

MAY 29 2012

BY: [Signature]

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
)
 MAX KAY and) DRE NO. H-37348 LA
 K-G FINANCIAL GROUP,) OAH NO. 2011080978
)
 Respondents.)

ORDER STAYING EFFECTIVE DATE

On May 3, 2012, a Decision was rendered in the above-entitled matter to become effective May 29, 2012.

IT IS HEREBY ORDERED that the effective date of the Decision of May 3, 2012, is stayed for a period of 30 days to allow Respondents MAX KAY and K-G FINANCIAL GROUP to file a petition for reconsideration.

The Decision of May 3, 2012, shall become effective at 12 o'clock noon on June 28, 2012.

DATED: May 29, 2012.

Real Estate Commissioner

By:

Dolores Weeks

DOLORES WEEKS

Regional Manager

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FILED

MAY -9 2012

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
BY: CRA

In the Matter of the Accusation of	)	DRE No. H-37348 LA
	)	
MAX KAY and	)	OAH No. 2011080978
K-G FINANCIAL GROUP,	)	
	)	
Respondents.	)	
_____	)	

DECISION

The Proposed Decision dated March 28, 2012, 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.

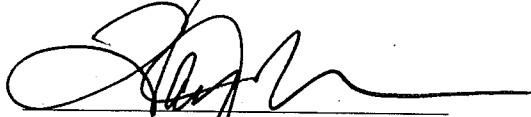
The Decision suspends or revokes one or more real estate licenses on grounds of conviction of a crime and knowingly making a false statement of fact required to be revealed in an application for license.

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 29, 2012.

IT IS SO ORDERED May 3, 2012.

Real Estate Commissioner


By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

MAX KAY and
K-G FINANCIAL GROUP,

Respondents.

Case No. H-37348 LA

OAH No. 2011080978

PROPOSED DECISION

Administrative Law Judge, Michael A. Scarlett, Office of Administrative Hearings, State of California, heard this matter on January 17, 2012, in Los Angeles, California.

Lisette Garcia, Staff Counsel, represented Robin Trujillo, Deputy Real Estate Commissioner of the State of California (Complainant).

Lynn Romano, Attorney at Law, represented Max Kay (Respondent) and K-G Financial Group (K-G Financial). Respondent was present at hearing.

Oral and documentary evidence was received and the record was held open until February 17, 2012, to allow Respondent to submit certified copies of the Superior Court docket evidencing a reduction of charges and/or dismissal or expungement of his May 20, 2010, criminal conviction for identity theft. On January 30, 2012, Respondent submitted a certified Superior Court docket indicating that Respondent's conviction had been reduced from a felony to a misdemeanor pursuant to Penal Code section 17B, and terminating Respondent's probation effective January 13, 2012. The letter and docket was marked as Respondent's Exhibit A. On February 24, 2012, Complainant submitted a letter (Complainant's Exhibit 7) indicating that it had not received Respondent's certified court records that were marked as Exhibit A. Both Respondent and Complainant submitted letters on February 28, 2012 (Respondent's Exhibit B), and February 29, 2012 (Complainant's Exhibit 8) establishing that Complainant had received Respondent's certified court documents in a timely manner. Exhibits 7, 8, A and B were admitted into evidence without objection. Consequently, the matter was submitted for decision on February 29, 2012.

FACTUAL FINDINGS

The Administrative Law Judge makes the following Factual Findings:

1. On June 16, 2011, Complainant filed the Accusation against Respondent in her official capacity as a Deputy Real Estate Commissioner of the Department of Real Estate

(Department), State of California. On July 8, 2011, Respondent filed a Notice of Defense and this hearing ensued.

2. On September 13, 2004, the Department issued real estate broker license number B/01315703 to Respondent. The broker license will expire on September 12, 2012, unless renewed by the Department. On October 4, 2004, Respondent became designated officer for K-G Financial, and continued to act in that capacity through the date of hearing. K-G Financial's corporation license will expire on April 14, 2014, unless renewed by the Department.

3. On May 20, 2010, Respondent was convicted in the Superior Court of California, County of Los Angeles, Case No. PA065573, based upon a plea of nolo contendere, of violating Penal Code section 530.5, subdivision (a) (identity theft), a felony and a crime of moral turpitude that is substantially related to the qualifications, functions or duties of a real estate broker. On July 28, 2010, at the sentencing hearing, imposition of sentence was suspended and Respondent was placed on formal probation for a period three years, ordered to serve 350 days in county jail, with credit for two days served, and ordered to pay penalty assessments and restitution in the total amount of \$260, excluding the probation revocation and parole restitution fines. Victim restitution was also ordered by the court, subject to a determination by Respondent's probation officer.

4. The facts and circumstances surrounding Respondent's conviction are that on September 25, 2009, Respondent and Mina Foster entered Galpin Ford in North Hills, California and attempted to purchase a 2010 Ford Mustang convertible, purchase price \$38,832, using false identification under the name of Jane Lui. Foster completed and signed the credit application for the auto loan with Respondent's assistance. Foster identified herself as "Jane Lui" to the sales representative and gave him a California driver's license with Foster's picture and Jane Lui's name on the license. Foster also provided the sales representative a social security card and a visa debit card both in Jane Lui's name. The sales representative became suspicious when Foster and Respondent did not accept an offer to test drive the vehicle or have the vehicle checked for a mechanical problem. Consequently, the Los Angeles Sheriff Department's auto theft task force was dispatched to the dealership to interview Respondent and Foster.

5. When interviewed by sheriff detectives, Respondent identified Foster as a friend of five years. He initially told detectives that he had come to the dealership to assist Foster in purchasing a vehicle. He said he did not know, or had ever heard of Jane Lui, and he did not know Foster was using that name. However, Foster told detectives that Respondent had the "Jane Lui" false identification documents made and gave them to her. She stated that Respondent requested her to use the false identification to purchase an automobile for Respondent because his credit was bad.

6. Subsequently, Respondent admitted he was attempting to purchase the automobile for his son, and that because his credit was bad, he could not purchase the car. Respondent admitted having the driver's license, credit card, and social security card made in Jane Lui's name to be used by Foster to purchase the automobile. The detectives'

subsequent investigation confirmed that Jane Liu was living in China when Respondent attempted to use her name to purchase the car, and that she did know or authorize Respondent or Foster to use her name or credit.

7. On March 8, 2010, Respondent submitted a designated officer renewal application to the Department for K-G Financial. In response to Question No. 5 on the application, to wit: "Are there Criminal CHARGES PENDING AGAINST YOU AT THIS TIME", Respondent marked the answer box denoting "No", and failed to reveal the October 22, 2009 felony complaint alleging charges from the September 25, 2009 offense.

8. At hearing Respondent admitted he and Foster attempted to use the false identification to purchase the automobile at Galpin Ford. He acknowledged that his conduct was wrong, and testified that he has never used false identification in a real estate transaction. However, Respondent falsely testified that his motive in using the false identification was to help a friend of his wife, and that he had no personal monetary or economic incentive or motive in committing the offense. This testimony is inconsistent with the admissions he made to detectives. Specifically, Respondent admitted he attempted to purchase the car for his son, and he used Jane Lui's name because his credit was bad. Respondent initially told detectives that he was helping Foster purchase the car, but later admitted the car purchase was for his son.

9. Respondent denied knowing the designated officer renewal application omitted his September 25, 2009, arrest and the subsequent October 22, 2009 felony criminal charges. He testified that the application was prepared by an employee at K-G Financial who was not aware of his arrest and pending charges. Respondent stated he did not review the application before submitting it to the Department, even though he signed the application under penalty of perjury. He further suggested that because he was not convicted of the offense until May 20, 2010, two months after the renewal application was submitted, he was not focused on the charges when the application was submitted. The Department's application clearly indicated that any pending criminal charges were required to be disclosed in the application. Respondent can not escape responsibility for failing to disclose the charges by simply asserting that one of his employees completed the application. Respondent failed to notify the employee of the pending criminal charges at the time the employee completed the application and signed the application attesting to the truth of the contents in the application.

10. Respondent is the sole owner of K-G Financial and is the broker of record and designated officer for the corporation license. He employs four office workers and eight real estate sales persons acting as independent contractors for K-G Financial. Respondent is married with five children: two sons from a previous marriage, and three children with his current wife. Respondent's wife, and two sons ages 29 and 24, are employed by K-G Financial. Respondent has not informed any of his employees, including his two sons, about his conviction for identity theft. His wife is aware of the criminal conviction and offense. Respondent served 350 days in county jail, commencing on August 4, 2010, and its unclear from the record how Respondent concealed this incarceration from his employees or sons.

He testified that if his license is revoked, the employees, including his family members, would suffer extreme financial harm.

11. Respondent expressed remorse and embarrassment for his criminal offense. He admitted the use of false identification was wrong and that he made a mistake. He asserted that he has never used false the identification when processing a real estate transaction. Respondent's credibility, however, is questioned due to inconsistent prior statements in the record. For example, Respondent asserted at hearing that he attempted to purchase the car from to help Foster, when in fact he tried to purchase the car for his son. Respondent falsely stated he was only trying to help a friend, but his bad credit was the reason he used Jane Lui's false identification. Respondent also did not take responsibility for submitting an application to the Department which omitted his pending criminal charges, choosing instead to claim an employee completed the application which he failed to review. Respondent's lack of candor and honesty seriously damaged his credibility at hearing. He also has not disclosed his misconduct to his employees and real estate salespersons working for K-G Financial.

12. On January 13, 2012, Respondent's felony conviction for identity theft was reduced to a misdemeanor pursuant to Penal Code section 17B (1-5) and Respondent's probation was terminated. Respondent has paid all fines and assessments ordered by the court. Respondent performs community service through volunteer work and contributions to his daughter's school.

13. Respondent has no prior or subsequent history of criminal convictions or discipline by the Department.

LEGAL CONCLUSIONS

Pursuant to the foregoing Factual Findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists to suspend or revoke Respondents' real estate broker and corporation licenses pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), in that Respondent incurred a conviction for identity theft on May 10, 2010, a crime of moral turpitude that is substantially related to the qualifications, functions or duties of a licensee, by reason of Factual Findings 3 through 6.

2. 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 licensee. (Bus. & Prof. Code § 490.) The Commissioner of the Department of Real Estate may suspend or revoke the license of a real estate licensee who has entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of a felony, or a crime that is 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. (Bus. & Prof. Code § 10177, subd. (b).)

3. Under the Department's regulations, a crime or act "shall be deemed to be substantially related to the qualifications, functions or duties of a licensee" if it involves "counterfeiting, forging or altering on of an instrument or uttering a false statement"; "the employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end"; "[d]oing 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." (Cal. Code Regs., tit. 10, § 2910, subds. (a)(2), (a)(4), and (a)(8).)

4. Moral turpitude has generally been held to mean a general "'readiness to do evil'... i.e., 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." (*People v. Mansfield* (1988) 200 Cal.App.3d 82, 87.) Convictions of crimes involving fraudulent intent and intentional dishonesty for personal gain establish moral turpitude as a matter of law. (*Harrington v. Dept. of Real Estate* (1989) 214 Cal.App.3d 394, 400-401.)

5. Respondent's criminal offense involved fraud, dishonesty, misrepresentation and deceit. He has yet to fully appreciate the seriousness of his conduct. Respondent continues to suggest that the conduct was not related to a real estate transaction, and thus, it should not be considered in determining his fitness to retain his licenses. Respondent's criminal offense involved the willful and unlawful attempt to purchase an automobile using the false identification and credit history of another. The false identification was procured by Respondent specifically for that purpose. Under the Department's regulations, such conduct is directly related to Respondent's fitness and ability to conduct real estate transactions on behalf of California's consumers. A real estate licensee must be honest, truthful, possess good moral character, and exhibit a high degree of integrity. Insuring consumer safety in real estate transactions is a significant public policy because of the access real estate licensees have to consumers' financial matters and personal information. "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. Cause exists to suspend or revoke Respondents' real estate broker and corporation licenses pursuant to Business and Professions Code sections 498 and 10177, subdivision (a), in that Respondent failed to disclose pending criminal charges in a renewal application to the Department, by reason of Factual Findings 7 through 9.

7. The Commissioner may suspend or revoke the license of a real estate licensee, or suspend or revoke the license of corporation (if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock), has procured, or attempted to procure, a real estate license or license renewal, for himself or herself or a salesperson, by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a real estate license, license renewal, or reinstatement. (Bus. & Prof. Code § 10177, subd. (a).) "A board may revoke, suspend, or otherwise restrict a license on the ground that the licensee secured the license by fraud, deceit, or knowing misrepresentation of a material fact or by knowingly omitting to state a material fact." (Bus. & Prof. Code § 498.)

8. In his renewal application for designated officer for K-G Financial, dated March 8, 2010, Respondent failed to reveal pending criminal charges arising from his arrest on September 25, 2009. Respondent signed the application under penalty of perjury attesting that the information contained therein was true and correct. Respondent may not avoid responsibility for his conduct by simply stating he failed to review the application which was completed by one of his employees.

Rehabilitation

9. Respondent has not established rehabilitation pursuant to the Department's applicable Criteria of Rehabilitation set forth at California Code of Regulations, title 10, section 2912, by reason of Factual Findings 10 through 13.

ORDER

All licenses and licensing rights of Respondent Max Kay (real estate broker license number B/01315703) and Respondent K-G Financial Group, (corporation license number C/01331859) under the Real Estate Law are hereby revoked.

DATED: March 28, 2012


MICHAEL A. SCARLETT
Administrative Law Judge
Office of Administrative Hearings