

FILED

JUN -7 2012

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
BY: C.2

In the Matter of the Accusation of)	No. H-37409 LA
)	
TODD MICHAEL RICCIO,)	2011080964
)	
Respondent.)	
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DECISION

The Proposed Decision dated April 27, 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.

Pursuant to Section 11517(c)(2) of the Government Code, the following corrections are made to the Proposed Decision:

Proposed Decision, Page 1, paragraph No. 1, line 1, "February 1, 2012" is corrected to read "February 2, 2012".

Proposed Decision, Page 1, paragraph No. 4, line 2, "February 1, 2012" is corrected to read "February 2, 2012".

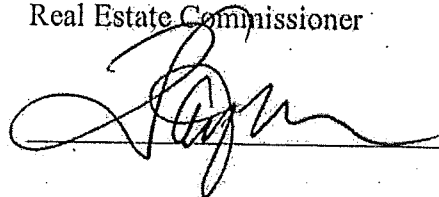
The Decision suspends or revokes one or more real estate licenses, but the right to a restricted license is granted to Respondent.

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 June 27, 2012.

IT IS SO ORDERED June 4, 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 Against:

TODD MICHAEL RICCIO,

Respondent.

Case No. H-37409 LA

OAH No. 2011080964

PROPOSED DECISION

This matter was heard on February ²~~1~~, 2012, in Los Angeles, by Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings.

Todd Michael Riccio (Respondent) was present and was represented by Frank M. Buda, Esq.

Complainant Robin Trujillo, Deputy Real Estate Commissioner (Complainant), was represented by Lissete Garcia, Counsel for the Department of Real Estate (Department).

Oral and documentary evidence was received, and the matter was argued and submitted for decision on February ²~~1~~, 2012.

FACTUAL FINDINGS

1. Complainant brought the Statement of Issues in her official capacity.
2. Respondent was initially licensed as a real estate salesperson on March 9, 2010. He presently holds a valid and active license. There have been no prior instances of discipline against Respondent's license.
3. On July 29, 2010, in the Superior Court of California, County of Ventura, case number 2010023363, Respondent was convicted of violating Penal Code section 484, subdivision (a) (petty theft), a misdemeanor.
4. The underlying events leading to the conviction were as follows. Respondent was employed as a sales clerk at Nordstrom department store. Respondent used a fraudulently obtained gift card in approximately May 2010. He has completed his one year conditional probation and paid restitution to Nordstrom. Respondent offered an explanation regarding his petty theft conviction. However, the issue of Respondent's guilt may not be re-litigated. Respondent's entry of the plea of nolo contendere in his criminal case is conclusive

evidence of guilt upon which the administrative law judge must rely. (*Arneson v. Fox* (1980) 28 Cal.3d 440.)

5. In aggravation, in September 2009, Respondent was convicted in the Superior Court of California, County of Ventura, case number 2009028213, Respondent was convicted of violating Vehicle Code section 23152, subdivision (b) (driving under the influence of alcohol), a misdemeanor. Respondent was sentenced to three years summary probation. Respondent's disclosed this conviction in his initial application for licensure and was issued a license on March 9, 2010, despite this conviction.

6. Respondent is 26 years old and is employed at Starioun Four Century 21 (SF). He is involved in his community. Respondent helps veterans re-build their homes and he is involved in prostrate cancer awareness.

7. Glen Scalise (Scalise) is a licensed real estate broker and has been involved in the real estate industry for 26 years. Scalise is Respondent's designated broker. He has supervised Respondent's handling of approximately 15 transactions. Scalise physically sees Respondent approximately three times per week, and they are in contact via e-mail and phone on a daily basis. Scalise has received compliments about Respondent's conduct as a real estate salesperson and he believes that Respondent is concerned with his clients' best interests, rather than "pushing a deal."

8. Respondent made an average witness on his own behalf. He was somewhat remorseful, but he did not take full responsibility for his misconduct. Nevertheless, Respondent established sufficient rehabilitation, combined with his broker's oversight, to safely protect the public.

LEGAL CONCLUSIONS AND DISCUSSION

1. Cause exists to suspend or revoke Respondent's real estate salesperson license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), based on Respondent's conviction. (Factual Findings 1-3.)

2. California Code of Regulations, title 10, section 2910, defines by regulation instances where acts are deemed to be substantially related to the qualifications, functions, or duties of a licensee. In this case Respondent was convicted of two misdemeanors which are substantially related to the qualifications, functions, or duties of a real estate salesperson. Honesty is one qualification required of a real estate salesperson. Therefore, Respondent's conviction for petty theft is substantially related to the qualifications, functions, or duties of a real estate salesperson. (Factual Findings 1-3.)

3. Criteria have been developed by the Department pursuant to Business and Professions Code section 482, subdivision (b), for the purpose of evaluating the rehabilitation of a licensee in considering whether or not to suspend or revoke the licensee's license on

account of a crime committed by the licensee. These criteria, found at California Code of Regulations, title 10, section 2912, are summarized as follows:

Subdivision (a) passage of at least two years since the conviction;

Subdivision (b) restitution;

Subdivision (c) expungement of the conviction;

Subdivision (d) expungement of the requirement to register as a sex offender;

Subdivision (e) completion of the criminal probation;

Subdivision (f) abstinence from drugs or alcohol that contributed to the crime;

Subdivision (g) payment of any criminal fines or penalties;

Subdivision (h) correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted;

Subdivision (i) new and different social and business relationships;

Subdivision (j) stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction;

Subdivision (k) completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement;

Subdivision (l) significant involvement in community; and

Subdivision (m) Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by any or all of the following:

(1) Testimony of applicant.

(2) Evidence from family members, friends or other persons familiar with the licensee's previous conduct and with subsequent attitudes and behavioral patterns.

(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.

(4) Evidence from psychiatrists, clinical psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

3. Respondent has addressed, and satisfied, a sufficient number of these criteria. Administrative proceedings to revoke, suspend, or impose discipline on a professional license are non-criminal and non-penal; they are not intended to punish the licensee, but

rather to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-786.) Respondent has previously not suffered any discipline against his license. It was not established that Respondent has been anything but a professional and honest real estate salesperson. Thus, the following order, along with the supervision of his broker Scalise, will sufficiently protect the public. (Factual Findings 4-8.)

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent Todd Michael Riccio 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:

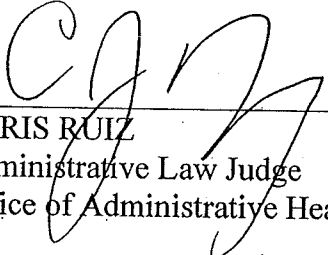
1. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.
2. The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

quired.

5. Respondent shall, within nine 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.

6. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of Respondent's license until Respondent passes the examination.

DATED: April 27, 2012.


CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings