FILED

DEC 12 2013

BUREAU OF REAL ESTATE

By [signature]

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of ALLIE DINH, Respondent.	NO. H-38504 LA L-2013050936

DECISION

The Proposed Decision dated November 13, 2013, 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:

> Page 4, Legal Conclusions, Paragraph 1, "qualifications, functions, and duties of a real estate salesperson" shall read: "qualifications, functions, and duties of a real estate licensee".

The Decision revokes a real estate license 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 JAN 03 2014.

IT IS SO ORDERED 12/11/2013

Real Estate Commissioner

WAYNE S. BELL

BEFORE THE BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation of ALLIE DINH, Respondent.	Case No. H-38504 LA OAH No. 2013050936

PROPOSED DECISION

Administrative Law Judge Angela Villegas, State of California, Office of Administrative Hearings, heard this matter on October 22, 2013, in Los Angeles, California.

Amelia Vetrone, counsel for the Department of Consumer Affairs, Bureau of Real Estate (Bureau), represented Complainant.

Respondent was present and was represented by attorney Edward Lear.

Evidence was received. The record was held open until November 12, 2013, on Respondent's request, with Complainant's agreement, (a) for Respondent to submit documentary evidence of restitution payments, with a deadline of November 7, 2013, and (b) for Complainant to file a response, with a deadline of November 12, 2013. No further submission was received from Respondent. On November 7, 2013, Complainant submitted correspondence so noting, and asking for the record to be closed at that time; this correspondence was marked for identification as Exhibit 5. The record was closed on November 12, 2013, and the matter was submitted for decision.

REDACTION OF PERSONAL IDENTIFYING INFORMATION

During the hearing it was discovered that Exhibit 4 contained unredacted names and personal identification numbers regarding crime victims. These references were redacted from the Office of Administrative Hearings' file.

FACTUAL FINDINGS

1. Complainant Veronica Kilpatrick, a Deputy Real Estate Commissioner of the State of California, filed the Accusation in her official capacity. Respondent filed a Notice of Defense requesting a hearing.

2. Respondent was licensed as a real estate salesperson in 2000. On September 12, 2005, her salesperson license was terminated, and the following day she was issued a broker's license. Respondent's license has no disciplinary history. The license expired October 26, 2013, though Respondent retains licensing rights; therefore, the Bureau has jurisdiction over this matter pursuant to Business and Professions Code section 10103.

3. On June 28, 2010, in the Superior Court of California, County of Riverside, case number RIF151971, Respondent[1] was convicted on her guilty plea of violating Penal Code section 487, subdivision (a) (grand theft). Respondent was placed on 36 months' formal probation, and ordered to (a) serve 152 days in county jail (less 152 days' credit); (b) stay away from all crime victims; and (c) pay fees, restitution, and fines, together totaling more than $49,000. Respondent has successfully completed the three-year probationary period, has complied with the stay-away order, and since August 2012 has paid $100 per month toward her debt, though she acknowledges she still owes nearly $49,000.

4. Respondent's crime occurred in the second half of 2008. She had lost her real estate business due to the financial crisis of that period, and her then-boyfriend[2]—a convicted felon—asked her to set up a corporation, LSA Logistics, for him, and to front as its sole officer. Respondent agreed. Her boyfriend, going by a false name (which Respondent knew was false) and using an industrial lot where he had a parking space as the business's address (a fact also known to Respondent), advertised LSA Logistics on a website called U-Ship, where transportation companies would bid for contracts to move large items, such as yachts, from one location to another. LSA Logistics entered into shipping contracts with some 10 victims and obtained payment from them, but never provided the promised services. In all, LSA Logistics' victims were swindled out of more than $160,000.

5. Respondent claimed not to realize anything was wrong with the way her then-boyfriend was conducting business, despite being "uncomfortable" (Respondent's word) knowing he was using a false name. She described her role in LSA Logistics as remote: she handled the money, but knew nothing about the transportation business and was not involved in it. Respondent testified she was prepared to accept responsibility for failing to keep a close enough eye on the company's doings, but could not accept responsibility for deliberate

---

[1] Respondent was convicted under her former name, Allie Kao.

[2] Respondent's former boyfriend was not charged, and according to Respondent, is still at large, whereabouts unknown.

wrongdoing since she had no part in it. Respondent testified her first inkling of something amiss was when her boyfriend left with all of the company's money, supposedly for a shipping job, and did not return or contact her.

6. Respondent's attempt to underplay her criminal conduct lacked credibility—and even if Respondent's testimony had been persuasive, her underlying conduct was still exceptionally credulous and irresponsible. Respondent's minimization of her role in the business was somewhat inconsistent with evidence developed for the criminal case as reflected in police reports, which Respondent adopted at the hearing as substantially correct. Each of the crime victims recounted speaking and/or exchanging email messages with Respondent *and* her then-boyfriend, and many of the victims described Respondent as appearing knowledgeable about LSA Logistics' business. Respondent insisted she had only dealt with customers with regard to payment, not with regard to shipping, but she could not and did not deny that she was "knowledgeable" about the matters she discussed with customers. Furthermore, Respondent did not contact police when she suspected wrongdoing by her boyfriend, and she did not alert any of the crime victims to the possibility that they had been defrauded. Respondent could not explain why she did not contact police, other than to characterize it as "stupid and naïve" (Respondent's phrase), driven by internal disbelief that her boyfriend could mistreat her as he had.

7. In retrospect, Respondent wishes she had handled the situation differently. She believes she was too trusting of her former boyfriend and too unquestioning of his practices. She acknowledges she should have confronted the problem immediately upon discovering it, and should have contacted the victims, instead of ignoring the problem. She feels she let pride and shame get in the way of doing the right thing.

8. Respondent's life has changed since the time of her crime and conviction. She no longer associates with her former boyfriend or any of their mutual acquaintances. She got married two years ago; her husband is employed as an emergency medical technician. The couple have an 18-month-old daughter. Respondent herself has maintained employment since her conviction. She currently works for Trans United Financial Services as a loan processor and transaction coordinator. She has tried to become a better person since her conviction, spending time with her family and volunteering every Thanksgiving for a skid row food provider, Feed the Hungry. She submitted several reference letters from friends and colleagues attesting to her character. Respondent feels she is a "completely different person" (Respondent's phrase) now than she was at the time of her crime: less trusting, warier, and more careful in business transactions.

9. Although the Bureau prayed for costs of enforcement and investigation in this matter under Business and Professions Code section 10106, it presented no evidence of its costs.

LEGAL CONCLUSIONS

1. The Bureau has established cause to discipline Respondent's license under Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b), based on Respondent's conviction, which is substantially related to the qualifications, functions, and duties of a real estate salesperson pursuant to California Code of Regulations, title 10 (Regulation), section 2910, subdivisions (a)(1) and (a)(4). (Factual Findings 3 – 6.)

2. Revocation of Respondent's real estate broker license is the appropriate discipline. Despite Respondent's fulfillment of some criteria set forth in Regulation section 2912, her showing is insufficient to warrant lesser discipline. First, Respondent fails to satisfy the key element of rehabilitation: *full* acceptance of responsibility for her conduct. (Factual Findings 4 – 6.) This is a cornerstone of rehabilitation, which is a "state of mind" reflecting "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging previous wrongdoing is critical to rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Yet instead of fully owning up to her crime, Respondent minimized the gravity of her own conduct, essentially denying wrongdoing and blaming her conviction almost entirely on her ex-boyfriend. (Factual Findings 4 – 6.) The conduct of Respondent's former boyfriend, as she described it, was undoubtedly wrong, but Respondent's failure to grasp the seriousness of *her own* behavior raises the concern that she might once again engage in conduct harmful to the public. Moreover, even if Respondent's characterization of her own conduct were completely believable, it would still occasion concern over protection of the public, since someone in the position of a broker must be trusted to work without supervision, and a credulous, easily duped person should not hold such a position.

3. Furthermore, barely over three years have elapsed since Respondent's conviction. (Factual Finding 3.) (Regulation § 2912, subd. (a).) She has completed her probation, but has not fully repaid her debt. (Factual Finding 3.) (Regulation § 2912, subds. (b), (e), and (g).) No evidence was presented that Respondent's conviction has been expunged. (Regulation § 2912, subd. (c).) Respondent's testimony as to the awareness she has gained of the need to conduct herself and her business with caution and care was encouraging, but ultimately was undermined by her failure to fully appreciate and acknowledge the significance of her criminal behavior. (Factual Findings 4 – 6.) (Regulation § 2912, subd. (h).)

4. On the plus side, Respondent's positive relationship with her family is commendable, as is her split from her former boyfriend and the acquaintances she shared with him. (Factual Finding 8.) (Regulation § 2912, subds. (i) and (j).) Also commendable is Respondent's volunteer work at Thanksgiving (Factual Finding 8), though such work, performed only one day a year, does not necessarily constitute "[s]ignificant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems." (Regulation § 2912, subd. (l).)

5. In sum, Respondent's refusal to recognize, and accept full responsibility for, her criminal conduct demonstrates that her attitude has not changed sufficiently at this time to warrant discipline short of revocation. (Factual Findings 4 – 7.) (Regulation § 2912, subd. (m).) Additional time is needed in order to determine whether Respondent will embrace full responsibility and contrition for her criminal behavior, and put into practice the lessons she professes to have learned.

6. Based on the Bureau's failure to present evidence of its costs (Factual Finding 6), costs are not awarded (Bus. and Prof. Code § 10106).

ORDER

1. All licenses and licensing rights of Respondent Allie Dinh under the Real Estate Law are revoked.

2. Complainant's request for cost recovery is denied.

Dated: November 13, 2013

Angela Villegas
Administrative Law Judge
Office of Administrative Hearings