

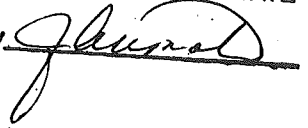
FILED

BEFORE THE BUREAU OF REAL ESTATE

JUL 23 2014

STATE OF CALIFORNIA

BUREAU OF REAL ESTATE

By 

In the Matter of the Accusation of)

CalBRE No. H-38612 LA

BROOKE BAILEY,)

OAH No. 2013040072

Respondent.)

DECISION

The Proposed Decision dated June 17, 2014, 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:

Order, Page 7, paragraph (e), line 3, "Post Office Box 187000, Sacramento, CA 95818-7000" is amended to read "Post Office Box 137013, Sacramento, CA 95813-7013".

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 AUG 13 2014

IT IS SO ORDERED

7/19/2014

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:

BROOKE BAILEY,

Respondent.

Case No. H-38612 LA

OAH No. 2013040072

PROPOSED DECISION

Administrative Law Judge Angela Villegas, State of California, Office of Administrative Hearings, heard this matter on January 31, 2014, in Los Angeles, California.

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

Respondent¹ was present and was represented by attorney Edward O. Lear.

Evidence was received. The record was held open until June 6, 2014, on Respondent's request, with Complainant's agreement, (a) for Respondent to submit, by May 30, 2014, documentation of the ruling on Respondent's pending motion for early termination of her criminal probation and dismissal of the criminal matter under Penal Code section 1203.4, and (b) for Complainant to submit, by June 6, 2014, any response thereto.

On March 19, 2014, Respondent filed a conformed copy of a March 14, 2014 court order granting her petition for dismissal under Penal Code section 1203.4, and attaching a minute order of the same date, documenting the termination of her criminal probation pursuant to Penal Code section 1203.3. Respondent's submission was marked for identification as Exhibit J.

Complainant did not file a response. Exhibit J was admitted. The record was closed on June 6, 2014, and the matter was submitted for decision.

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¹ Respondent formerly used the surnames Siciliano and Siciliano Smith.

REDACTION AND SEALING OF PERSONAL INFORMATION

1. During and after the hearing, it was discovered that Exhibits 3 and 4 contained unredacted personal identifying information, personal financial information, and/or medical information regarding Respondent and others.

2. *Redaction.* To preserve the right of public access to the extent possible, the above references were redacted from the Office of Administrative Hearings' file as to Exhibit 3, and as to Exhibit 4 except as noted below.

3. *Sealing.* With regard to the ninth and tenth pages of Exhibit 4, despite efforts to redact private information, it was not possible to do so without obliterating relevant content. Accordingly, to safeguard the privacy of the information, on the sua sponte order of the administrative law judge, the ninth and tenth pages of Exhibit 4 are sealed.

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 currently holds a real estate broker license, first issued on April 28, 2001, which, as of January 16, 2013,² was scheduled to expire on April 27, 2013. The evidence did not disclose whether Respondent's license has been renewed or, if so, the current expiration date, but even if Respondent's license is presently expired, the Bureau retains jurisdiction over this matter pursuant to Business and Professions Code section 10103. Before becoming licensed as a broker, Respondent held a real estate salesperson license, originally issued on March 6, 1999. Her licenses have no disciplinary history.

3. On March 2, 2012, in the Superior Court of California, County of Riverside, case number SWF1100515, Respondent was convicted on her guilty plea of violating Penal Code section 484i, subdivision (a) (possession of incomplete access card, with intent to complete it without the issuer's consent), a misdemeanor substantially related to the qualifications, functions, and duties of a licensed real estate broker.

4. The court placed Respondent on 36 months' summary probation, on condition that she serve one day in county jail (less credit for one day served), and pay fines, fees, and victim restitution, and stay away from the victim—Respondent's mother. The evidence did not disclose what amount, if any, Respondent was ordered to pay her mother in restitution, or how much Respondent has actually paid, but Respondent's mother testified to her satisfaction with the relationship she presently has with Respondent. Prior to the administrative hearing in this matter, Respondent moved for early termination of probation

² The date of the license history certification submitted by the Bureau (Exhibit 2).

and dismissal of the criminal case under Penal Code section 1203.4, and the motion was still pending on the date of the administrative hearing. On March 14, 2014 the court granted the motion. (Exhibit J.)

5. The circumstances leading to Respondent's conviction were unusual and complicated. They originated with the relationship among Respondent, her mother, and her now-deceased husband (sometimes referred to as Mr. Bailey).

(a) Respondent and Mr. Bailey married in 2005. During the marriage, Respondent worked as a real estate broker, earning from \$100,000 to \$250,000 per year. Mr. Bailey did not work outside the home. On numerous occasions, Mr. Bailey approached Respondent's mother for money, saying he and Respondent needed financial assistance. Respondent's mother frequently acceded to these requests.

In early 2009, Respondent helped her mother refinance her home, and in so doing, stored documents containing her mother's financial information in the home Respondent shared with Mr. Bailey. Without Respondent's permission, Mr. Bailey unearthed bank and credit card information, and at that point transitioned from asking his mother-in-law for money to simply availing himself of it. He forged checks from Respondent's mother's account, and used at least one credit card number belonging to her.

(b) Respondent acknowledged she had turned a blind eye to her husband's depredations. She let Mr. Bailey manage the couple's finances and did not question where he was getting money.

Eventually, Respondent's mother noticed money missing from her accounts. A police investigation revealed discrepancies pointing to Mr. Bailey and Respondent, who were charged with felony financial elder abuse (Pen. Code § 368, subd. (d)) and grand theft (Pen. Code § 487, subd. (a)), with an enhancement pursuant to Penal Code section 12022.6, subdivision (a)(1) (causing loss or harm exceeding \$65,000).

(d) The criminal proceedings continued against Respondent after Mr. Bailey's suicide, despite Respondent's mother's request that they be dropped. The criminal complaint was amended, however, to dismiss the more serious charges and strike the enhancement, replacing both with "the least damning misdemeanor" (Respondent's testimony) possible, in recognition of the fact that Mr. Bailey had been the principal malefactor.

7. Respondent has close and supportive relationships with longtime and new friends and business associates, several of whom wrote letters of support praising her character, trustworthiness, diligence, intelligence, courage, and resilience—and all of whom are aware of her criminal past and the circumstances surrounding it. One close friend, who is also a former client, testified on Respondent's behalf at the hearing, praising not only her character and personal growth, but also her professional handling of his transaction, noting that he has referred others to her for real estate services. Respondent looks forward to rebuilding her professional life. She recognizes "there's a relationship" (Respondent's phrase) between the circumstances of her crime—in which Respondent's inattention to her and Mr. Bailey's personal finances allowed her mother to be victimized—and the potential for similar improprieties, in either her personal or professional life, if she fails to exercise proper diligence. Nevertheless, Respondent pointed out that she has never been involved in misfeasance of any kind in her professional life. Moreover, she testified, "nothing would be overlooked when it came to money, and I would never leave anyone else in charge of it again."

8. Respondent, her mother, and her friend all testified credibly and compellingly. Respondent's candor and forthrightness in describing her past were very impressive, especially considering how difficult it must have been to talk about—and in a sense re-live—the events leading to her conviction. While it was clear from Respondent's demeanor that

those subjects were painful to discuss, she was nevertheless exceptionally thorough and unflinching in her testimony.

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

LEGAL CONCLUSIONS

1. The Bureau 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 of a crime 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), (a)(2), (a)(4), and (a)(8). (Factual Findings 3 – 5.)

2. Although license discipline in some form is appropriate, the circumstances of Respondent's crime, and her progress in rehabilitation, show that outright revocation of her broker license would be too harsh, and is unnecessary to protect the public, at this time. Respondent has fulfilled many of the criteria set forth in Regulation section 2912, and beyond that, has accepted responsibility for her conduct³ and taken impressive steps to rebuild her life. (Factual Findings 6 – 8.) (See *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940; *Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058 (fully acknowledging previous wrongdoing is critical to rehabilitation).)

(a) Respondent's conviction is relatively recent—having been entered approximately two years ago—but the criminal conduct itself was complete by 2009, nearly three years before the conviction. (Factual Findings 3 – 5.) (Regulation § 2912, subd. (a).) Respondent's mother, the crime victim, has been made whole to her satisfaction, and has forgiven Respondent, even coming to believe the primary offender was Respondent's late husband. (Factual Finding 6.) (Regulation § 2912, subd. (b).) Furthermore, Respondent fulfilled all the conditions of her probation (Factual Finding 4), which was terminated early (*id.*), and had the conviction dismissed under Penal Code section 1203.4 (*id.*). (Regulation § 2912, subds. (c), (e), and (g).)

³ Respondent's attorney argued in closing that, based on the evidence presented at the administrative hearing, Respondent had not actually committed any crime. This argument contravened *Arenstein v. California State Board of Pharmacy* (1968) 265 Cal.App.2d 179, 190, which held that a guilty plea admits all elements of the crime, and constitutes conclusive evidence of all facts necessary to establish those elements. Consequently, the argument was not persuasive. On the other hand, it was a *legal* argument made by counsel, not an attempt by Respondent herself to evade responsibility for her conduct.

(b) In addition, Respondent persuasively demonstrated that her attitude has changed for the better since the time of her crime. (Factual Findings 6 and 7.) (Regulation § 2912, subds. (i) and (m).) Her family life has stabilized, and she has rebuilt old friendships and developed positive new relationships with friends and business associates. (Factual Findings 6 and 7.) (Regulation § 2912, subds. (i) and (j).) She has embraced a healthful lifestyle, and has undertaken psychotherapy in an effort to learn from the past, and ensure that she never again becomes involved in a relationship in which she is dominated and mistreated to the point that she becomes complicit in harming another person. (Factual Findings 6 – 8.) (Regulation § 2912, subd. (k).) She recognizes the destructive potential of ignoring important matters—particularly financial matters—and is intent on never doing so again. (Factual Finding 7.) (Regulation § 2912, subd. (h).) Moreover, it is noteworthy that even at Respondent's nadir, she did not allow the darkness of her personal life to seep into her professional life. (Factual Finding 7.)

3. In sum, Respondent has made sufficient rehabilitative progress to warrant discipline short of revocation. At this point Respondent has not demonstrated complete rehabilitation, so as to dispense with the need for any discipline whatsoever, but the additional supervision that will accompany a period of restricted, probationary licensure should be sufficient to protect the public against the very low risk that Respondent will re-offend, or otherwise engage in improper behavior.

4. 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 Brooke Bailey under the Real Estate Law are revoked; provided, however, a restricted real estate broker 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.

2. 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:

(a) 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.

(b) 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.

(c) 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.

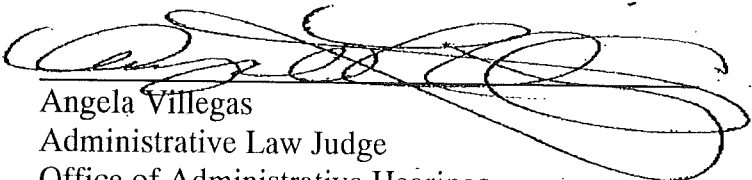
(d) Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education 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.

(e) Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 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 the suspension or revocation of that license.

(f) Respondent shall report in writing to the Bureau of Real Estate as the Commissioner shall direct by this Decision, or by separate written order issued while the restricted license is in effect, such information concerning Respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest. Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of Respondent and periodic summaries of salient information concerning each real estate transaction in which the Respondent engaged during the period covered by the report.

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

Dated: June 17, 2014


Angela Villegas
Administrative Law Judge
Office of Administrative Hearings