

FILED
AUG 14 2008
DEPARTMENT OF REAL ESTATE

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BY: Barbara J. Bigby
Chief Deputy Commissioner

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

In the Matter of the Accusation Against:

ANTONIO CASTELAN,

Respondent.

Case No. H-34670 LA

OAH No. L2008030139

PROPOSED DECISION

This matter was heard on June 20, 2008, by Erlinda G. Shrenger, Administrative Law Judge with the Office of Administrative Hearings, in Los Angeles, California.

James A. Demus, Staff Counsel, represented Robin Trujillo (Complainant), a Deputy Real Estate Commissioner for the Department of Real Estate (Department), State of California.

Frank M. Buda, Attorney at Law, represented Antonio Castelan (Respondent), who was present.

Oral and documentary evidence was received and argument was heard. The record was closed and the matter was submitted for decision on June 20, 2008.

FACTUAL FINDINGS

1. Complainant filed the Accusation in her official capacity.
2. Respondent is licensed by the Department as a real estate salesperson, license no. 01184803. He was originally licensed by the Department on July 18, 1994.

Respondent's Conviction

3. (A) On February 3, 2005, in the Superior Court of California, County of Riverside, case number RIF119712, Respondent was convicted on his plea of guilty of violating Penal Code section 530.5, subdivision (a) (using personal identification information of another to obtain credit), a misdemeanor and crime involving moral turpitude which is substantially related to the qualifications, functions, or duties of a real estate licensee.

(B) Imposition of sentence was suspended. Respondent was granted summary probation for a period of 36 months under terms and conditions including that he serve 60

days in custody on consecutive weekends starting on February 25, 2005; he pay a restitution fine of \$100; and he pay restitution to the victim in an amount determined by the court.

(C) The facts and circumstances underlying the conviction are: Respondent obtained credit using the personal information of another person, J.C., without his consent.¹ Respondent and J.C. had a business relationship in which they bought houses, fixed them up, and then resold them. Respondent used J.C.'s personal information, and signed J.C.'s name, on an American Express credit card application without J.C.'s consent. J.C. was shown as the main account holder on the account.

4. At the administrative hearing, Respondent explained that the American Express account was to help pay the costs of rehabilitating the properties that he and J.C. acquired in their business. Respondent testified that he and J.C. verbally agreed they should get a credit card for their business. J.C. did not consent to Respondent using his personal information to obtain a credit card. Respondent admitted it was a mistake and bad judgment on his part to sign J.C.'s name on the application. Respondent told the police that he did not use his own personal information on the application because he had bad credit and thought he would not qualify for an American Express card. Respondent told the police that he was still friends with J.C. Respondent testified the American Express account was opened while he and J.C. were still in a business relationship. Respondent's testimony was unclear on the time period he was in a business relationship with J.C. and when the business relationship ended.²

5. Respondent testified that he continued to use the American Express credit card, which showed J.C. as the main account holder, even after his business relationship with J.C. had ended. J.C. was contacted by a collection agency about the account. Respondent paid off the outstanding balance owed on the account with his own personal funds on July 11, 2001. In his statement to police on August 24, 2004, J.C. reported that he did not have to pay money to any credit card company and his credit report was repaired.

Aggravating Factor

6. It was established that, on October 26, 2004, in the Superior Court of California, County of Riverside, case number RIM454230, Respondent was convicted on his

¹ J.C. is identified by his first and last initials to protect his privacy.

² Respondent's testimony of the circumstances surrounding the American Express account is contradicted by J.C.'s statements in the police report, including that he never gave Respondent permission to open an American Express account, the account was opened one to two years after his business relationship with Respondent had ended, and he does not consider Respondent his friend. However, J.C.'s statements to the police are hearsay and, by themselves, are insufficient to establish findings that contradict Respondent's testimony. (Gov. Code, § 11513, subd. (d); *Lake v. Reed* (1997) 16 Cal.4th 448.)

plea of guilty of violating Vehicle Code section 23152, subdivision (b) (driving with a blood-alcohol level of 0.8 percent or higher), a misdemeanor.

Rehabilitation

7. Respondent completed the terms of the criminal probation resulting from his February 3, 2005, conviction. Respondent's 36-month probation terminated on February 3, 2008.

8. Respondent is 40 years old. He and his wife have been married for 24 years. They have three children, ages 18, 16, and 9. Respondent attends church with his family twice per month. He is actively involved with his children's activities, such as football, soccer, and baseball games, fundraising events, musicals, and dance recitals.

9. Respondent has worked in the real estate business since 1994. He has completed over 500 residential sales transactions, handled deposits from consumers, and has had no complaints about his work as a real estate salesperson. In 2007, Respondent completed 48 hours of continuing education courses to renew his real estate license. Respondent wants to retain his license because real estate has been his profession for 14 years, and he is his family's sole source of income.

10. Respondent has expressed remorse for his unlawful use of J.C.'s personal information to obtain credit. He is "absolutely embarrassed" by his crime. He has learned not to sign other people's names without consent. He will not repeat his criminal conduct, and regrets losing his friendship with J.C.

11. Respondent presented six letters of support at the administrative hearing. The letters generally describe Respondent as honest, professional, and hardworking. One of the letters, dated June 18, 2008, is from Alvina Brown (Brown), who is Respondent's broker. In her letter, Brown wrote that she has found Respondent to be "honest, forthright and professional," and she agrees to "closely supervise his license activities" if the Department allows him to keep his license.

LEGAL CONCLUSIONS

1. Cause exists to discipline Respondent's real estate salesperson license, pursuant to Business and Professions Code sections 10177, subdivision (b), and 490, because Respondent was convicted of a crime involving moral turpitude which is substantially related to the qualifications, functions, and duties of a real estate licensee, by reason of Factual Findings 3-4.³

¹ Effective January 1, 2008, Business and Professions Code section 10177, subdivision (b), was amended to delete the requirement that the conviction involve a crime of moral turpitude and, instead, replace it with the requirement that the crime is substantially related to the qualifications, functions, or duties of a real estate licensee. Respondent does

2. Pursuant to California Code of Regulations, title 10, section 2910, Respondent's crime is substantially related to the qualifications, functions or duties of a real estate licensee because it involved the uttering of a false statement (§ 2910, subd. (a)(2)), the employment of fraud, deceit, falsehood, or misrepresentation to achieve an end (§ 2910, subd. (a)(4)), and doing an unlawful act with the intent of conferring a financial or economic benefit on himself (§ 2910, subd. (a)(8).) (Factual Findings 3-5.)

3. 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.) As cause for discipline against Respondent's license has been established, Respondent bears the burden to establish his reformation against a history of criminal conduct. (See, *Martin v. Alcoholic Beverage Control Appeals Bd.* (1950) 52 Cal.2d 259, 264-265.)

4. The Department has developed criteria for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding has been initiated, which are set forth at California Code of Regulations, title 10, section 2912. Respondent has met most of the Section 2912 criteria applicable to his case except for the expungement of his conviction. (§ 2912, subd. (c).) More than two years have passed since his conviction on February 3, 2005. (§ 2912, subd. (a).) Respondent successfully completed his criminal probation, paid all criminal fines, and paid off the outstanding balance on the American Express account at issue. (§ 2912, subds. (b), (e), and (g).) Respondent is fulfilling his familial and parental responsibilities, and attends church with his family. (§ 2912, subds. (j) and (l).) He is no longer in business with J.C. and understands he should not sign other persons' names without consent (§ 2912, subds. (h) and (i).) Respondent completed 48 hours of real estate courses to renew his license in 2007 (§ 2912, subd. (k).) Respondent has expressed remorse and accepted responsibility for his crime. (§ 2912, subd. (m).) He does not dispute he unlawfully used J.C.'s personal information without his consent. Despite his criminal history, Alvina Brown, a broker, supports Respondent in retaining his license and agrees to closely supervise his licensed activities.

5. A real estate licensee in this state must be truthful, honest, and have integrity at all times. Public protection is paramount because real estate licensees are responsible for consumers' financial matters and have intimate access to their personal information.

not dispute that his crime involved moral turpitude. Thus, cause for discipline is established under Section 10177, subdivision (b), both before and after the 2008 amendment.

"Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee. If [respondent's] offenses reflect unfavorably on his honesty, it may be said he lacks the necessary qualifications to become a real estate salesperson." (*Harrington v. Dept. of Real Estate* (1989) 214 Cal.App.3d 394, 402.) "The Legislature intended to ensure that real estate brokers and salespersons will be honest, truthful and worthy of the fiduciary responsibilities which they will bear." (*Ibid.*)

6. The nature of Respondent's crime reflects unfavorably on his character for integrity, honesty and truthfulness. Respondent unlawfully used personal identification information to obtain credit, which is adverse to the interest of public protection. Respondent committed his crime against a person with whom he had a business relationship and considered a friend. Respondent's payment of the outstanding balance owed on the account does not mitigate or excuse his unlawful use of J.C.'s personal information without his consent. The public interest requires that administrative sanctions be imposed to prevent future misconduct and to remind Respondent of the responsibilities and expectations required of him by his possession of a real estate license.

7. Based on consideration of all factors, the Order below should protect the public from any potential risk of harm in allowing Respondent to retain his license on a restricted basis.

ORDER

All licenses and licensing rights of Respondent Antonio Castelan under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson 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 two (2) 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 Department of Real Estate 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, 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.

DATED: July 21, 2008


ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings

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FILED
JAN 28 2008
DEPARTMENT OF REAL ESTATE

By Laura B. Brown

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-34670 LA
ANTONIO CASTELAN,)	<u>A C C U S A T I O N</u>
Respondent.)	

The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against ANTONIO CASTELAN, ("Respondent") alleges as follows:

1.

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

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 salesperson.

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3.

On or about February 3, 2005, in the Superior Court of California, County of Riverside, in case no. RIF119712, Respondent was convicted of violating California Penal Code Section 530.5 (using personal identification information of another to obtain credit), a misdemeanor. The underlying facts of this crime involve moral turpitude which bears a substantial relationship under Section 2910, Title 10, Chapter 6, California Code of Regulations to the qualifications, functions or duties of a real estate licensee.

4.

In aggravation, on or about October 26, 2004, in the Superior Court of California, County of Riverside, in case no. RIM454230, Respondent was convicted of violating California Vehicle Code Section 23152(b) (driving with a blood alcohol level of .08% or higher), a misdemeanor.

5.

The crime of which Respondent was convicted, as described in Paragraph 3 above, constitutes cause under Sections 490 and 10177(b) of the Code for the suspension or revocation of the license and license rights of Respondent under the Real Estate Law.

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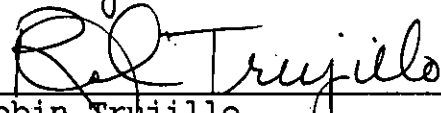
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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all the licenses and license rights of
5 Respondent, ANTONIO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

9 Dated at Los Angeles, California

10 this 24 day of January, 2008.

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12 Robin Trujillo
13 Deputy Real Estate Commissioner
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25 cc: ANTONIO CASTELAN
26 Indian Hills Financial Services, Inc.
27 Robin Trujillo
Sacto.