

FILED
JUL 30 2008
DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	No. H-33132 LA
MICHAEL AUGUST PETRULLO,	)	
Respondent.	)	

ORDER SUSPENDING RESTRICTED REAL ESTATE LICENSE

To: MICHAEL AUGUST PETRULLO

On May 23, 2007, a restricted real estate broker license was issued by the Department of Real Estate to Respondent on the terms, conditions and restrictions, as set forth in the Real Estate Commissioner's Decision of April 27, 2007, in Case No. H-33132 LA, effective May 23, 2007. This Decision granted Respondent the right to the issuance of a restricted real estate broker license subject to the provisions of Section 10156.7 of the Business and Professions Code and to enumerated additional terms, conditions and restrictions imposed under authority of Section 10156.6 of said Code. Among those terms, conditions and

1 restrictions, Respondent was required to submit, within 9 months
2 from the aforementioned effective date, evidence of having
3 completed 45 hours of approved continuing education offerings as
4 set forth in Article 2.5, Chapter 3, of the Real Estate Law for
5 renewal of a real estate license. The Commissioner has
6 determined that as of March 26, 2008, Respondent has failed to
7 satisfy this condition and, as such, is in violation of Section
8 10177(k) of the Business and Professions Code. Respondent has no
9 right to renew the restricted license if this condition is not
10 satisfied by the date of its expiration (Section 10156.7 of the
11 Business and Professions Code).

12 NOW, THEREFORE, IT IS ORDERED under authority of
13 Section 10156.7 of the Business and Professions Code of the State
14 of California that the restricted real estate broker license
15 heretofore issued to Respondent and the exercise of any
16 privileges thereunder is hereby suspended until such time as
17 Respondent provides proof satisfactory to the Department of
18 having taken the continuing education offerings referred to above
19 or pending final determination made after hearing (see "Hearing
20 Rights" set forth below).

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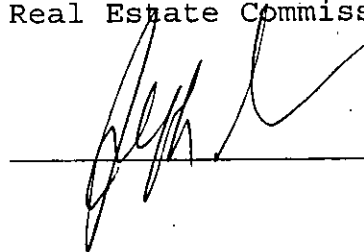
1 IT IS FURTHER ORDERED that all license certificates and
2 identification cards issued by the Department of Real Estate
3 which are in the possession of Respondent be immediately
4 surrendered by personal delivery or by mailing in the enclosed
5 self-addressed envelope to:

6 DEPARTMENT OF REAL ESTATE
7 Attention: Flag Section
8 Post Office Box 187000
9 Sacramento, CA 95818-7000

10 HEARING RIGHTS: Pursuant to the provisions of Section
11 10156.7 of the Business and Professions Code, you have the right
12 to a hearing to contest the Commissioner's determination that you
13 are in violation of Section 10177(k). If you desire a hearing,
14 you must submit a written request. The request may be in any
15 form as long as it is in writing and indicates that you want a
16 hearing. Unless a written request for a hearing, signed by or on
17 behalf of you, is delivered or mailed to the Department at 320
18 West Fourth Street, Suite 350, Los Angeles, California 90013,
19 within 20 days after the date that this Order was mailed to or
20 served on you, the Department will not be obligated or required
21 to provide you with a hearing.

22 This Order shall be effective immediately.

23 DATED: 7-3, 2008.

24 JEFF DAVI
25 Real Estate Commissioner
26 
27

FILED

MAY - 3 2007

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
BY: 

* * * * *

In the Matter of the Accusation of)
MICHAEL AUGUST PETRULLO,)
Respondent.)

No. H-33132 LA
L-2006080954

DECISION

The Proposed Decision dated March 28, 2007 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.

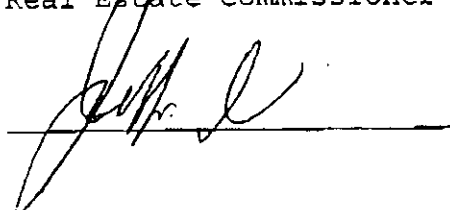
The Decision suspends or revokes one or more real estate licenses on grounds of conviction of a crime and knowingly making a false statement of fact required to be revealed in an application for license.

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 respondent.

This Decision shall become effective at 12 o'clock noon on May 23, 2007.

IT IS SO ORDERED 4-27-07

JEFF DAVIS
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

APR 30 2007

DEPARTMENT OF REAL ESTATE

BY: 

In the Matter of the Accusation Against:

Case No. H-33132 LA

MICHAEL AUGUST PETRULLO,

OAH No. L2006080954

Respondent.

PROPOSED DECISION

This matter was heard on February 26, 2007, by Erlinda G. Shrenger, Administrative Law Judge with the Office of Administrative Hearings, in Los Angeles, California.

Elliott MacLennan, Staff Counsel for the Department of Real Estate (Department), represented Maria Suarez (Complainant), a Deputy Real Estate Commissioner for the Department.

Frank M. Buda, Attorney at Law, represented Michael August Petrullo (Respondent), who also was present.

Oral and documentary evidence was received and argument was heard. The matter was submitted for decision on February 26, 2007.

FACTUAL FINDINGS

1. Complainant filed the Accusation in her official capacity.
2. Respondent is licensed by the Department as a real estate broker, license number 01122430. His real estate broker license was originally issued on May 29, 1998.

Respondent's Renewal Application

3. On May 26, 2006, Respondent filed an application with the Department to renew his license as a real estate broker. Respondent filed his renewal application using the online system on the Department's website.

4. The renewal application form contained a series of questions to be answered by applicants, including Question 3, which asked,

Within the past four year period, have you been convicted of any violation of law? Convictions expunged under Penal Code section 1203.4 must be disclosed. However, you may only omit minor traffic citations which do not constitute a misdemeanor or felony offense.

Two boxes, one designated "No" and one designated "Yes," were provided on the application form. If the answer to Question 3 is "Yes," the applicant is directed to complete Items 22 and 23 on page 3 of the application, which provided space for the applicant to give detailed conviction information.¹

5. In response to Question 3, Respondent marked the box designated "No." Since Respondent completed the renewal application using the Department's online system, his certification under penalty of perjury that the information contained in the application was true and correct is represented by the notation "Certified by license applicant via eLicensing" in the space provided for the applicant's signature.

6. Respondent's answer to Question 3 of the renewal application was false, incorrect, and concealed a material fact, because Respondent failed to disclose a reportable conviction, described below.

Respondent's Conviction

7. On March 12, 1997, Respondent entered into a plea agreement with the U.S. Attorney's Office pursuant to which Respondent pleaded guilty to violating Title 18, United States Code, section 1014 (false statement to financial institution) and section 2 (aiding and abetting). Pursuant to the plea agreement, Respondent also agreed to cooperate in other investigations by the U.S. Attorney's Office and other law enforcement agencies. Subsequently, on March 28, 1997, a criminal case was filed against Respondent in the U.S. District Court, Central District of California, entitled *United States of America v. Michael Petrullo*, Case No. CR97-294-JSL. The plea agreement was filed in the criminal case on April 21, 1997. Respondent was not sentenced until July 12, 2004, at which time the court sentenced Respondent to one year of probation and payment of a \$50 special assessment.

8. The underlying facts and circumstances of Respondent's conviction occurred in April 1991 while Respondent was an employee of Mountain Valley Mortgage. Respondent submitted falsified utility records to Bank of America in support of a real estate

¹ Complainant's Exhibit 2 included a certified copy of the Broker Renewal Application filed by Respondent on May 26, 2006. However, page 3 of the application was missing from Exhibit 2. The Broker Renewal Application (Form RE 208 (Rev. 6/04)) available on the Department's website was reviewed to determine the requirements of Items 22 and 23.

mortgage loan application to show that the applicant for the loan resided at the address shown in the records when, in fact, the applicant did not. Bank of America disbursed loan proceeds to the applicant in reliance on, among other documents, the falsified utility records submitted by Respondent with the loan application.

Nondisclosure of Conviction on Renewal Application

9. Respondent attributed his incorrect answer to Question 3 to a problem with the Department's online system. Respondent claimed the online system would not allow him to check the "Yes" box for Question 3 on the renewal application. Respondent claimed he tried "at least five times" to check the "Yes" box for Question 3, but the online system would not accept a "Yes" answer. Finally, Respondent checked the "No" box to Question 3 so he could complete the rest of the application and then go back and correct his answer to Question 3. Respondent claimed the online system would not allow him to go back to Question 3. Respondent submitted his renewal application through the online system knowing his answer to Question 3 was false and incorrect.

10. After submitting his renewal application through the online system, Respondent did not inform the Department of his problem using the online system. Nor did he provide the Department with an explanation or clarification of his incorrect answer to Question 3 on his renewal application. Respondent submitted his renewal application through the online system on May 26, 2006, which was two days prior to his renewal date of May 28, 2006.

11. Respondent's renewal application dated May 26, 2006 was not the first time Respondent failed to disclose a conviction on an application submitted to the Department. Respondent was issued a real estate salesperson license on October 9, 1991. The salesperson license was revoked on November 13, 1992, based, in part, on Respondent's failure to disclose two criminal convictions on his original license application. Later, Respondent's salesperson license was reinstated as of May 9, 1994.

12. Notwithstanding Factual Findings 9, 10, and 11, above, there is evidence that Respondent did not intend to hide his conviction from the Department. In the year prior to filing his renewal application, Respondent reported his conviction to the Department in a Confidential-Interview Information Statement dated June 20, 2005. Respondent also reported the conviction to Anthony Vo, a Deputy Commissioner for the Department, during a telephone interview conducted on August 24, 2005.

Rehabilitation From Conviction

13. Respondent completed his criminal probation and paid the \$50 special assessment ordered by the federal court. There was no order of restitution against him.

14. Respondent is presently self-employed as a real estate broker. He brokers mortgage loans and also represents buyers and sellers in real estate transactions. Respondent

belongs to professional organizations such as the Southland Regional Association of Realtors, Inc. and his local Board of Realtors. In 2005, he was named Broker of the Year by CitiMortgage, a division of CitiBank. Respondent has taken courses to renew his individual broker license and corporate license. He completed 45 hours of continuing education courses. Respondent no longer associates with the individuals involved with the loan transaction that led to his conviction. Respondent has been active in the real estate business since the reinstatement of his salesperson license in 1994 and then the issuance of his broker license in 1998. No complaints or disciplinary action (other than this case) have been made against Respondent's licenses.

15. Respondent has been married to his wife for 18 years, and they have a daughter (age 14) and a son (age 6). Respondent is active in his community in coaching a boys baseball team and a girls softball team for the last three to four years, participating in his own childrens' activities and their school, and participating in the Bell Canyon Kids Committee, which organizes activities and a summer camp for children.

16. Respondent takes full responsibility for his involvement in the loan transaction that led to his federal conviction. Respondent expressed remorse and embarrassment for his conduct. Respondent presented several reference letters from friends, clients, and business associates, attesting to his character for truthfulness and honesty and his remorse for his criminal conduct.

LEGAL CONCLUSIONS

1. Cause exists to discipline Respondent's real estate broker license, pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), because, as set forth in Factual Findings 7 and 8, Respondent was convicted of a crime involving moral turpitude, which is substantially related to the qualifications, functions, and duties of a licensed real estate broker.

2. Cause exists to discipline Respondent's real estate broker license, pursuant to Business and Professions Code sections 498 and 10177, subdivision (a), because, as set forth in Factual Findings 3 through 11, Respondent procured a license renewal by knowingly making a material misstatement of fact in an application for a broker license renewal.

3. The Department has established criteria for rehabilitation from conviction of a crime to be considered in licensing proceedings, which are set forth at California Code of Regulations, title 10, section 2912. Respondent has met the criteria for rehabilitation that are applicable to him, as follows:

Subdivision (a): More than two years have passed since Respondent's last conviction. It has been 16 years since the loan transaction that resulted in Respondent's conviction, and 10 years since Respondent entered into the plea agreement with the U.S. Attorney's Office.

Subdivision (e): Respondent completed his criminal probation.

Subdivision (g): Respondent paid the \$50 special assessment imposed as part of his conviction.

Subdivision (h): Respondent no longer works for the company where his criminal conduct occurred. Since 1994, Respondent has worked in the real estate business without complaints or other disciplinary action made against his real estate licenses.

Subdivision (i): Respondent no longer associates with the individuals involved with the conduct that led to his conviction.

Subdivision (j): Respondent has a stable family life and actively participates in his childrens' activities.

Subdivision (k): Respondent has completed continuing education courses required for the renewal of his license.

Subdivision (l): Respondent has significant involvement in community activities.

Subdivision (m): Respondent has shown a change in attitude from that which existed at the time of his criminal acts.

4. The objective of a disciplinary proceeding is to protect the public, the licensed profession or occupation, maintain integrity, high standards, and preserve public confidence in real estate professionals. (*Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Clerici v. Dept. of Motor Vehicles* (1990) 224 Cal.App.3d, 1016, 1030-1031.) The purpose of proceedings of this type is not to punish Respondent. In particular, the statutes relating to real estate licenses are designed to protect the public from any potential risk of harm. (*Lopez v. McMahon* (1988) 205 Cal.App.3d 1510, 1516; *Arneson v. Fox* (1980) 28 Cal.3d 440.) The law looks with favor upon those who have been properly reformed. (*Reisner v. State Bar* (1967) 67 Cal.2d 799, 811.) To that end, Respondent bears the burden to establish his reformation against a history of criminal conduct. (See, *Martin v. Alcoholic Bev. App. Bd.* (1950) 52 Cal.2d 259, 265.)

5. Although Respondent established his rehabilitation from his federal conviction, the nondisclosure of his conviction on his broker renewal application remains troubling. This is the second time Respondent has failed to disclose conviction information on a license application submitted to the Department. After the revocation of his salesperson license based on nondisclosure of conviction information, one would have expected Respondent to be more conscientious about providing conviction information in his future applications to the Department. Respondent's explanation that the Department's online system prevented him from giving a truthful answer to Question 3 was not persuasive. (See,

Factual Findings 9 and 10.) As established by Respondent's testimony, he submitted his renewal application two days before his renewal date of May 28, 2006, yet Respondent made no effort to contact the Department to correct his answer to Question 3 on the renewal application or inform the Department about his problem using the online system. Respondent's nondisclosure of his conviction on his broker renewal application reflects a failure to appreciate the need to act honestly with the Department. Since Respondent reported his federal conviction to the Department in the year prior to filing his broker renewal application, it does not appear Respondent intended to conceal his federal conviction from the Department. (Factual Finding 12.) However, Respondent's disclosure of his conviction in the year prior to his broker renewal application does not excuse his failure to provide a correct and truthful answer to Question 3 on the renewal application. There is no evidence that Respondent has engaged in any other unlawful conduct since the reinstatement of his salesperson license in 1994 or the issuance of his broker license in 1998.

6. Under the circumstances presented in this case, Respondent should be permitted to retain his broker's license, provided it is conditioned as set forth below. In particular, Respondent should be required to take and pass a course in ethics and the Professional Responsibility Examination administered by the Department.

ORDER

All licenses and licensing rights of Respondent Michael August Petrullo 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.

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 (3) years have elapsed from the effective date of this Decision.

4. Respondent shall, within nine (9) 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, within six (6) months from the effective date of this Decision, take and pass a Department approved course in ethics. If Respondent fails to satisfy this condition, the Commissioner may order suspension of Respondent's license until Respondent passes a Department approved course in ethics.

6. Respondent shall, within twelve (12) months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of Respondent's license until Respondent passes the examination.

DATED: March 28, 2007


ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings

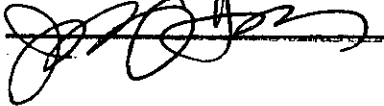
ALVARO MEJIA, Counsel (SBN 216956)
Department of Real Estate
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Los Angeles, California 90013-1105

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FILED

AUG 11 2006

DEPARTMENT OF REAL ESTATE

BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	No. H- 33132 LA
	)	
MICHAEL AUGUST PETRULLO,	)	<u>A C C U S A T I O N</u>
	)	
Respondent.	)	

The Complainant, Maria Suarez, a Deputy Real Estate
Commissioner of the State of California, for cause of Accusation
against MICHAEL AUGUST PETRULLO, ("Respondent") alleges as
follows:

1.

The Complainant, Maria Suarez, a Deputy Real Estate
Commissioner of the State of California, makes this Accusation
in her official capacity.

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2.

Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code ("Code"), as a real estate broker.

3.

(PRIOR LICENSE DISCIPLINE)

On or about July 8, 1992, the State of California, Department of Real Estate, in case no. H-25137 LA, filed an Accusation against Respondent's real estate salesperson license. As more fully set forth in the Decision for the above-mentioned case, cited below, The Department of Real Estate established that Respondent's real estate license was subject to discipline based on two (2) criminal convictions and his failure to reveal these convictions on his original license application.

On August 10, 1992, this matter was heard before the Office of Administrative Hearings. On September 18, 1992, a Decision was rendered in the above-entitled matter. The Decision was to become effective on October 14, 1992. On September 30, 1992, an Order Staying Effective Date was rendered in the above-entitled matter. The Decision was modified to become effective on November 13, 1992. On October 27, 1992, Respondent petitioned for reconsideration of the Decision of September 24, 1992. The petition for reconsideration was denied on November 11, 1992.

1 On November 23, 1993, Respondent petitioned for
2 reinstatement of his real estate salesperson license.
3 Respondent's petition for reinstatement was granted, under
4 certain terms and conditions, on May 9, 1994.

5 4.

6 (CRIMINAL CONVICTIONS)

7 On or about July 15, 2004, in the United States
8 District Court, Central District of California, in case no.
9 CR97-294-JSL, Respondent was convicted of violating Title 18,
10 United States Code, Section 1014 (False Statement to Financial
11 Institution), and violating Title 18, United States Code,
12 Section 2 (Aiding and Abetting). The underlying facts of these
13 crimes involve moral turpitude, which bear a substantial
14 relationship under Section 2910, Title 10, Chapter 6, California
15 Code of Regulations to the qualifications, functions or duties
16 of a real estate licensee.
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18 5.

19 The crimes of which Respondent was convicted, as
20 described in Paragraph 4 above, constitute cause under Sections
21 490 and 10177(b) of the Code for the suspension or revocation of
22 the license and license rights of Respondent under the Real
23 Estate Law.

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6.

(FAILURE TO REVEAL CONVICTIONS)

Question 3 of the Respondent's Broker Renewal Application, completed by him on or about May 26, 2006, asks the following: "WITHIN THE PAST FOUR YEAR PERIOD, HAVE YOU BEEN CONVICTED OF ANY VIOLATION OF LAW? CONVICTIONS EXPUNGED UNDER PENAL CODE SECTION 1203.4 MUST BE DISCLOSED. HOWEVER, YOU MAY ONLY OMIT MINOR TRAFFIC CITATIONS WHICH DO NOT CONSTITUTE A MISDEMEANOR OR FELONY OFFENSE". Respondent answered "No" to Question No. 3 on his Broker Renewal Application, and failed to reveal the convictions described above in Paragraph 4.

7.

Respondent's failure to reveal the convictions set forth herein in Paragraph 4 above, in his license application is cause to suspend or revoke his present real estate license and license rights pursuant to Business and Professions Code Sections 498, and/or 10177(a).

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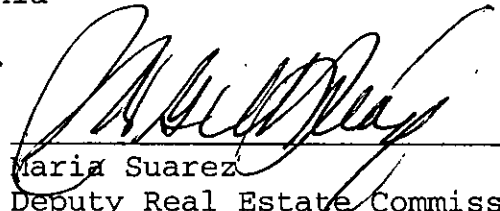
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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all the licenses and license rights of
5 Respondent, MICHAEL AUGUST PETRULLO, under the Real Estate Law
6 (Part 1 of Division 4 of the Business and Professions Code) and
7 for such other and further relief as may be proper under other
8 applicable provisions of law.

9 Dated at Los Angeles, California

10 this 9th day of August, 2006.

11 
12 Maria Suarez
13 Deputy Real Estate Commissioner
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26 cc: MICHAEL AUGUST PETRULLO
27 Maria Suarez
Sacto.
AV