

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DAVID BENJAMIN
Administrative Law Judge
Office of Administrative Hearings