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FILED

DEC 30 2014

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

JUANCARLOS GUERRERO,

Respondent.

) CalBRE No. H-38905 LA
) OAH No. 2014070011
)
)
) STIPULATION & AGREEMENT
) AND DECISION AFTER
) REJECTION
)

The California Bureau of Real Estate ("Bureau") filed an Accusation against JUANCARLOS GUERRERO ("Respondent") on June 10, 2013. On October 28, 2014, a hearing was held and evidence was received; the case was deemed submitted on October 28, 2014.

On November 7, 2014, the Proposed Decision of Administrative Law Judge Humberto Flores was issued, and determined, among other things, that Respondent's real estate salesperson license should be revoked; provided, however, Respondent should be issued a

1 restricted real estate salesperson license by the Real Estate Commissioner ("Commissioner")
2 pursuant to section 10156.5 of the Business and Professions Code ("Code").

3 On December 4, 2014, the Commissioner rejected the Proposed Decision of
4 November 7, 2014.

5 The parties wish to settle this matter without further proceedings.

6 IT IS HEREBY STIPULATED by and between Respondent JUANCARLOS
7 GUERRERO, representing himself, and the Bureau, acting by and through Cheryl Keily,
8 Counsel for the Bureau, as follows for the purpose of settling and disposing of the Accusation
9 filed by the Bureau:
10

11 I acknowledge that I have received, read and understand the Accusation filed
12 by the Bureau of Real Estate against me on June 10, 2013, and the Statement to Respondent
13 and the Discovery Provisions of the Administrative Procedure Act ("APA") sent to me in
14 connection with the Accusation.
15

16 I hereby admit that the allegations contained in the Accusation filed against me
17 are true and correct and constitute a basis for the discipline of my real estate salesperson
18 license.
19

20 I further acknowledge that the Commissioner held a hearing on this Accusation
21 on October 28, 2014, before the Office of Administrative Hearings for the purpose of proving
22 the allegations therein. I was present at the hearing and represented myself, and participated
23 therein. Further, I have had an opportunity to read and review the Proposed Decision of the
24 Administrative Law Judge.

25 I understand that pursuant to Government Code Section 11517(c) of the APA,
26

1 the Commissioner has rejected the Proposed Decision of the Administrative Law Judge. I
2 further understand that pursuant to the same Section 11517(c), the Real Estate Commissioner
3 may decide this case upon the record, including the transcript, without taking any additional
4 evidence, after affording me the opportunity to present written argument to the Commissioner.
5

6 I further understand that by signing this Stipulation and Agreement, I am
7 waiving my right to obtain a dismissal of the Accusation through proceedings under
8 Government Code Section 11517(c) if this Stipulation and Agreement is accepted by the
9 Commissioner. However, I also understand that I am not waiving my rights to further
10 proceedings to obtain a dismissal of the Accusation if this Stipulation and Agreement is not
11 accepted by the Commissioner.
12

13 I hereby request that the Commissioner in his discretion revoke my real estate
14 salesperson license and issue to me a restricted real estate salesperson license under the
15 authority of Code Section 10156.5 if I make application therefor and pay to the Bureau the
16 appropriate fee for said license within 90 days from the effective date of the Decision herein.
17

18 I further understand that the restricted license shall be subject to the provisions
19 of Section 10156.7 of the Code and the following conditions, limitations and restrictions will
20 attach to the restricted license issued by the Bureau.

21 By reason of the foregoing and solely for the purpose of settlement of the
22 Accusation without further administrative proceedings, it is stipulated and agreed that the
23 Commissioner shall adopt the following Order:
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under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson
license shall be issued to Respondent pursuant to Code Section 10156.5 if Respondent makes
application therefor and pays to the Bureau the appropriate fee for the restricted real estate sales
license within 90 days from the effective date of this Decision.

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1 4. Respondent shall submit with any application for license under an employing
2 broker, or any application for transfer to a new employing broker, a statement signed by the
3 prospective employing real estate broker, on a form approved by the Bureau, which shall certify:

4 (a) That the employing broker has read the Decision of the Commissioner
5 which granted the right to a restricted license; and
6

7 (b) That the employing broker will exercise close supervision over the
8 performance by the restricted licensee relating to activities for which a real estate salesperson
9 license is required.

10 5. Respondent shall, within nine (9) months from the effective date of this
11 Decision, present evidence satisfactory to the Commissioner that Respondent has, since the most
12 recent issuance of an original or renewal real estate salesperson license, taken and successfully
13 completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate
14 Law for renewal of a real estate salesperson license. If Respondent fails to satisfy this condition,
15 the Commissioner may order the suspension of the restricted license until Respondent presents
16 such evidence. The Commissioner shall afford Respondent the opportunity for a hearing
17 pursuant to the APA to present such evidence.
18

19 6. Respondent shall notify the Commissioner in writing within 72 hours of any
20 arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate, 320 W. 4th
21 Street, Room 350, Los Angeles, California 90013. The letter shall set forth the date of
22 Respondent's arrest, the crime for which Respondent was arrested and the name and address of
23 the arresting law enforcement agency. Respondent's failure to timely file written notice shall
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1 constitute an independent violation of the terms of the restricted license and shall be grounds for
2 the suspension or revocation of that license.

3 II. Any restricted real estate license issued to Respondent pursuant to this
4 Decision shall be suspended for thirty (30) days from the issuance of said restricted license.
5

6 III. Respondent shall pay the Bureau its costs of investigation and enforcement in
7 the amount of \$3,393 within 60 days of the effective date of this Decision.

8
9 DATED: December 16, 2014 Cheryl D. Keily
10 CHERYL D. KEILY, Counsel
11 BUREAU OF REAL ESTATE

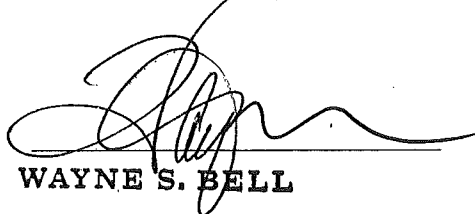
12 I have read the Stipulation and Waiver and its terms are agreeable and acceptable
13 to me. I understand that I am waiving my rights given to me by the California Administrative
14 Procedure Act (including but not limited to Section 11506, 11508, 11509, and 11513 of the
15 Government Code), and I willingly, intelligently, and voluntarily waive those rights.

16
17
18 DATED: 12/16/14 Juan Carlos Guerrero
19 JUANCARLOS GUERRERO
20 Respondent

The foregoing Stipulation and Agreement is hereby adopted as my Decision in
this matter and shall become effective at 12 o'clock noon on January 20, 2015.

IT IS SO ORDERED Dec. 23, 2015.

Real Estate Commissioner



WAYNE S. BELL

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FILED

DEC 10 2014

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

JUANCARLOS GUERRERO,

Respondent.

No. H-38905 LA

OAH No. 2014070011

NOTICE

TO: JUANCARLOS GUERRERO, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated November 7, 2014, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated November 7, 2014, 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 October 28, 2014, any written argument hereafter submitted on behalf of Respondent and Complainant.

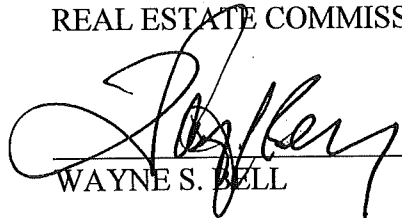
Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of October 28, 2014, at the

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

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

6 DATED: 12/4/2014

7 REAL ESTATE COMMISSIONER

8 
9 _____
10 WAYNE S. BELL

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

JUANCARLOS GUERRERO,

Respondent.

Case No. H-38905 LA

OAH No. 2014070011

PROPOSED DECISION

This matter was heard by Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings, on October 28, 2014, in Los Angeles, California.

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

Juancarlos Guerrero also known as Juan Carlos Guerrero (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 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 salesperson under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code

3. (a) On June 9, 2010, in the Superior Court of California, County of Ventura, Case No. 2010019639FA, respondent entered a plea of guilty to one count charging a violation of Penal Code section 368, subdivision (b)(1), felony elder abuse, and to one count charging a violation of Penal Code section 69, resisting a police officer, a felony. Both crimes are substantially related to the duties, functions and qualifications of a real estate salesperson. Judgment was entered and sentence was imposed on July 7, 2010.

(b) Imposition of sentence was suspended and respondent was placed on formal probation for 36 months on certain conditions including, inter alia, that respondent serve 180 days in the county jail, pay fines and fees totaling \$2,414, complete anger management counseling, and pay \$250 in restitution to the victim. Respondent was also ordered to pay a monthly probation fee of \$143. Because respondent had not kept current with his payments, the total amount owed by respondent increased to \$5,608.34. On April 17, 2012, the court granted respondent's motion to terminate probation. The balance of unpaid court fees was converted to a civil judgment.

(c) The facts and circumstances underlying the conviction were that on June 1, 2010, respondent confronted G.G., an elderly man (74 years old) who had attempted to assist respondent's mother retrieve her dog. Respondent yelled at the G.G. and told him to "Get the fuck out of his neighborhood." G.G. had been riding his bike in the area when he was confronted by respondent. G.G. then left respondent's neighborhood and rode his bike to another area. Respondent somehow was able to obtain a ride. He directed the driver to a certain area known as "Bermuda Dunes." Respondent told the driver to stop his vehicle and respondent got out the vehicle and walked to the location where G.G. was riding his bike. Respondent confronted G.G. again and struck G.G. in the face with a closed fist. Respondent then left the area. G.G. suffered bruises, abrasions and swelling on his face.

4. (a) On June 9, 2010, in the Superior Court of California, County of Ventura, Case No. 2010014888MA, respondent entered a plea of guilty to one count charging a violation of Penal Code section 417, subdivision (a)(1), exhibiting a deadly weapon (a screw driver), a misdemeanor that is substantially related to the duties, functions and qualifications of a real estate salesperson. Judgment was entered and sentence was imposed on July 7, 2010.

(b) Imposition of sentence was suspended and respondent was placed on formal probation for 36 months on certain conditions including, inter alia, that respondent serve 90 days in the county jail, and pay fines and fees totaling \$1,203, and complete an anger management counseling program. On April 17, 2012, the court granted respondent's motion to terminate probation. The balance of unpaid court fees was converted to a civil judgment.

(c) The facts and circumstances underlying the conviction occurred on April 26, 2010, when respondent went to a post office to retrieve his mail from his post office mailbox. He was unable to open the mailbox so he approached the clerk and demanded his mail. He was informed that the mailbox box had been closed due to lack of payment and that he needed to fill out certain information before mail could be given to him. Respondent became angry, went to his car and obtained a screw driver and attempted to open his post office box with the screw driver. Unable to open the mail box, he again approached the clerk and angrily demanded his mail while holding the screwdriver. The clerk felt threatened and called police.

5. (a) On June 24, 2010, in the Superior Court of California, County of Ventura, Case No. 2010015490MA, respondent entered a plea of guilty and was convicted of violating Penal Code section 148, subdivision (a)(1), resisting a peace officer, a misdemeanor that is substantially related to the duties, functions and qualifications of a real estate salesperson.

(b) Imposition of sentence was suspended and respondent was placed on conditional revocable release for 36 months on certain conditions including, inter alia, that respondent serve 48 days in the county jail, and pay fines and fees totaling \$532.

(c) The facts and circumstances underlying the conviction occurred over a two-hour period at two different locations.

(d) In the afternoon of April 30 2010, respondent drove to a tow-yard and asked to be allowed to open his car and retrieve certain items including a gun from the car. Respondent was told that since the vehicle was not registered in his name that he would not be allowed to open the car and retrieve the items. Respondent became incensed and argued with the tow-yard operator. While arguing with the tow-yard operator, respondent waived his hands in an agitated manner. He then returned to his car and was followed by the tow-yard operator who wrote down respondent's vehicle's license plate number. While the tow-yard operator was writing down the license plate number, another tow-yard employee called police. After calling the police, the employee stood outside the tow-yard office and saw that respondent held what looked like a shotgun and pointed it in his direction. Respondent then left the tow-yard.

(e) Respondent was later confronted at another location by a plain clothes police officer who heard a dispatch regarding the call from the tow-yard. The officer called to respondent and ordered him to lie down on the ground. Respondent refused and said: "Fuck you, I'm going back to my car and you can't stop me." The officer then retrieved a rifle and pointed it at respondent and repeated his order. Respondent refused to heed the officer's demand. By then other patrol units from Oxnard Police Department and the Sheriff's Department, including a K-9 unit, arrived on the scene and respondent finally complied with the officer's order to lie down.

(f) Respondent initially resisted the officers' attempt to place respondent in handcuffs. He was finally handcuffed and arrested by a combination of Oxnard police officers and sheriff's deputies. At the time of his arrest, respondent did not have a shotgun in his possession. However, one of the investigating officers later determined that there were shock absorbers in respondent's vehicle at the time of the incident which could have been mistaken for a shotgun.

6. (a) On July 27, 2010, in the Superior Court of California, County of Ventura, Case No. 2010011757MA, respondent entered a plea of guilty and was convicted of violating Penal Code section 148, subdivision (a)(1), resisting a peace officer, a misdemeanor that is substantially related to the duties, functions and qualifications of a real estate salesperson.

(b) Imposition of sentence was suspended and respondent was placed on conditional revocable release for 36 months on certain conditions including, inter alia, that respondent serve two days in the county jail and pay fines and fees totaling \$601.

(c) The facts and circumstances underlying the conviction were that respondent had been behaving strangely at an AT&T store in Simi Valley on April 1, 2010. Concerned employees called the Simi Valley Police Department. When police officers arrived at the location to conduct an investigation, respondent resisted their efforts to detain him. While searching respondent, police officers found and confiscated a glass pipe commonly used to smoke methamphetamine. Police officers also searched respondent's car and found a plastic baggie containing white crystal-like substance that tested positive for methamphetamine.

7. (a) On January 25, 2011, in the Superior Court of California, County of San Diego, Case No. M114001, respondent entered a plea of guilty and was convicted of violating Penal Code section 12025, subdivision (a)(1), having a concealed firearm in a vehicle, a misdemeanor that is substantially related to the duties, functions and qualifications of a real estate salesperson.

(b) Imposition of sentence was suspended and respondent was placed on conditional revocable release for 24 months on certain conditions including, inter alia, that respondent serve 365 days in the county jail, complete a batterer's treatment program, pay fines and fees totaling \$601.

(c) The facts and circumstances underlying the conviction were that respondent was driving his vehicle in San Diego when he was pulled over by police officers who conducted a search and found a loaded hand gun in the vehicle. This offense occurred on April 14, 2010.

8. Respondent committed all of the above offenses during a three-month period when he was using methamphetamine. In 2009, during the economic recession, the real estate market was extremely slow and respondent was unable to provide for his family. He started having financial difficulties that affected his marriage. Then in November 2009, he was introduced to methamphetamine and started to use it regularly and eventually became addicted. Respondent's former wife divorced him and for a period of time he was unable to see his children. Respondent's life was out of control and he began to commit the above described criminal offenses. Respondent no longer uses drugs. He has been free of drugs since his July 27, 2010 conviction. This is important because drug use was the major factor in respondent's criminal behavior the above referenced three-month period.

9. In January 2012, respondent completed a 12-week alcohol and drug rehabilitation program. He also completed an anger management program. This shows that respondent has taken the steps to address his past drug abuse and his past violent behavior resulting from his use of drugs.

10. Respondent was originally licensed in 2004. He was doing well as a salesperson until 2009. After resolving his criminal court cases, respondent returned to work for Castillo Realty for 18 months. He worked for Oasis Realty in Oxnard, California. Respondent presented evidence that since January 2012, he has sold 27 properties, totaling over \$8,000,000 worth of sales (Exhibit A, p. 20). There was no evidence that respondent has been the subject of any complaints by any buyers or sellers of real estate or by anyone with whom he has had other business dealings.

11. Since respondent has been off drugs, his former wife has allowed respondent to share custody with his children. They now have an amicable relationship. Respondent has remarried and has a stable family life. He is also current with child support payments. He spends most of his time away from work with his wife and his children when they visit. Respondent did not present evidence of community involvement that is not related to his work although he and his wife attend church on a regular basis.

12. Respondent presented numerous letters of reference attesting to respondent's professionalism in the performance of his duties and of the ethical manner in which he represents his clients. Many of these reference letters were written by colleagues and others who have worked with or who have had business dealings with respondent over the past four years.

13. Pursuant to Business and Professions Code Section 10106, complainant requests costs of investigation of this matter in the amount of \$2,503, and cost of enforcement in the amount of \$890. These costs are reasonable under section 10601.

LEGAL CONCLUSIONS

1. Cause exists to suspend or revoke respondent's real estate salesperson license under Business and Professions Code sections 490, and 10177, subdivision (b), for a felony conviction and misdemeanor convictions that are substantially related to the duties, functions and qualifications of a real estate salesperson pursuant to California Code of Regulations, title 10, section 2910, subdivisions (a)(8), (a)(10), and (a)(11), by reason of Factual Findings 3 through 7.

2. California Code of Regulations, title 10, section 2912, sets forth criteria for rehabilitation. The factors set forth in section 2912 are applied 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 convictions occurred four years ago.

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant.

Respondent has not paid the restitution ordered by the court in the conviction set forth in Factual Finding 3.

(c) Expungement of the conviction or convictions resulting from immoral or antisocial acts.

Respondent's convictions have not 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 is no longer on probation for his criminal convictions.

(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.

Respondent stopped using drugs on July 27, 2010. Further, respondent completed a drug and alcohol rehabilitation program in January 2012. He also completed an anger management program. These rehabilitation programs addressed the two root causes of his criminal conduct.

(g) Payment of any fine imposed in connection with the criminal conviction.

Respondent has not paid all of the fines imposed by the Superior Court in his criminal cases. In two of respondent's criminal cases, the court converted the fines to civil judgments.

(h) Correction of business practices responsible in some degree for the crime or crimes for which the licensee was convicted.

This factor is not applicable in 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.

Respondent no longer has contact with persons who supplied him with drugs or who use drugs.

(j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.

Respondent has a stable family life since he remarried. Further, he has repaired his relationship with his former wife, and has shared custody and provides child support for his children.

(k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

There was no evidence presented addressing this factor.

(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 community involvement.

(m) Change in attitude from that which existed at the time of the commission of the criminal acts. . .

All of respondent's criminal convictions were based on underlying conduct that occurred during a three-month period in 2010 when respondent was using methamphetamine. There is no evidence that respondent committed any offense before or since that time. One can infer that his use of drugs was the major factor in his criminal behavior during that period. His decision to stop using drugs and his completion of a drug rehabilitation program is the most important part of his rehabilitation. In addition, respondent's efforts to repair his past relationships and stabilize his family life, and return to work to provide for his family are all encouraging signs of a changed attitude. However, respondent's convictions were serious, and in his testimony respondent tended to minimize his misconduct. This is an indication that respondent has not completely changed his attitude toward the behavior underlying his convictions.

3. Respondent satisfied six of the applicable criteria of rehabilitation set forth in regulation section 2912. His convictions are four years old, he stopped using drugs, has a stable family life, no longer associates with drug users, is no longer on probation, and for the most part has changed his attitude. Further, his criminal offenses were drug induced and he has made substantial efforts to address his past drug problem. However, respondent's

convictions were serious and based on violent or aggressive behavior. Further, he still owes court ordered fines and fees. Finally respondent either denied or attempted to minimize the seriousness of his offenses. Based on the entire record of this case, the public would be adequately protected by imposing a stayed revocation of respondent's license under appropriate conditions, including a term of suspension.

4. Complainant submitted reasonable costs of investigation under Business and Professions Code section 10106. Therefore, cause exists to grant complainant's request for the costs of investigation and enforcement.

ORDER

All licenses and licensing rights of respondent Juancarlos Guerrero, under the Real Estate Law are revoked; provided, 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:

- Not Adopted*
1. Any restricted license issued to respondent pursuant to this Decision shall be suspended for 30 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 two years have elapsed from the effective date of this Decision.
 5. 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:

Not Adopted

(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.

6. Respondent shall pay to the Bureau of Real Estate the costs of investigation and enforcement of this matter in the amount of \$3,393. In its discretion, the Bureau may allow respondent to pay this amount in installments.

7. 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.

DATED: November 7, 2014

Humberto Flores
HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings