

MAR 03, 2014

By J. J. J. J. J.

STATE OF CALIFORNIA

In the Matter of the Accusation of

Brian Scott Ferguson,

Respondent.

ORDER MODIFYING DISCIPLINARY ACTION
PURSUANT TO STIPULATED SETTLEMENT

WRIT SETTLEMENT

In consideration for the dismissal with prejudice and in complete settlement of Respondent's said Petition for Writ of Mandate the following order is made:

1 NOW, THEREFORE, IT IS ORDERED that Respondent shall be entitled to apply
2 for and be issued restricted real estate salesperson license pursuant to California Business and
3 Professions Code section 10156.5 if Respondent makes application therefor, and pays to the
4 Bureau of Real Estate the appropriate fees for said license within forty-five (45) days from the
5 effective date of this Decision. The restricted license issued to Respondent shall be subject to all
6 the provisions of California Business and Professions Code section 10156.7 and to the following
7 limitations, conditions, and restrictions imposed under authority of California Business and
8 Professions Code section 10156.6:

9 A. Said restricted license issued to Respondent BRIAN SCOTT FERGUSON
10 may be suspended prior to hearing by order of the Real Estate Commissioner in the event of
11 Respondent's conviction (including conviction on a plea of nolo contendere) of a crime which
12 bears a significant relation to Respondent's fitness or capacity as a real estate licensee.

13 B. Said restricted license may be suspended prior to hearing by order of the Real
14 Estate Commissioner or evidence satisfactory to the Real Estate Commissioner that Respondent
15 has violated provisions of the California Real Estate Law, the Subdivided Lands Law,
16 Regulations of the Real Estate Commissioner, or conditions attaching to said restricted license.

17 C. Respondent shall not be eligible to apply for the issuance of unrestricted real
18 estate licenses nor the removal of any of the conditions, limitations, or restrictions of the
19 restricted license until two (2) years have elapsed from the date of issuance of the restricted
20 license.

21 D. Respondent shall submit with any application for license under an employing
22 broker, or any application for transfer to a new employing broker, a statement signed by the
23 prospective employing real estate broker on a form approved by the Bureau of Real Estate which
24 shall certify: (a) That the employing broker has read the Decision of the Real Estate
25 Commissioner which granted the right to a restricted license; and (b) That the employing broker
26 will exercise close supervision over the performance by the restricted licensee relating to
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1 activities for which a real estate license is required.

2 E. Respondent shall, within nine (9) months from the effective date of this
3 Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has
4 taken and successfully completed the continuing education requirements of Article 2.5 of
5 Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to
6 satisfy this condition, the Real Estate Commissioner may order the suspension of the restricted
7 license until the Respondent presents such evidence. The Real Estate Commissioner shall afford
8 Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present
9 such evidence.

10 F. Respondent BRIAN SCOTT FERGUSON shall, within six (6) months from
11 the effective date of this Decision, take and pass the Professional Responsibility Examination
12 administered by the Bureau of Real Estate including the payment of the appropriate examination
13 fee. If Respondent fails to satisfy this condition, the Real Estate Commissioner may order the
14 suspension of the restricted license until the Respondent presents such evidence. The Real Estate
15 Commissioner shall afford Respondent the opportunity for a hearing pursuant to the
16 Administrative Procedure Act to present such evidence.

17 G. Respondent BRIAN SCOTT FERGUSON shall notify the Real Estate
18 Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Real
19 Estate Commissioner at the Bureau of Real Estate, Flag Section, Post Office Box 137013,
20 Sacramento, CA 95813-7013. The letter shall set forth the date of Respondent's arrest, the crime
21 for which Respondent was arrested, and the name and address of the arresting law enforcement
22 agency. Respondent's failure to timely file written notice shall constitute an independent
23 violation of the terms of the restricted license, and shall be grounds for the suspension or
24 revocation of that license.

25 H. Pursuant to California Business and Professions Code section 10106,
26 Respondent BRIAN SCOTT FERGUSON shall pay the Real Estate Commissioner's reasonable
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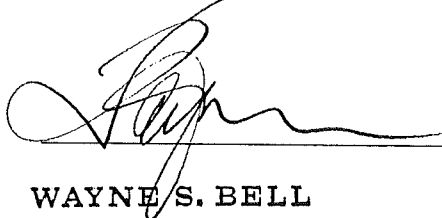
1 cost for investigation and enforcement of the matter. The investigation and enforcement cost
2 which led to this disciplinary action is \$4,086.90. Said payment shall be made within forty-five
3 (45) days from the effective date of this Decision. Said payment shall be in the form of a
4 cashier's check or certified check made payable to the Bureau of Real Estate.

5 The Real Estate Commissioner may suspend Respondent's license pursuant a
6 hearing held in accordance with California Government Code section 11500, et seq., if payment
7 is not timely made within forty-five (45) days from the effective date of this Decision. The
8 suspension shall remain in effect until payment is made in full or until Respondent enters into an
9 agreement satisfactory to the Real Estate Commissioner to provide for payment, or until a
10 decision providing otherwise is adopted following a hearing held pursuant to this condition.

11 This Order shall be effective immediately.

12 DATED: 2/27/2014

14 REAL ESTATE COMMISSIONER

15 
16
17 WAYNE S. BELL

Sacramento Files

FEB 20 2013
DEPT. OF REAL ESTATE

FILED

FEB 19 2013

DEPARTMENT OF REAL ESTATE
BY: *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
BRIAN SCOTT FERGUSON,)
Respondent.)

DRE No. H-38102 LA
OAH No. 2012060218

ORDER DENYING RECONSIDERATION

On January 8, 2013, a Decision was rendered in the above-entitled matter. The Decision was to become effective on February 6, 2013, and was stayed by separate Order to February 19, 2013.

On or about January 25, 2013, Respondent petitioned for reconsideration of the Decision of January 8, 2013.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of January 8, 2013, and reconsideration is hereby denied.

IT IS SO ORDERED 2/16/2013

Real Estate Commissioner

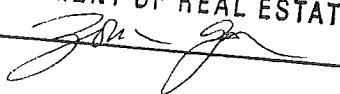
[Signature]
By WAYNE S. BELL
Chief Counsel

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FILED

JAN 29 2013

DEPARTMENT OF REAL ESTATE

BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of) No. H-38102 LA
BRIAN SCOTT FERGUSON,)
Respondent.)

ORDER STAYING EFFECTIVE DATE

On January 8, 2013, Decision was rendered in the
above-entitled matter against BRIAN SCOTT FERGUSON to become
effective February 6, 2013.

IT IS HEREBY ORDERED that the effective date of the
Decision of January 8, 2013, is stayed for a period of 10 days.

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1 The Decision of January 8, 2013, shall become
2 effective at 12 o'clock noon on February 19, 2013.

3 IT IS SO ORDERED JANUARY 29, 2013

4 Real Estate Commissioner

5 Phillip Inde
6 By: PHILLIP INDE
7 Regional Manager

Scots Glas

FILED

JAN 17 2013

BEFORE THE DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

BY: 

In the Matter of the Accusation of)	DRE No. H-38102 LA
)	
BRIAN SCOTT FERGUSON,)	OAH No. 2012060218
)	
)	
Respondent.)	
_____)	

DECISION

The Proposed Decision dated November 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 the conviction of a crime.

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
February 6, 2013.

IT IS SO ORDERED

1/8/13

Real Estate Commissioner


By: Awet P. Kidane
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

Brian Scott Ferguson,

Respondent.

Case No. H-38102 LA

OAH No. 2012060218

PROPOSED DECISION

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on October 29, 2012.

Diane Lee, Staff Counsel, represented complainant Robin Trujillo, Deputy Real Estate Commissioner in the Department of Real Estate (Department).

Attorney Donald J. Boss represented respondent Brian Scott Ferguson.

Oral and documentary evidence was received at the hearing, and the matter was deemed submitted October 29, 2012.

The Department of Real Estate brings this Accusation to revoke respondent's real estate broker license. For the reasons set out below, respondent's license is revoked.

FACTUAL FINDINGS

Jurisdiction and Background

1. Complainant issued this Accusation in her official capacity.
2. Respondent has been a licensed real estate salesperson since February 2007. His license was renewed in 2011 and expires February 14, 2015. On May 3, 2012, the Department brought this Accusation to revoke his license, and respondent timely requested a hearing.

Criminal Conviction

3. On May 27, 2009, in Los Angeles Superior Court, case number 8BF06210, respondent was convicted on his no contest pleas of two misdemeanor counts of intentionally selling, or knowingly possessing for sale, counterfeit goods in violation of Penal Code

section 350, subdivision (a). Respondent was arrested while selling counterfeit "Coach" purses from the back of his SUV in a shopping mall parking lot. The police report says that he attempted to conceal the merchandise by closing the SUV when he saw the police officers approach, but later admitted to them that he believed the merchandise was counterfeit. Police seized 254 items from respondent's SUV and his home, including 119 pairs of jeans, 26 purses and 71 shirts. Respondent was sentenced to two days in jail, with credit for two days served, fined \$120, ordered to complete 24 hours of community service, and placed on summary probation for a year.

Mitigation, Aggravation and Rehabilitation

4. Respondent paid the fines and completed his community service and probation. On September 7, 2010 the convictions on both counts were dismissed under Penal Code section 1203.4.

5. Respondent obtained a conditional real estate license when he was 19 years old. When respondent was arrested in December 2008, he was 20 years old. Respondent testified that he was a student at the time, not making a living in real estate, and reselling merchandise to make ends meet.

6. Respondent testified at hearing that he bought the merchandise from a vendor or vendors in Santee Alley, a discount clothing area in downtown Los Angeles, and resold it. He began by reselling at swap meets and progressed to finding buyers by advertising on Craigslist. He testified that he believed the merchandise was not counterfeit, which contradicts what he told the arresting officers. He also admitted that items he was selling, such as "Coach" and "Louis Vuitton" purses, are expensive items of the sort not normally found in Santee Alley. His testimony that he did not knowingly sell counterfeit goods was not credible, both because it contradicted his earlier statements that were contemporaneous with the crime, and because it is highly unlikely that he would buy inexpensive clothes and purses in a market known for bargains, honestly believing they were expensive designer goods.

7. Respondent introduced a list, which he prepared, of 31 real estate transactions in which he has been involved as an agent since his conviction. He testified that there have been no complaints by clients. He participates in monthly functions by his employing brokerage to "give back to the community," and participates occasionally in his church's outreach program to provide food to the homeless. He testified that he does not associate with the same persons he associated with at the time he was arrested. He has no record of other criminal convictions.

8. Other than the list of transactions and his own testimony, respondent introduced no evidence of rehabilitation or character.

LEGAL CONCLUSIONS

1. There is cause to suspend or revoke respondent's license under Business and

Professions Code¹ sections 490 and 10177, as paragraph 4 of the Accusation alleges. Section 490, subdivision (a) allows any board to suspend or revoke a license if the licensee “has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued,” and Section 10177, subdivision (b), allows the Department, specifically, to suspend or revoke a real estate license if the licensee has been convicted of “a crime substantially related to the qualifications, functions, or duties of a real estate licensee[.]” Respondent’s crime is substantially related under California Code of Regulations, title 10, section 2910,² subdivision (8), because it was an “unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator[.]” Because dealing in counterfeit merchandise both deprives the manufacturer of legitimate goods of business and fraudulently induces buyers to pay for the goods, it is substantially related under CCR section 2912, subdivision (a)(1), as a “fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person.”

2. Respondent has the burden of showing rehabilitation. He has met some of the rehabilitation criteria set out in CCR section 2912. More than two years have passed since his convictions (Factual Finding 3; CCR §2912, subd. (a)). He has paid the fine (CCR §2912, subd. (g)), completed probation (CCR §2912, subd. (e)), and had his convictions expunged under Penal Code section 1203.4. (CCR §2912, subd. (c)); (Factual Finding 4.)

3. The evidence was inconclusive or non-existent as to other rehabilitation criteria. On the critical criterion of change in attitude (CCR §2912, subd. (m)), the evidence is that respondent denies guilt for the crime, which indicates a failure to take responsibility for his actions. And because respondent offered no evidence other than his own testimony (and a document he generated), it is particularly significant that in the only instance in which his testimony can be compared to an objectively verifiable fact, his testimony that he believed he was not selling counterfeit goods contradicted his statement to the arresting officers that he believed the goods were indeed counterfeit. The contradiction calls into question his uncorroborated testimony about other matters noted in Factual Finding 7, such as changes in his social relationship (CCR §2912, subd. (i)), the extent of his participation in community or charitable activities (CCR §2912, subd. (l)), and even how much work he has actually done as a real estate salesperson.

4. Respondent has not carried his burden of proving that the public would be protected if he continued to hold a real estate license.

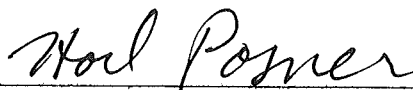
¹ Further statutory references are to the Business and Professions Code.

² Further references to the California Code of Regulations are cited as “CCR.”

ORDER

All licenses and licensing rights of respondent Brian Scott Ferguson under the Real Estate Law are revoked.

DATED: November 28, 2012

A handwritten signature in cursive script, reading "Howard Posner", written over a horizontal line.

HOWARD POSNER
Administrative Law Judge
Office of Administrative Hearings