

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of No. H-32136 LA

JACK THANTRON, L-2005100382

Respondent.

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DECISION AFTER REJECTION

This matter was heard on September 6, 2005, by

Administrative Law Judge ("ALJ") Deborah Myers at the Office of

Administrative Hearings ("OAH) in Los Angeles, California.

Respondent JACK THANTRON ("Respondent") appeared personally and represented himself.

Elliott Mac Lennan, Counsel, represented the Complainant.

Evidence was received, the record was closed on September 6, 2005.

On October 5, 2005, the Administrative Law Judge submitted a Proposed Decision which I declined to adopt as my Decision herein.

Pursuant to Section 11517(c) of the Government Code of the State of California, Respondent was served with notice of my determination not to adopt the Proposed Decision of the Administrative Law Judge along with a copy of said Proposed Decision. On November 7, 2005, Respondent was notified that the case would be decided by me upon the record, the transcript of proceedings held on September 6, 2005, and upon written argument offered by Respondent and Complainant. On February 16, 2006, Complainant submitted argument. 9 10 Respondent has not submitted argument. 11 The Proposed Decision dated October 5, 2005, of the 12 Administrative Law Judge of the Office of Administrative 13 Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter. 14 15 The right to reinstatement of a revoked real estate license is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's 18 Criteria of Rehabilitation are attached hereto for the information of Respondent. 19 20 This Decision shall become effective at 12 o'clock noon **JUL** 12 21 on 2006. IT IS SO ORDERED 23 JEFF DAVY Real Estate Commissioner 24 25 26

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BEFORE THE DEPARTMENT OF REAL ESTATE STATE OF CALIFORNIA

In the Matter of the Accusation of

JACK THANTRON,

Respondent.

Case No. H-32136 LA

OAH No. L2005100382

PROPOSED DECISION

Daniel Juárez, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on December 21, 2005, in Los Angeles, California.

Elliot MacLennan, Staff Counsel, represented Deputy Real Estate Commissioner Maria Suarez (Complainant).

Jack Thantron (Respondent) appeared and represented himself at the hearing.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on December 21, 2005.

FACTUAL FINDINGS

- 1. On July 25, 2005, Complainant, acting in her official capacity, signed the Accusation against Respondent.
- 2. Complainant's Accusation sets forth Respondent's misdemeanor conviction as grounds to revoke or suspend his real estate broker license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b).
- 3. Respondent has consistently held a real estate broker license since July 3, 2003 without any disciplinary action taken against him by the Department of Real Estate, until this action. Respondent's broker license expires on July 2, 2007 and was in effect at all times relevant to this action.
- 4. On November 18, 2003, following a guilty plea, the Riverside County Superior Court (case no. RIM444181) convicted Respondent of Penal Code section 503 (Embezzlement), a misdemeanor. The crime is substantially related to a real estate broker's qualifications, functions and duties, and involves moral turpitude. (See, Legal Conclusions

5-6, post.) The Superior Court suspended imposition of Respondent's sentence and placed him on summary probation for three years.

- 5. The terms and conditions of Respondent's probation included payment of \$316.00 in fines and \$100.00 in restitution, and 20 days in a county work release program, served on consecutive weekends. The sentencing court further ordered Respondent to submit to searches for stolen property upon request of law enforcement, pay further restitution to the victim store (in a later determined amount), obey all laws and ordinances, and not have negative contact with Target stores. Respondent paid all fines and restitution connected to his conviction and served his 20-day (weekend) sentence at the Smith Correctional Facility in Riverside County. Thus far, he has complied with the terms of his probation. His probation will terminate on, approximately, November 18, 2006.
- 6. The facts underlying Respondent's conviction are that, between August 5, 2003 and September 7, 2003, while working as a pharmacist at a Target retail store in Corona, California, Respondent used his employee access code to electronically activate ten dollars of credit on each of four Target gift cards. Respondent did not pay for these gift cards. He used two of the four cards to purchase miscellaneous items at two different Target stores in Anaheim Hills and Garden Grove, California. Unbeknownst to Respondent, a store surveillance camera had recorded his actions. Consequently, on September 29, 2003, the Corona Police Department arrested Respondent. Immediately upon arrest, Respondent expressed remorse for his actions and apologized for his actions. He returned the two unused cards to the Target store thereafter.
- 7. Respondent resigned from his pharmacist position at the store. He expressed remorse and embarrassment for his criminal actions. He asserted he would not repeat this or similar actions. He could not explain why he took and used the gift cards, saying only that it was an unexplainable impulse. He described his criminal actions as "stupid." He apologized directly to the staff at Target. He has no other criminal history. He was 31 years old at the time of the crime and arrest. Respondent had worked as a licensed pharmacist at various drug stores since February 1998. He has never had any discipline imposed on his pharmacy license. He holds a doctorate in Pharmacy from the University of the Pacific and an undergraduate degree from the University of California at Los Angeles. His professional goal is to become a direct lender by establishing a mortgage and residential real estate partnership.

LEGAL CONCLUSIONS

1. Business and Professions Code section 490 states:

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

2. Business and Professions Code section 10177, subdivision (b) states:

The commissioner may suspend or revoke the license of a real estate licensee . . . who has done any of the following . . .

[¶] · · · [¶]

- (b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.
- 3. Cause exists to revoke or suspend Respondent's real estate broker license, pursuant to Business and Professions Code section 490, for his misdemeanor conviction, as set forth in Factual Findings 4-6, and Legal Conclusions 1 & 5.
- 4. Cause exists to revoke or suspend Respondent's real estate broker license, pursuant to Business and Professions Code section 10177, subdivision (b), for his misdemeanor conviction, as set forth in Factual Findings 4-6, and Legal Conclusions 2 & 6.
- 5. Respondent's crime is substantially related to a real estate broker's qualifications, functions, and duties. A substantial relationship is found where the crime involves either "[t]he fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person, [t]he employment of ... fraud, deceit, falsehood ... to achieve an end," or the "[d]oing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator." (Cal. Code Regs., tit. 10, § 2910, subds. (1), (4) & (8).) Respondent stole money from Target by fraudulently activating gift cards for his own benefit. Therefore, Respondent's crime meets several regulatory provisions for finding a substantial relationship to a real estate broker's qualifications, functions, and duties.
- 6. Respondent's crime, by its facts and circumstances, involves moral turpitude. The courts have held that moral turpitude "is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." (*In re Craig* (1938) 12 Cal.2d 93, 97.) Moral turpitude "is inherent in crimes involving fraudulent

intent, intentional dishonesty for purposes of personal gain or other corrupt purpose. (Golde v. Fox (1979) 98 Cal.App.3d 167, 185.) Respondent engaged in fraudulent and dishonest acts to benefit himself financially. He did so as a Target employee, entrusted with the access codes that activate gift cards. Therefore, Respondent's crime involves moral turpitude.

- 7. Respondent has met some of the regulatory criteria for rehabilitation. He paid restitution to the Target store. (Cal. Code Regs., tit. 10, § 2912, subd. (b).) He paid all courtimposed fines. (Cal. Code Regs., tit. 10, § 2912, subd. (g).) He demonstrated a change in attitude from that which existed at the time of the commission of the crime. (Cal. Code Regs., tit. 10, § 2912, subd. (m).)
- 8. Respondent's crime involved \$40.00. While the embezzlement value was minor, there is cause to be concerned for the public's protection given the nature of Respondent's crime. Target entrusted Respondent, as an employee, with the access codes used to activate the store gift cards. Respondent breached that trust, acting in a deceitful manner for his own economic benefit. It is further concerning that Respondent did not present any reasoning or explanation for his actions. He described his criminal act as an impulse. Such a description gives rise to the concern of whether Respondent can be trusted as a real estate broker who will have access to client trust accounts and who carries fiduciary responsibilities in order to execute his broker duties. Nonetheless, Respondent demonstrated genuine remorse and he testified credibly that his criminal actions were out of character, and would not be repeated. His lack of a criminal history, and his seven years as a pharmacist and two years as a real estate broker with no license discipline, lead one to conclude that Respondent's singular, isolated incident is, in fact, best described as an impulsive act of poor judgment and immaturity, despite his age. The evidence supports a conclusion that the public will be adequately protected by allowing Respondent to hold a restricted real estate broker license.

ORDER

All licenses and licensing rights of Respondent Jack Thantron under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the Department 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:

l. 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 four (4) years have elapsed from the effective date of this Decision.
- 4. 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 the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
- 5. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning Respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest. Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of Respondent and periodic summaries of salient information concerning each real estate transaction in which the Respondent engaged during the period covered by the report.

January 9, 2006

DANIEL JUAREZ

Administrative Law Judge

Office of Administrative Hearings

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DEPARTMENT OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of JACK THANTRON,

No. H-32136 LA

L-2005100382

Respondent.

NOTICE

TO: JACK THANTRON, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated January 9, 2006, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated January 9, 2006, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on December 21, 2005, and any written argument hereafter submitted on behalf of Respondent and Complainant.

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OBE LEGAL/RECOVERY

02/08/2006 14:33 FAX 9162279458

Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of December 21, 2005, at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

Written argument of Complainant to be considered by me must be submitted within 15 days after receipt of the argument of Respondent at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

DATED:

Estare Commissioner

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BEFORE THE DEPARTMENT OF REAL ESTATE STATE OF CALIFORNIA

In the Matter of the Accusation of

JACK THANTRON,

Respondent.

Case No. H-32136 LA

OAH No. L2005100382

PROPOSED DECISION

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Elliot MacLennan, Staff Counsel, represented Deputy Real Estate Commissioner Maria Suarez (Complainant).

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- 2. Complainant's Accusation sets forth Respondent's misdemeanor conviction as grounds to revoke or suspend his real estate broker license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b).
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- 4. On November 18, 2003, following a guilty plea, the Riverside County Superior Court (case no. RIM444181) convicted Respondent of Penal Code section 503 (Embezzlement), a misdemeanor. The crime is substantially related to a real estate broker's qualifications, functions and duties, and involves moral turpitude. (See, Legal Conclusions

5-6, *post.*) The Superior Court suspended imposition of Respondent's sentence and placed him on summary probation for three years.

- 5. The terms and conditions of Respondent's probation included payment of \$316.00 in fines and \$100.00 in restitution, and 20 days in a county work release program, served on consecutive weekends. The sentencing court further ordered Respondent to submit to searches for stolen property upon request of law enforcement, pay further restitution to the victim store (in a later determined amount), obey all laws and ordinances, and not have negative contact with Target stores. Respondent paid all fines and restitution connected to his conviction and served his 20-day (weekend) sentence at the Smith Correctional Facility in Riverside County. Thus far, he has complied with the terms of his probation. His probation will terminate on, approximately, November 18, 2006.
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The commissioner may suspend or revoke the license of a real estate licensee . . . who has done any of the following . . .

 $[\P] \dots [\P]$

- (b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.
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- 4. Cause exists to revoke or suspend Respondent's real estate broker license, pursuant to Business and Professions Code section 10177, subdivision (b), for his misdemeanor conviction, as set forth in Factual Findings 4-6, and Legal Conclusions 2 & 6.
- 5. Respondent's crime is substantially related to a real estate broker's qualifications, functions, and duties. A substantial relationship is found where the crime involves either "[t]he fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person, [t]he employment of ... fraud, deceit, falsehood ... to achieve an end," or the "[d]oing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator." (Cal. Code Regs., tit. 10, § 2910, subds. (1), (4) & (8).) Respondent stole money from Target by fraudulently activating gift cards for his own benefit. Therefore, Respondent's crime meets several regulatory provisions for finding a substantial relationship to a real estate broker's qualifications, functions, and duties.
- 6. Respondent's crime, by its facts and circumstances, involves moral turpitude. The courts have held that moral turpitude "is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." (*In re Craig* (1938) 12 Cal.2d 93, 97.) Moral turpitude "is inherent in crimes involving fraudulent

intent, intentional dishonesty for purposes of personal gain or other corrupt purpose. (Golde v. Fox (1979) 98 Cal. App. 3d 167, 185.) Respondent engaged in fraudulent and dishonest acts to benefit himself financially. He did so as a Target employee, entrusted with the access codes that activate gift cards. Therefore, Respondent's crime involves moral turpitude.

- 7. Respondent has met some of the regulatory criteria for rehabilitation. He paid restitution to the Target store. (Cal. Code Regs., tit. 10, § 2912, subd. (b).) He paid all courtimposed fines. (Cal. Code Regs., tit. 10, § 2912, subd. (g).) He demonstrated a change in attitude from that which existed at the time of the commission of the crime. (Cal. Code Regs., tit. 10, § 2912, subd. (m).)
- 8. Respondent's crime involved \$40.00. While the embezzlement value was minor, there is cause to be concerned for the public's protection given the nature of Respondent's crime. Target entrusted Respondent, as an employee, with the access codes used to activate the store gift cards. Respondent breached that trust, acting in a deceitful manner for his own economic benefit. It is further concerning that Respondent did not present any reasoning or explanation for his actions. He described his criminal act as an impulse. Such a description gives rise to the concern of whether Respondent can be trusted as a real estate broker who will have access to client trust accounts and who carries fiduciary responsibilities in order to execute his broker duties. Nonetheless, Respondent demonstrated genuine remorse and he testified credibly that his criminal actions were out of character, and would not be repeated. His lack of a criminal history, and his seven years as a pharmacist and two years as a real estate broker with no license discipline, lead one to conclude that Respondent's singular, isolated incident is, in fact, best described as an impulsive act of poor judgment and immaturity, despite his age. The evidence supports a conclusion that the public will be adequately protected by allowing Respondent to hold a restricted real estate broker license.

ORDER

All licenses and licensing rights of Respondent Jack Thantron under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the Department 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.

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- 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 four (4) years have elapsed from the effective date of this Decision.
- 4. 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 the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
- 5. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning Respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest. Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of Respondent and periodic summaries of salient information concerning each real estate transaction in which the Respondent engaged during the period covered by the report.

January 9, 2006

DANIEL JUAREZ

Administrative Law Judge

Office of Administrative Hearings

ELLIOTT MAC LENNAN, SBN 66674 Department of Real Estate 320 West 4th Street, Ste. 350 Los Angeles, California 90013-1105 DEPARTMENT OF REAL ESTATE

Telephone:

(213) 576-6911 (direct) (213) 576-6982 (office)

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of JACK THANTRON,

Respondent.

No. H-3213.6LA

ACCUSATION

The Complainant, Maria Suarez, a Deputy Real Estate

Commissioner of the State of California, for cause of accusation

against JACK THANTRON (Respondent), is informed and alleges in

her official capacity as follows:

Ι

Respondent is presently licensed as a real estate broker under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code) (Code).

II

Respondent was originally licensed by the Department of Real Estate of the State California as a real estate broker on July 3, 2003.

CRIMINAL CONVICTION

III

On or about November 18, 2003, in the Superior Court of California, County of Riverside, in Case No. RIM444181,
Respondent was convicted of violating California Penal Code
Section 503 (Embezzlement), a misdemeanor. This crime, by its
facts and circumstances, involves moral turpitude and is
substantially related under Section 2910, Chapter 6, Title 10 of
the California Code of Regulations, to the qualifications,
functions or duties of a real estate licensee.

IV

The facts as alleged in Paragraph III, above, constitute cause for the suspension or revocation of the license and license rights of Respondent under Code Section 490 and/or 10177(b) of the Real Estate Law.

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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against the license and license rights of Respondent JACK THANTRON under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provision of law. Dated at Los Angeles California

Jack Thantron

Maria Suarez

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cc: