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FILED

FEB - 1 2013

DEPARTMENT OF REAL ESTATE

BY: James B. Demus

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation Against

DAVID J. SUN,

Respondent.

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Case No. H-37872 LA

OAH No. L-2012040076

DECISION AFTER REJECTION

Humberto Flores, Administrative Law Judge ("ALJ") Office of Administrative Hearings, State of California, heard this matter on August 9, 2012 in Los Angeles, California.

James Demus, Staff Counsel, represented Robin Trujillo ("Complainant"), Deputy Real Estate Commissioner in the Department of Real Estate ("Department").

DAVID J. SUN ("Respondent") appeared personally and represented himself.

Oral and documentary evidence was received, and the matter was submitted for Decision on August 9, 2012. On August 23, 2012, the ALJ issued a Proposed Decision which I declined to adopt as my Decision herein.

Pursuant to Section 11517(c) of the Government Code of the State of California, Respondent was served with notice of my determination not to adopt the Proposed Decision of the ALJ along with a copy of said Proposed Decision. Respondent was notified that I would decide the case upon the record, the transcript of proceedings held on August 9, 2012, and upon any written

1 argument offered by Respondent and Complainant. Complainant submitted argument and Respondent
2 did not.

3 I have given careful consideration to the record in this case, including the transcript of
4 proceedings of August 9, 2012. I have also considered the argument submitted by Complainant. The
5 following shall constitute the Decision of the Real Estate Commissioner ("Commissioner") in this
6 proceeding:

7 FINDINGS OF FACT

8 1. The Complainant brought the Accusation in her official capacity.

9 2. Respondent is licensed under the Real Estate Law, Part 1 of Division 4 of the
10 Business and Professions Code ("Code"), as a real estate broker. He was originally licensed as a
11 broker on March 5, 2008.

12 3. On October 15, 2010, in the Superior Court of California, Orange County, in
13 Case No. 10HM07511, Respondent was convicted of violating Penal Code section 602.5 (a),
14 unauthorized entry of a dwelling, a misdemeanor that is substantially related to the qualifications,
15 functions and duties of a real estate licensee. Judgment of conviction was entered and the court
16 suspended the sentence. Respondent was placed on informal probation for one year on certain
17 conditions including that he serve 17 days in the county jail and pay fines and fees totaling \$160.
18 The conviction was expunged pursuant to Penal Code Section 1203.4 on June 18, 2012.

19 4. The facts and circumstances leading to Respondent's conviction were that
20 Respondent used his real estate agent's pass key to enter an uninhabited house that was for sale.

21 (a) At hearing, Respondent testified that business was slow, and he went to Orange
22 County from San Gabriel to look for leads for business. While there, Respondent located a house
23 for sale that was listed on the Multiple Listing Service (MLS). The owners of the house were
24 living in Portland Oregon at the time of the incident. Respondent testified that one rainy night, he
25 entered the house to freshen up and charge his cell phone. While there, he was confronted by the
26 listing agent who called the local police at about 8:30 p.m. Respondent told the listing agent that
27

1 he was a real estate broker and had come in to view the property. He then left the premises, but
2 was stopped and arrested by local officers shortly thereafter.

3 (b) The ALJ found that Respondent's version as to why he entered the house was
4 not credible. The ALJ reasoned that it is highly unusual for a real estate broker who does not have
5 the listing to enter a house at approximately 8:00 p.m. In addition, according to the arrest report,
6 Respondent opened the garage door, parked his car in the garage, and closed the garage door. In
7 addition, Respondent told the arresting police officer that it was common practice for him to stay
8 for several hours at a house to freshen up, charge his batteries and take naps. When the officer
9 searched Respondent's vehicle, he observed a foldable bed, a comforter and toiletries.

10 (c) Respondent testified that during the time of the incident, the real estate market
11 was very slow and Respondent was having a difficult time financially. Based on the evidence in
12 this case, the ALJ found that it was a reasonable inference that Respondent was living out of his
13 car and entered the uninhabited dwelling to shower and sleep.

14 5. From February 1, 2010 to February 1, 2012, the business address registered by
15 Respondent with the Department was 2960 Huntington Drive, #81052, San Marino, California.
16 Respondent did not maintain an office at this address during the stated time period. In fact, the
17 location was a post office box and not his actual place of business.

18 6. Respondent testified that he now does business as Paradise Realty. He provided a
19 copy of his current business card which contains his new address.

20 7. Respondent's testimony at hearing, statements made to arresting officers and
21 observations contained in the police report reflected inconsistencies. Respondent came across as
22 having a difficult time telling the truth. In addition, at hearing, Respondent's testimony failed to
23 reflect an appreciation on his part of the serious breach of trust posed by using his position as a
24 broker to enter and use other people's property for his own personal needs and purposes. He did
25 not demonstrate remorse or change in attitude.

26 8. Respondent did not provide any independent documentation or witness testimony
27 in support of his character or qualifications to be a real estate licensee.

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2 LEGAL CONCLUSIONS

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4 1. Cause exists to suspend or revoke Respondent's real estate broker license pursuant
5 to Business and Professions Code ("Code") Sections 10165, 10177(d) and 10177(g) for failing to
6 maintain an office or place of business where his license could be displayed and where he could
7 consult with clients, in violation of Code Section 10162 and Title 10, Chapter 6 of the California Code
8 of Regulations, Regulation 2715.

9
10 2. Cause exists to suspend or revoke Respondent's real estate broker license pursuant
11 to Code Sections 10177(j), for dishonest conduct in that Respondent used his lock-box pass key access
12 to a dwelling for his personal benefit.

13
14 3. Although Complainant did not allege the conviction itself as a basis for discipline,
15 instead using it as a basis for dishonest dealing, the conviction was directly related to the
16 qualifications, functions and duties of a real estate licensee.

17
18 4. As cause exists to suspend or revoke Respondent's real estate license,
19 Respondent bears the burden of establishing his rehabilitation and fitness to be a real estate
20 licensee. (*Martin v. Alcoholic Beverage Control Appeals Bd.* (1950) 52 Cal.2d 259, 264-265.)

21
22 5. The Real Estate Law and the disciplinary procedures provided for in the Real Estate
23 Law are designed to protect the public and to achieve the maximum protection for the purchasers of
24 real property and those dealing with real estate licensees. Real estate licensees act as fiduciaries in
25 their dealings with the public. Real estate salespersons and brokers hold money and other personal
26 property on behalf of clients, and have access to homes when the owners are not present. Clients and
27 commercial institutions rely on the licensee's integrity in representing them. Such licensees must be
trustworthy. Honesty and integrity are among the qualities which necessarily bear on the fitness,

1 qualifications, and duties of a real estate licensee(*Ring v. Smith* (1970) 5 Cal.App.3d 197, 205; *Golde*
2 *v. Fox* (1976) 98 Cal.App.3d 167, 177; *Harrington v. Department of Real Estate* (1989) 214
3 Cal.App.3d 394, 402.)

4 6. Respondent's conduct leading to his conviction was lacking in honesty and integrity.
5 Respondent gained access to a vacant home for personal use through the lock-box system he had
6 access to as a realtor. He breached the trust of the owner of the property, of the listing agent and of the
7 community that relies on good faith conduct. In addition, Respondent failed to acknowledge that he
8 was apparently living out of his car at the time and entered the dwelling to sleep and take a shower.
9 His testimony at hearing was equivocal, filled with denial of any wrongdoing, and reflecting a total
10 lack of appreciation for the seriousness of his conduct. Respondent has not demonstrated sufficient
11 rehabilitation to establish his trustworthiness and that supervision by another broker would be
12 adequate to protect the public.

13
14 ORDER

15 All licenses and licensing rights of Respondent DAVID J. SUN under the Real Estate
16 Law are revoked.

17 This Decision shall become effective at 12 o'clock noon on FEB 20 2013

18
19 IT IS SO ORDERED 1/30/13

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21 REAL ESTATE COMMISSIONER

22 
23 By AWET P. KIDANE
24 Chief Deputy Commissioner

FILED

OCT 18 2012

DEPARTMENT OF REAL ESTATE

BY: Jane B. Cron

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

DAVID J. SUN,

Respondent.

No. H-37872 LA

OAH No. 2012040076

NOTICE

TO: DAVID J. SUN, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated August 23, 2012, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated August 23, 2012, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on August 9, 2012, any written argument hereafter submitted on behalf of Respondent and Complainant.

Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of August 9, 2012, at the

Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

Written argument of Complainant to be considered by me must be submitted within 15 days after receipt of the argument of Respondent at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

DATED:

10/12/2012

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:

DAVID J. SUN,

Respondent.

Case No. H-37872 LA

OAH No. 2012040076

PROPOSED DECISION

This matter was heard by Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings, on August 9, 2012, in Los Angeles, California.

Complainant was represented by James Demus, Counsel for the Department of Real Estate (Department). David J. Sun (respondent) appeared personally and represented himself.

Evidence was received and the matter was submitted for decision. The Administrative Law Judge finds as follows:

FACTUAL FINDINGS

1. Complainant, Robin Trujillo, made the Accusation and First Amended Accusation in her official capacity as Deputy Real Estate Commissioner of the State of California.
2. Respondent is presently licensed and/or has licensing rights as a real estate broker under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code. Respondent was originally licensed on March 5, 2008.
3. On October 15, 2010, in the Superior Court of California, County of Orange, Case No. 10HM07511, respondent entered a plea of guilty and was convicted of violating Penal Code section 602.5, subdivision (a), unauthorized entry of a dwelling, a misdemeanor that is substantially related to the duties, functions and qualifications of a real estate salesperson. Judgment of conviction was entered and the court suspended the sentence and placed respondent on informal probation for one year on certain conditions including conditions ordering respondent to serve 17 days in the county jail (time served) and pay fines and fees totaling \$160. The conviction was expunged on June 18, 2012.

4. (A) The facts and circumstances underlying the conviction were that respondent used his real estate agent's pass key to enter an uninhabited house that was for sale. The owners of the house were living in Portland, Oregon, at the time of the incident. Respondent testified that during the time of the incident the real estate business was slow so he went to Orange County to get some leads for business. While in the City of Irvine he noticed a particular house that was for sale. He stated that it was raining that night so he entered the house to view it for a potential purchaser and to get out of the rain. While in the house, respondent decided to freshen up and charge his cell phone. Respondent was confronted in the house by the listing agent who called the local police at approximately 8:30 p.m. Respondent told the listing agent that he was a real estate broker that he came in to view the property then immediately left the premises. Respondent was stopped and arrested by local police officers shortly after leaving the premises.

(B) Respondent's version as to why he entered the house was not credible. First of all, it is highly unusual for a real estate broker who does not have the listing to enter a house at approximately 8:00 p.m. and bring toiletries, bedding and clothing. In addition, once inside the house, respondent opened the garage door, parked his car inside the garage and closed the garage door. Respondent told the arresting police officer that "it was common practice for him to stay for several hours at a house to freshen up, charge his batteries and take naps." When the officer searched respondent's vehicle, he observed a foldable bed, a comforter, and toiletries.

(c) Based on the evidence in this case, a reasonable inference is that respondent was living out of his car and entered this uninhabited dwelling to shower and sleep.

5. From February 1, 2010 to February 1, 2012, the business address registered by respondent with the Department was 2960 Huntington Drive # 81052, San Marino, California. Respondent did not maintain an office at this address during the stated time period. In fact, the location was a post office box and not his actual place of business.

6. Respondent testified that during the time of the incident the real estate market was very slow and respondent was having a difficult time financially. Perhaps because of embarrassment, respondent does not want to admit that he was living out of his car at the time of the incident. In any event, respondent has been doing much better over the past year. He owns and operates Paradise Realty located in San Gabriel, California.

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LEGAL CONCLUSIONS

1. Cause exists to suspend or revoke respondent's real estate broker's license under Business and Professions Code sections 10165 and 10177, subdivisions (d) and (g), for a failing to maintain an office or place of business where his license could be displayed and where he could consult with clients, in violation of Business and Professions Code section 10162 and California Code of Regulations, title 10, section 2715.

2. Cause exists to suspend or revoke respondent's real estate broker's license under Business and Professions Code section 10177, subdivisions (g) and (j), for dishonest conduct in that respondent used his broker's pass key to enter an uninhabited for-sale dwelling without permission from the owner or the owner's agent. Respondent used his status as a real estate broker to enter the property for his personal benefit.

3. Although complainant did not allege the conviction itself as a basis for discipline, instead using it as a basis for dishonest dealing, said conviction is directly related to his duties as a real estate broker. Therefore, the rehabilitation criteria set forth in California Code of Regulations, title 10, section 2911, is applicable to this case as follows:

(a) The passage of not less than two years from the most recent criminal conviction that is "substantially related" to the qualifications, functions or duties of a licensee of the department. Respondent's conviction is less than two years old.

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee. This factor is not applicable to this case.

(c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action. Respondent's conviction has been expunged.

(d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of section 290 of the Penal Code. This factor is not applicable to this case.

(e) Successful completion or early discharge from probation or parole. Respondent has completed probation.

(f) Abstinence from the use of controlled substances or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance or alcohol. This factor is not applicable to this case because there was no evidence that respondent has an alcohol or substance abuse problem.

(g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license. Respondent has paid all fines and fees imposed by the Superior Court.

(h) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted. This factor is not applicable to this case.

(i) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question. This factor is not applicable to this case.

(j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction. Respondent did not present evidence on this issue.

(k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement. Respondent did not present evidence on this issue.

(l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems. Respondent did not present evidence on this issue.

(m) Change in attitude from that which existed at the time of the commission of the criminal acts. . . Respondent continued to assert that he entered the house to view it for a client. As noted in Factual Finding 4, this assertion was not credible because

4. Respondent did not establish rehabilitation pursuant to regulation section 2911. Respondent's conviction and underlying conduct is less than two years old and is directly related to his duties as a real estate broker in that he used his broker pass key to enter the house without permission and used the premises for his personal benefit. The imposition of discipline in this case required a balancing of public protection and an understanding of respondent's predicament at the time of his misconduct. Based on all of the facts and circumstances of this case, the public would be adequately protected by revoking respondent's broker's license and allowing respondent to apply for and obtain a restricted salesperson's license. This would provide a vehicle for respondent to be supervised during a period of probation.

ORDER

All licenses and licensing rights of respondent David J. Sun, under the Real Estate Law are revoked. 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 thereof 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 two years have elapsed from the effective date of this Decision.

4. Respondent shall submit with any application for a 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 required.

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 respondent

Not
Adopted

presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: August 23, 2012

Humberto Flores

HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings