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SEP 12 2013

BUREAU OF REAL ESTATE

By *[Signature]*

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)	BRE No. H-38567 LA
)	OAH No. 2013030728
MILTON YING CHOW,)	
)	
)	
Respondent.)	
_____)	

DECISION

The Proposed Decision dated July 31, 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.

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 October 2, 2013.

IT IS SO ORDERED

9/9/2013

REAL ESTATE COMMISSIONER

[Signature]
WAYNE BELL

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

MILTON YING CHOW

Respondent.

Case No. H-38567 LA

OAH No. 2013030728

PROPOSED DECISION

This matter was heard by Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings, on June 11, 2013, in Los Angeles, California. This matter was consolidated for hearing with the accusation in case number H-38566 LA (OAH No. 2013020558).

Complainant was represented by Cheryl D. Keily, Counsel for the Bureau of Real Estate (Bureau).

Milton Ying Chow (respondent) appeared personally and was represented by Michael B. Montgomery, Attorney at Law.

Evidence was received and the record was left open to allow complainant to submit a letter brief regarding the relationship between a real estate broker's license and a mortgage loan originator license and of the effect on his broker's license in the event that discipline imposed on respondent's mortgage loan originator license. Complainant's letter brief was received on July 16, 2013, and marked exhibit 10 for identification only. Complainant did not submit a reply within ten days. The record was closed and the matter as submitted for decision on July 29, 2013. The Administrative Law Judge finds as follows:

FACTUAL FINDINGS

1. Complainant, Howard Alston made the Accusation in his 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.

3. On August 31, 1995, in the Superior Court of California, County of Los Angeles, respondent entered a plea of guilty to seven felony counts charging violations of California Corporations Code sections 25540, subdivision (a), selling securities without obtaining qualification from the Commissioner of Corporations under Corporations Code section 25510 (Exhibit 6, pages 60 and 71). Pursuant to a plea agreement, sentencing was deferred to allow respondent and his co-defendants to pay restitution to the victims. The total amount of restitution ordered by the court was \$500,000. Respondent paid a total of \$20,000 in \$600 monthly installments over a five year period while sentencing was deferred. On June 8, 2000, the court entered judgment and imposed sentence, reducing the charges against respondent to misdemeanors and placing respondent on probation for six months on the condition that he obey all laws (Exhibit 6, page 83).¹ On August 14, 2007, respondent's conviction was expunged pursuant to Penal Code section 1203.4.

4. The facts and circumstances underlying the conviction are complex and involve respondent and two co-defendants. In or about 1990, respondent's co-defendant, Jose Santiago, who owned and operated The Homeowners Financial Center (THFC), solicited and convinced various homeowners to refinance their homes and to invest the proceeds in THFC on the false representation that they would receive a 14 to 20 percent rate of return on their investment. In fact, THFC was not solvent and eventually filed for bankruptcy, with the homeowners losing the money they invested in THFC. The refinancing for the victim homeowners was handled by respondent through Total Real Estate Enterprises and Total Real Estate Escrow, both of which were owned and operated by respondent. Through these companies, respondent was instrumental and complicit in Mr. Santiago's fraudulent conduct.

5. Respondent's broker's license was suspended for 60 days (forty actual days) in 1992. Respondent asserted in a declaration submitted to the Bureau that the underlying facts of this discipline were that he became a broker for an associate who started a mortgage company and thereafter failed to supervise this associate who employed unlicensed loan originators.

6. Respondent did not disclose his guilty plea set forth in Factual Finding 3 in a 1999 renewal application for his broker's license. Complainant alleges that this failure to disclose is cause for discipline, however, since the imposition of judgment had been deferred until June 8, 2000, respondent's answer of "No" to the question: "Within the last four year period, have you been convicted of any violation of law?" was not a misrepresentation.

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¹ The court record is inconsistent on the charges on which respondent was convicted. In certain parts of the record, the docket indicates that respondent was convicted of violating Corporations Code section 25540, subdivisions (a) and (b), however, respondent pled guilty only to subdivision (a).

7. In a 2003 renewal application for his broker's license, respondent answered "No" to the question: "Within the last four year period, have you been convicted of any violation of law?" Respondent's failure to disclose his June 8, 2000 conviction in his 2003 renewal application was a knowing and willful omission of a material fact.²

8. Respondent terminated his relationship with Mr. Santiago when criminal charges were filed. There was no evidence that respondent, in the operation of his real estate business, has committed or engaged in fraudulent or other misconduct since his 1995 guilty plea. Respondent has been continuously working as a real estate broker since his conviction and has been able to maintain a stable family life despite experiencing the criminal investigation of his real estate business and the subsequent criminal proceedings initiated against him.

LEGAL CONCLUSIONS

1. Cause exists to suspend or revoke respondent's real estate broker's license under Business and Professions Code sections 490 and 10177, subdivision (b), for respondent's conviction of the crimes set forth in Factual Findings 3 and 4.

2. Cause exists to suspend or revoke respondent's real estate broker's license under Business and Professions Code sections 498 and 10177, subdivision (a), for failing to disclose his criminal conviction as set forth in Factual Finding 7.

3. California Code of Regulations, title 10, section 2911, sets forth criteria for establishing rehabilitation. The rehabilitation criteria set forth in California Code of Regulations, title 10, section 2911, are 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 was convicted of the offenses 13 years ago. The underlying offenses occurred 23 years ago.

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee. Respondent paid \$20,000 of the \$500,000 restitution order.

² In the companion case, evidence was received that respondent failed to disclose his conviction in a 2010 application for a Mortgage Loan Originator Endorsement (MLO), and in a subsequent MLO application submitted in 2012. Respondent testified that he believed that he was not required to disclose his conviction on these submissions because by then his conviction had been expunged.

(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. No 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. There was no evidence that respondent has engaged in any fraudulent conduct since he entered his guilty plea in 1995.

(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. Respondent is no longer associated with his co-defendants.

(j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction. Despite his conviction, respondent has maintained a stable family life.

(k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement. Respondent has taken courses as required by the Bureau.

(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 of significant community involvement.

(m) Change in attitude from that which existed at the time of the commission of the criminal acts. . . . Respondent testified that he operates his real estate and loan mortgage businesses in accordance with all rules and regulations governing real estate brokers, and there was no contradictory evidence presented by complainant. However, respondent's failure to disclose his conviction in his 2003 renewal application and in his 2010 and 2012 loan originator endorsement applications is cause for concern.

4. Respondent's conduct underlying his conviction occurred in 1990. He pled guilty in 1995, and was convicted in 2000. There has been a significant passage of time. Further, there was no evidence of complaints against respondent or that respondent has engaged in any misconduct in connection with the operation of his real estate business since entering his plea of guilty. However, respondent's failure to disclose his conviction on his renewal applications is cause for concern. Based on the application of the rehabilitation factors set forth in Legal Conclusion 3, and in consideration of the facts and circumstances of this case, the public would be adequately protected by allowing respondent to continue working as a real estate broker under a restricted real estate broker's license with appropriate conditions, including a period of suspension.

ORDER

All licenses and licensing rights of respondent Milton Ying Chow, under the Real Estate Law are revoked. However, a restricted real estate broker's 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. Any restricted license issued to respondent pursuant to this Decision shall be suspended for 15 days from the date of issuance of said restricted license.

2. 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.

3. 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.

4. 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.

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 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 notify the Bureau in writing within 72 hours of any arrest by sending a certified letter to the Bureau of Real Estate, Post Office Box 187000, Sacramento, California 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 suspension or revocation of that license.

DATED: July 31, 2013

Humberto Flores

HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings