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DEC 22 2009

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

BY: 

* * * * *

In the Matter of the Accusation of)
)
)
 MICHAEL ROYCE MONTRIEF,)
)
)
)
 Respondent.)
 _____)

No. H-35609 LA
L-2009031091

DECISION

The Proposed Decision dated November 19, 2009, 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.

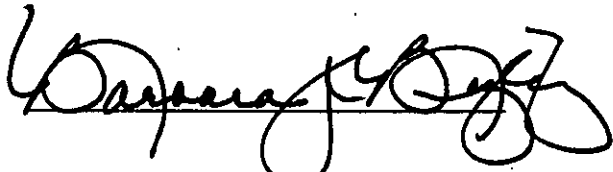
The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

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 January 11, 2010.

IT IS SO ORDERED 12/17/09

JEFF DAVI
Real Estate Commissioner



BY: Barbara J. Bigby
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

MICHAEL ROYCE MONTRIEF,

Respondent.

Case No.: H-35609 LA

OAH No.: 2009031091

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on October 28, 2009.

Julie L. To, Real Estate Staff Counsel, represented the Complainant.

Respondent appeared and was represented by Randy Kramer, Attorney at Law.

Oral and documentary evidence and evidence by way of official notice was received and the matter then argued and thereafter submitted.

The Administrative Law Judge now finds, concludes and orders as follows:

FACTUAL FINDINGS

Parties

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

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

Criminal Conviction

3. On May 14, 2008, in the Superior Court of the State of California, County of Orange, in Case No. 07WF2554, Respondent plead guilty to the following counts of a felony complaint warrant:

Count 1: On or about October 2, 2005, in violation of section 487(a) of the Penal Code (Grand Theft), a felony, Michael Royce Montrief did unlawfully take money and the personal property of Bruce L. Castor, Jr., which had a value exceeding four hundred dollars (\$400).

- - -

Count 7: On or about November 1, 2005, in violation of section 550(b)(1) of the Penal Code (Insurance Fraud Written Claim), a felony, Michael Royce Montrief, with the intent to defraud, did knowingly and unlawfully prepare, make, and subscribe a material writing, with the intent to present and use it, and to allow it to be presented to 21st Century Insurance, in support of a false and fraudulent claim, and did aid and abet, solicit, and conspire with another to do the same.

On that same day of May 14, Respondent was thus convicted of violating Penal Code sections 487, subdivision (a) (grand theft property over \$400.00) and 550, subdivision (b)(1) (insurance fraud), both felonies.

Rehabilitation

4. As a result of the conviction Respondent was placed on 90 days house arrest and ordered to pay restitution. He did complete the house arrest sentence and has paid restitution. He began a three year term of probation on May 14, 2008. Probation is scheduled to end in May, 2011.

5. Respondent has recently married and he and his wife are now parents of an infant child. Respondent has stability of family life and does fulfill all familial and parental responsibilities.

6. The crime is recent. The crime, *per se*, involves moral turpitude. There is no record of any other conviction and there is no record that Respondent is not presently in conformity to society's norms and rules. However, given a recent crime involving moral turpitude a record of clear and convincing rehabilitation is necessary for continued licensure. Respondent did not establish or demonstrate such rehabilitation. In particular, there is no evidence of:

- Successful completion of probation.

- Expungement of the conviction.
- Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.
- Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.
- New and different social and business relationships from those which existed at the time of the conduct that is the basis for the conviction.
- A change in attitude from that which existed at the time of the conviction as demonstrated by evidence from probation or parole officers or law enforcement officials competent to testify as to Respondent's social adjustments.
- Respondent's contrition. In his testimony he understated the gravity of the felonies.

LEGAL CONCLUSIONS

Applicable Statutes and Regulations

1. Business and Professions Code section 490 provides in pertinent part:

(a) . . . 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.

(c) . . . a conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. . . .

- - -

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

The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, 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 substantially related to the qualifications, functions or duties of a real estate licensee, 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. Penal Code section 487 provides in pertinent part:

487. Grant theft is theft committed in any of the following cases:

- (a) When the money, labor, or real or personal property taken is of a value exceeding four hundred dollars (\$400). . .

4. Penal Code section 550, subdivision (b) (1) provides:

- - -
- (b) It is unlawful to do, or to knowingly assist or conspire with any person to do, any of the following:
 - (1) Present or cause to be presented any written or oral statement as part of, or in support of or opposition to, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false or misleading information concerning any material fact.

5. California Code of Regulations, title 10, section 2910, provides in part:

- (a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in section 480, (a)(2) or 480, (a)(3) of the Code, the crime or act

shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of sections 480 and 490 of the Code if it involves:

- (1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person.
- (2) Counterfeiting, forging or altering of an instrument or the uttering of a false statement.

- - -

- (4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end.

- - -

- (8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

6. The necessary elements of a crime under Penal Code sections 487, subdivision (a) and 550, subdivision (b) include the fraudulent taking of funds belonging to another; the uttering of a false statement; the employment of misrepresentation to achieve an end; the doing of an unlawful act with the intent of conferring a financial benefit upon Respondent. Accordingly, the crime set forth in Finding 3 bears a substantial relationship under California Code of Regulations, title 10, section 2910, subdivisions (a)(1), (a)(2), (a)(4) and (a)(8), to the qualifications, functions or duties of a real estate licensee.

7. Respondent's conviction for substantially related crimes (both felonies) constitutes grounds to discipline his real estate salesperson license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b).

Penalty Considerations

8. California Code of Regulations, title 10, section 2912, sets forth criteria of rehabilitation that have been developed by the Department, pursuant to Business and Professions Code section 482, subdivision (a), to evaluate the rehabilitation of a licensee who is subject to disciplinary action on account of a crime or act committed by the Respondent. Additionally, the public interest must be considered in that the objective of an administrative

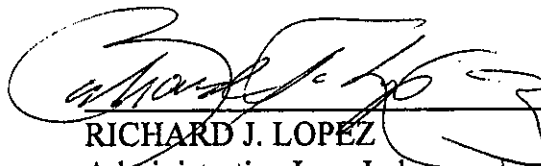
proceeding relating to licensing is to protect the public. *Fahmy v. MBC* (1995) 38 Cal.App. 4th 8107, 817; *Ex Parte Brounsall* (1778) 2 Cowp. 829, 98 Eng.Rep. 1385.

9. Respondent's conviction is less than two years remote and, thus, Respondent has not met the initial factor set forth in the criteria and the crime has not been expunged. Additionally, by reason of Finding 6, Respondent has yet to comply with the remaining applicable criteria. It would be against the public interest to permit Respondent to now act as a real estate salesperson. Respondent is encouraged to complete the rehabilitative process and, in the event of a petition for reinstatement, document same and provide full disclosure to the Department.

ORDER

All licenses and licensing rights of Michael Royce Montrief under the Real Estate Law are revoked.

Dated: December 19, 2009


RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:rfm

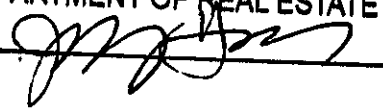
1 JULIE L. TO, Counsel (SBN 219482)
2 Department of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982
6 (Direct) (213) 576-6916

FILED

JAN 14 2009

DEPARTMENT OF REAL ESTATE

BY: 

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-35609 LA
12 MICHAEL ROYCE MONTRIEF,) A C C U S A T I O N
13 Respondent.)
14 _____)

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16 The Complainant, Maria Suarez, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against MICHAEL ROYCE MONTRIEF ("Respondent"), alleges as
19 follows:

20 1.

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

24 2.

25 Respondent is presently licensed and/or has license
26 rights under the Real Estate Law, Part 1 of Division 4 of the
27

1 California Business and Professions Code ("Code"), as a real
2 estate broker.

3 3.

4 On or about May 14, 2008, in the Superior Court of the
5 State of California, County of Orange, in Case No. 07WF2554,
6 Respondent was convicted of violating Penal Code Sections 487(A)
7 (grand theft property over \$400.00) and 550(b)(1) (insurance
8 fraud), both felonies. Respondent was sentenced 90 days in
9 jail, three years formal probation, and ordered to pay fines.

10 4.

11 This conviction, by its facts and circumstances, bears
12 a substantial relationship under Section 2910, Title 10, Chapter
13 6, California Code of Regulations to the qualifications,
14 functions or duties of a real estate licensee.

15 5.

16 The crimes of which Respondent was convicted, as
17 described in Paragraph 3 above, constitute cause under Sections
18 490 and 10177(b) of the Code for the suspension or revocation of
19 the license and license rights of Respondent under the Real
20 Estate Law.

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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 ROYCE MONTRIEF, 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 12th day of January, 2008.

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14 Maria Suarez
15 Deputy Real Estate Commissioner
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26 cc: MICHAEL ROYCE MONTRIEF
27 Maria Suarez
Sacto.