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DEPARTMENT OF REAL ESTATE

BY: *R. Meder*

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

BARAK VOLNER,

Respondent.

No. H-36474 LA

ORDER DENYING REINSTATEMENT OF LICENSE AND
GRANTING RIGHT TO A RESTRICTED LICENSE

On August 24, 2010, a Decision was rendered providing for the surrender of the real estate broker license of Respondent.

On October 12, 2011, Respondent petitioned for reinstatement of Respondent's real estate broker license. The Attorney General of the State of California has been given notice of the filing of the petition.

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has undergone sufficient rehabilitation to warrant the reinstatement of Respondent's real estate broker license, in that:

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1 I

2 In 2009, the Department conducted an Audit of a licensed real estate corporation
3 for which Respondent was the designated officer. The audit found numerous violations of the
4 Real Estate Law.

5 II

6 The burden of proving rehabilitation rests with the petitioner (*Feinstein v. State*
7 *Bar* (1952) 39 Cal. 2d 541). A petitioner is required to show greater proof of honesty and
8 integrity than an applicant for first time licensure. The proof must be sufficient to overcome the
9 prior adverse judgment on the applicant's character (*Tardiff v. State Bar* (1980) 27 Cal. 3d 395).

10 The Department has developed criteria in Section 2911 of Title 10, California
11 Code of Regulations (Regulations) to assist in evaluating the rehabilitation of an applicant for
12 reinstatement of a license. Among the criteria relevant in this proceeding are:

13 Regulation 2911(a) - passage of sufficient time to show rehabilitation

14 Respondent has not provided such proof.

15 Regulation 2911(k) - correction of business practices

16 Respondent has not provided such proof.

17 Regulation 2911(l) – significant or conscientious involvement in community,
18 church or social programs

19 Respondent has not provided proof of involvement in such activities.

20 Given the violations found and the fact that Respondent has not established that
21 Respondent has complied with Regulation 2911(a), (k), and (l), I am not satisfied that
22 Respondent is sufficiently rehabilitated to receive an unrestricted real estate license.

23 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for
24 reinstatement of Respondent's real estate broker license is denied.

25 I am satisfied, however, that it will not be against the public interest to issue a
26 restricted real estate salesperson license to Respondent so that Respondent can work under the
27 supervision of a broker and demonstrate his understanding of and compliance with appropriate

1 business practices.

2 A restricted real estate salesperson license shall be issued to Respondent pursuant
3 to Code Section 10156.5 if Respondent within twelve (12) months from the date hereof
4 providing Respondent:

5 (a) qualifies for, takes and passes the written examination required to obtain a real
6 estate salesperson license;

7 (b) makes application and pays the appropriate fee for said license;

8 The restricted license issued to Respondent shall be subject to all of the provisions
9 of Code Section 10156.7 and to the following limitations, conditions and restrictions imposed
10 under authority of Code Section 10156.6:

11 1. The restricted license issued to Respondent may be suspended prior to hearing
12 by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of
13 nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a
14 real estate licensee.

15 2. The restricted license issued to Respondent may be suspended prior to hearing
16 by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that
17 Respondent has violated provisions of the California Real Estate Law, Regulations of the Real
18 Estate Commissioner or conditions attaching to the restricted license.

19 3. Respondent shall not be eligible to apply for the issuance of an unrestricted
20 real estate license nor for the removal of any of the conditions, limitations or restrictions of a
21 restricted license until two (2) years have elapsed from the effective date of this Decision.

22 4. Respondent shall submit with any application for license under an employing
23 broker, or any application for transfer to a new employing broker, a statement signed by the
24 prospective employing real estate broker on a form approved by the Department of Real Estate
25 which shall certify:

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(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.

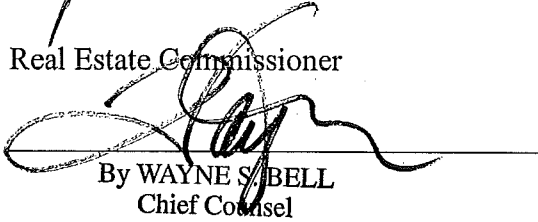
This Order shall become effective at 12 o'clock noon on

DEC - 4 2012

IT IS SO ORDERED

7/20/2012

Real Estate Commissioner



By WAYNE S. BELL
Chief Counsel