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DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
BY: R. Sheker

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In the Matter of the Accusation of)	No. H-37351 LA
ARMANDO MIRANDA, JR.,)	L-2011071063
)	
)	
Respondent.)	
_____)	

DECISION

The Proposed Decision dated February 29, 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 the conviction of a crime, but the right to a restricted license is granted to Respondent.

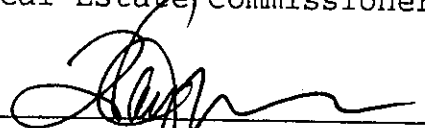
The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on APR 24 2012

IT IS SO ORDERED

3/30/2012

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

ARMANDO MIRANDA, JR.,

Respondent.

Case No. H-37351 LA

OAH No. 2011071063

PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on January 31, 2012, in Los Angeles, California.

Amelia V. Vetrone, Counsel for the Department of Real Estate (Department), appeared on behalf of Complainant Robin Trujillo, Deputy Real Estate Commissioner of the State of California.

Jeffrey G. Jacobs, Attorney at Law, represented respondent Armando Miranda, Jr., who was present.

Oral and documentary evidence was received, the record was closed, and the matter was submitted on January 31, 2012.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Complainant filed the Statement of Issues in her official capacity. Respondent timely filed a notice of defense.
2. The Department originally issued real estate broker license no. S/01220424 to respondent on February 8, 2000. The license expired as of February 7, 2008, but was renewed as of April 2, 2008; it is currently scheduled to expire on April 1, 2012.
3. On September 15, 2010, the California Corporations Commissioner, in Case No. 963-2115, OAH No. 2008060960, issued a Final Decision After Reconsideration (Commissioner's Decision) barring respondent from any position of employment, management, or control of any escrow agent for a period of one year, based on respondent's violations of the Business and Professions Code and Title 10 of the California Code of Regulations.

4. The action taken by the California Corporations Commissioner arose out of respondent's part ownership and operation of an escrow company, Orange County Escrow, Inc. The Commissioner issued an escrow agent license to respondent on February 2, 2005. In April 2007, a Department of Corporations examiner found that the escrow company had committed violations of the Escrow Law, including carrying debit balances in escrow accounts. On the date of the examination, the escrow manager, Ms. Tafola, was not present, having been hospitalized. The Commissioner's Decision established the following pertinent facts:

8. A computer crash of [Orange County] Escrow's computer system in June 2005 resulted in bookkeeping issues that may have contributed to some of the [violations of the Escrow Law].

[redacted] . . . [redacted]

14. The arrival of the Department examiner on April 3, 2007, coincided with a disruption in Respondents' business due to the illness of Ms. Tafola. When the examiner arrived and the approved escrow manager, Ms. Tafola, was not present, the staff called Respondent Miranda, who arrived shortly thereafter. Respondent Miranda was not familiar with the regular procedures for the business' operations or bookkeeping—he relied on Ms. Tafola for those functions. That day, he sought help from Gilda Martinez, who just started working for [Orange County] Escrow that same day. Neither Respondent Miranda nor Ms. Martinez knew where many of the records were stored. It is fair to say that, under all of the circumstances, Respondent Miranda and Ms. Martinez did the best they could to answer questions of, and provide documents to, the examiner that day.

15. Although Respondent Miranda was a signatory on some of the accounts of [Orange County] Escrow, at the time of the examination, he was not familiar with the process whereby [Orange County] Escrow performed its work as an escrow agent, including the operation of the computer software used for the escrows and the trust account itself.

16. Since the time of the examination, Respondent Miranda has become much more familiar with the operations and bank account practices of [Orange County] Escrow. He reviews periodic reports and is better able to oversee the operations of [Orange County] Escrow.

17. Complainant alleged that [unauthorized fees] were taken purposely to cover general account disbursements at the end of the month (referring to March 2007). This allegation was not supported by the evidence. The examiner was able to show how the use of those fees, when transferred to the general account, increased the balance in [Orange County] Escrow's general bank account. . . . From this, the examiner speculated, without sufficient facts[,] that the transfers were done to pay operating expenses. However, Respondents

established that the fees generated when these escrows were closed were the result of improper use of the escrow software, and not intentional acts taken for the purpose of increasing the balance in the general account. While [Orange County] Escrow may be at fault for not realizing that the improper use of the software allowed fees to be taken when they were not authorized, it was not established that the unauthorized fees were taken for an improper purpose.

18. Respondents notified the Department of the computer crash in Supplementary Information filed with the Department dated November 30, 2005. [] In Supplementary Information filed with the Department dated November 30, 2006 . . . , Respondents notified the Department that 18 escrows were to be adjusted to repost data that was lost due the to [sic] 2005 computer crash. In Supplementary Information filed with the Department dated November 30, 2007 . . . , Respondents notified the Department that there were no material irregularities in a test check of escrow fund receipts and disbursements and of dormant files and outstanding checks, and that there were no escrows with debit balances. . . .

(Ex. 3.)

5. In the Legal Conclusions section of the Commissioner's Decision, the Corporations Commissioner found cause to discipline respondent's escrow license for "recklessly causing disbursement of escrow account funds other than in accordance with escrow instructions;" for "failure to reconcile the trust account;" for "failure to reconcile the general account, and for failure to have the records available on request;" for failure to have adequate net worth and liquid assets;" and for failure to cooperate with the examination by not promptly providing all requested records." (Ex. 3.)

6. The Commissioner also found it appropriate not to revoke respondent's escrow agent license, but rather to suspend it for one year and bar respondent from employment, management, or control of any escrow agent for one year:

27. As Respondents immediately (or soon thereafter) corrected the majority (if not all) of the errors noted by the examiner, and there was no evidence presented that any funds taken were so done [sic] for the purpose of theft, fraud, or other wrong intention, combined with the firing of the former office manager under whom the errors and violations occurred, as well as Respondent Miranda's efforts since the examination to become quickly acquainted with and diligently oversee activities of [Orange County] Escrow, it appears that Respondents have done all they could to mitigate any harm or potential harm to the public.

(Ex. 3.)

7. Respondent testified that all of the auditor's findings were addressed and corrected. The escrow company no longer does business; the escrow license was revoked

when the escrow company did not pay for the Department of Corporations audit, and the no-longer-active escrow company was evicted from its premises. Respondent is working with the Department and attempting to obtain documentation that will allow the company's owners to properly disburse funds remaining in the escrow company's accounts and shut the company down. No one with funds in escrow has been harmed and no loss has occurred. Respondent's testimony was credible, and was consistent with documentary evidence.

8. Respondent works full-time as a real estate broker and testified that it is the only career he has known. He represents both buyers and sellers, and does not do any escrow work. His license has never been subject to discipline by the Department.

9. After his experience as a licensed escrow agent, respondent is chary of holding money in trust for his real estate brokerage clients. But it appears that his real estate brokerage practice will require him to do so. In the course of his business, respondent accepts earnest money deposits from buyers; he keeps the checks in a binder, and maintains a log of them. When a purchase offer is accepted, respondent sends the appropriate check to the designated escrow officer. Sometimes that process takes more than three business days. But even though respondent acknowledged that he must forward funds to escrow or deposit them in a trust account within three business days, he does not deposit them in a trust account because he does not want to have "trust fund issues."

10. If respondent desires to continue to practice under his real estate broker's license, however, he must be willing to deposit checks into a trust account rather than hold them for an extended period of time. Given respondent's rapid mastery of the requirements of operating and accounting for the transactions of an escrow company to a degree sufficient to allow him to comply with the Department of Corporations, as reflected in the Commissioner's findings (Ex. 3), he should be able to properly deposit in a trust account, and properly account for, money placed in trust with him as a real estate broker, without endangering the public or his clients.

LEGAL CONCLUSIONS

1. Complainant bears the burden of proof. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99; *Pipkin v. Bd. of Supervisors* (1978) 82 Cal.App.3d 652.) The standard of proof is clear and convincing evidence to a reasonable certainty. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) Clear and convincing evidence means the evidence is "so clear as to leave no substantial doubt" and is "sufficiently strong to command the unhesitating assent of every reasonable mind." (*Mathieu v. Norrell Corp.* (2004) 115 Cal.App.4th 1174, 1190 [citing *Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 332-333].)

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2. Cause exists to suspend or revoke respondent's real estate broker's license under Business and Professions Code section 10177, subdivision (f), as set forth in Factual Findings 3 through 6, on the ground that respondent

... had a license issued by another agency of this state ... revoked or suspended for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, if the action of ... revocation, or suspension by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and only upon an express finding of a violation of law by the agency or entity.

(Bus. & Prof. Code, § 10177, subd. (f).)

3. Respondent has acted diligently to correct the conditions at the escrow company for which his escrow agent license was disciplined. He was not found by the Commissioner to have acted for any improper motive. The Commissioner did not revoke respondent's license, but suspended it for a year; that suspension has now expired. No evidence has been presented to show that anyone has suffered any harm as a result of respondent's acts. Respondent has never been disciplined by the Department. Respondent is capable of properly maintaining a trust account. (Factual Findings 3 through 10.) Respondent has, therefore, established that restricting his practice as a licensed broker should adequately protect the public from any potential risk of harm.

ORDER

All licenses and licensing rights of respondent Armando Miranda, Jr., under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent under 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 that 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 attaching to the restricted license until two years have elapsed from the effective date of this Decision.

4. Respondent shall, within nine months form 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 notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of respondent's arrest, the crime for which respondent was arrested, and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

DATED: February 29, 2012


HOWARD W. COHEN
Administrative Law Judge
Office of Administrative Hearings

Handwritten initials/signature

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DEPARTMENT OF REAL ESTATE
BY: *Handwritten signature*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

11 In the Matter of the Accusation of) No. H-37351 LA
12)
13 ARMANDO MIRANDA JR.,) A C C U S A T I O N
14)
15 Respondent.)
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15 The Complainant, Robin Trujillo, a Deputy Real Estate
16 Commissioner of the State of California, acting in her official
17 capacity, for cause of Accusation against ARMANDO MIRANDA JR.,
18 ("Respondent") alleges as follows:

19 1.

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

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

Dated at Los Angeles, California: May 25, 2011.



Robin Trujillo
Deputy Real Estate Commissioner

cc: ARMANDO MIRANDA JR.
Robin Trujillo
Sacto.