

This Decision shall become effective at 12 o'clock noon on MAR 30 2021.

IT IS SO ORDERED 3-1-21

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

Douglas R. McCauley

FILED

FEB 11 2021

DEPARTMENT OF REAL ESTATE
By *L. Sanyal*

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

In the Matter of the Accusation Against:

BEHNAM HALALI, Respondent.

Agency Case No. H-12342 SF

OAH No. 2020090652

PROPOSED DECISION

Administrative Law Judge Traci C. Belmore, State of California, Office of Administrative Hearings, heard this matter on November 23, 2020, via videoconference.

Adriana Z. Badilas, Counsel, represented complainant Robin S. Tanner, Supervising Special Investigator, Department of Real Estate, State of California.

Respondent Behnam Halali was present at the hearing, representing himself.

The record closed and the matter was submitted for decision on November 23, 2020.

FACTUAL FINDINGS

1. Respondent Behnam Halali is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code, as a real estate broker. Respondent's real estate broker license was issued on January 11, 2013 and expired on January 10, 2017.

2. On December 24, 2018, complainant Robin S. Tanner filed an accusation in her official capacity as Supervising Special Investigator. The accusation alleges that respondent is subject to discipline for being convicted of two substantially related crimes, failure to timely notify the Department of Real Estate (Department) of the convictions, and engaging in fraud or dishonest dealing. Respondent filed a notice of defense and this hearing ensued.

Convictions

3. On December 16, 2014, respondent was indicted in the United States District Court for the Northern District of California for six violations of the United States Code: conspiracy to commit wire fraud (18 U.S.C. § 1349), three counts of wire fraud (18 U.S.C. § 1343), money laundering (18 U.S.C. § 1957), and aggravated identity theft (18 U.S.C. § 1028), all felonies.

4. A jury found respondent guilty of conspiracy to commit wire fraud, three counts of wire fraud, and aggravated identity theft on a date not established by the record. The money laundering charge was dismissed. On January 10, 2018, respondent was sentenced to serve 60 months in prison followed by three years of supervised release. Respondent was also ordered to pay restitution.

5. The above offenses occurred between September and December 2011. Respondent and his co-conspirators were working as independent contractors selling life insurance policies. Respondent sold life insurances to individuals knowing that the individuals would not retain the policies on a long-term basis. Respondent sold them the policies in order to receive commissions, bonuses, and to meet sales quotas. When respondent sold the policies, he knew that the individuals would keep them long enough for respondent to receive his commission and/or any associated bonuses. As a result, respondent and his co-conspirators received in excess of \$2,500,000 in unearned commissions.

6. Respondent did not notify the Department of his indictment or conviction within 30 days of either event.

Respondent's Evidence

7. Respondent took full responsibility for his past wrongdoing. He admitted he made several mistakes but stated that he had learned from them.

8. Respondent's criminal behavior occurred in 2011, two years prior to obtaining his real estate broker's license. At the time of the criminal behavior, respondent was drinking heavily. Respondent believed his drinking was "normal." Respondent learned during his incarceration that his drinking was problematic. Respondent does not believe his drinking caused his criminal behavior, but it was a factor. Respondent has a sobriety date of March 25, 2018.

9. Respondent obtained his real estate broker's license after the criminal behavior occurred but prior to being indicted for it. Respondent has no history of license discipline.

10. Respondent is attending Alcoholics Anonymous (AA) meetings and therapy sessions weekly.

11. Respondent was released from prison on May 18, 2020. Respondent earned early release by participating in 10 months of cognitive therapy, six months of behavioral therapy, and a 2,000-hour apprenticeship. Respondent had no disciplinary issues while incarcerated. Respondent is currently participating in a one-year residential re-entry program, at the conclusion of which he will start his three-year term of supervised release.

12. Respondent credibly testified that he notified the Department of his indictment but acknowledged that it was not within 30 days of the December 16, 2014 indictment. Respondent included information about his indictment in his application to renew his real estate broker's license sometime in 2016. Respondent notified the Department of his convictions on June 7, 2018, and admitted that he had not notified the Department within the required 30 days.

13. Respondent is currently working as a retail clerk and his employer is aware of his convictions. Respondent has not engaged in community service as he was released from prison during the COVID-19 pandemic.

Costs

14. In connection with the investigation and enforcement of this accusation, complainant requests an award of costs in the total amount of \$1,015.75. These costs reflect \$244.75 in enforcement costs and \$771.00 in investigative costs. The request is supported by declarations that comply with the requirements of California Code of Regulations, title 1, section 1042. The amount of costs is reasonable.

LEGAL CONCLUSIONS

1. The burden of proof is on the complainant to show cause for discipline by clear and convincing evidence. (*Small v. Smith* (1971) 16 Cal.App.3d 450,457; Evid. Code, § 500.) The burden is on respondent to show rehabilitation by a preponderance of the evidence. (Evid. Code, §§ 115, 500.)

2. Business and Professions Code sections 490 and 10177, subdivision (b), authorize the Commissioner to suspend or revoke the license of a licensee who has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a licensee. California Code of Regulations, title 10, section 2910, sets forth the criteria to be used when determining whether a crime or act is substantially related to the qualification, functions, or duties of a real estate licensee.

Respondent's convictions for conspiracy to commit wire fraud, wire fraud, and aggravated identity theft (Factual Finding 4) are substantially related to the qualifications, functions, or duties of a real estate licensee. (Cal. Code Regs., tit. 10, § 2910 subd. (a)(1), (2) & (8).) Cause exists to discipline respondent's license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b).

3. Business and Professions Code section 10177, subdivision (j), authorizes the Commissioner to suspend or revoke the license of a licensee who has engaged in any conduct that constitutes fraud or dishonest dealing. Respondent's conduct underlying the convictions involved fraud and/or dishonest dealing. (Factual Finding 5.) Cause exists to discipline respondent's license pursuant to this section.

4. Business and Professions Code section 10186.2 establishes the duty of a licensee to report the bringing of a criminal complaint, information, or indictment

charging a felony against the licensee, and the conviction of the licensee of any felony or misdemeanor within 30 days of the occurrence and provides that failure to do so constitutes cause for discipline. Business and Professions Code section 10177, subdivision (d), authorizes the Commissioner to impose license discipline for willful disregard or violation of the Real Estate Law. As set forth in Factual Findings 6 and 12, respondent failed to notify the Department of his indictment and convictions in a timely manner. Consequently, cause exists to discipline respondent's license pursuant to Business and Professions Code sections 10177, subdivision (d), and 10186.2.

5. The goal of license discipline proceedings is not punishment but rather to protect the public. (Bus. & Prof. Code, § 10050.1.) Having established that cause for discipline exists, the question is whether respondent has demonstrated that he can be trusted to discharge the duties of a real estate licensee in a manner consistent with public safety.

6. The criteria for evaluating rehabilitation of a licensee who has been convicted of a crime are set forth in California Code of Regulations, title 10, section 2912, and have been considered. The relevant criteria include: the nature and severity of the crime or act; the licensee's criminal history; the time that has elapsed since the commission of the acts; compliance with probation; change in attitude from that which existed at the time of the offenses; payment of restitution; and significant and conscientious involvement in community programs. Of the many rehabilitation criteria, a change in attitude is "arguably the most important in predicting future conduct." (*Singh v. Davi* (2012) 211 Cal.App.4th 141, 149.)

7. Nine years have passed since the commission of the acts but only two years since respondent's conviction and sentencing. Respondent has earned an early release from prison, maintained his sobriety, acknowledged the wrongfulness of his

conduct and is on the path to rehabilitation. (Factual Findings 7, 8, and 11.)

Respondent's rehabilitation efforts are to be commended but they are a work in progress. Respondent's convictions occurred only two years ago, and he is still under the control of the criminal justice system and is not scheduled to complete his supervised release for several years. (See *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [rehabilitation cannot be completely assessed until applicant is no longer under threat of violation].)

Respondent's crimes involved defrauding an insurance company of large sums of money through a complicated and sophisticated scheme. The purpose of this proceeding is not to further punish respondent for his criminal conduct (*Donaldson v. Department of Real Estate* (2005) 134 Cal.App.4th 948, 958, fn. 10), but to ensure that real estate brokers and salespersons will be honest, truthful, and worthy of the fiduciary responsibilities they bear. (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402).

At this time, respondent has not demonstrated that he is sufficiently rehabilitated from his criminal offenses such that he could be trusted to discharge the duties of a real estate broker in a manner consistent with public safety. Given these circumstances, it would be against the public interest to allow respondent to retain a real estate broker license even on a restricted basis.

Costs

8. Business and Professions Code section 10106 authorizes the Department to recover its reasonable costs of investigation and enforcement in disciplinary proceedings. Based on Factual Finding 14, respondent is ordered to pay \$1,015.75 pursuant to this section.

ORDER

1. All licenses and licensing rights of respondent Behnam Halali under the Real Estate Law are revoked.
2. Respondent shall pay the Department's costs associated with the investigation and enforcement of this proceeding in the amount of \$1,015.75.

DATE: 12/18/2020

TRACY C. BELMORE

Administrative Law Judge

Office of Administrative Hearings