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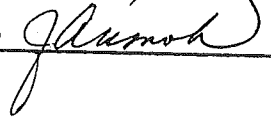
BEFORE THE BUREAU OF REAL ESTATE

APR 02 2014

STATE OF CALIFORNIA

BUREAU OF REAL ESTATE

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By 

In the Matter of the Accusation of

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CalBRE No. H-38911 LA

SERGEY OGANESYAN,

OAH No. 2013070783

Respondent.

DECISION

The Proposed Decision dated February 20, 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.

The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

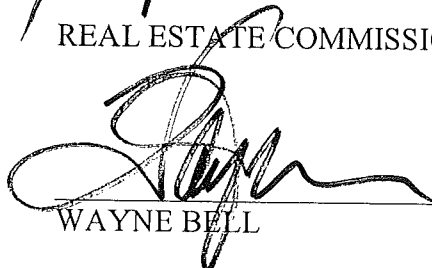
The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

APR 23 2014 This Decision shall become effective at 12 o'clock noon on \_\_\_\_\_.

IT IS SO ORDERED

3/31/2014

REAL ESTATE COMMISSIONER

  
WAYNE BELL

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

In the Matter of the Accusation of

SERGEY OGANESYAN,

Respondent.

Case No. H-38911 LA

OAH No. 2013070783

**PROPOSED DECISION**

Administrative Law Judge Jerry Smilowitz, State of California, Office of Administrative Hearings, heard this matter on February 11, 2014, in Los Angeles, California.

Amelia V. Vetrone, Staff Counsel, Bureau of Real Estate (Bureau), Department of Consumer Affairs, represented Complainant, Robin Trujillo, Deputy Real Estate Commissioner (Complainant).

Respondent Sergey Oganessian was represented by his attorney, Armen Shaghzo, and was present at the hearing.

Oral and documentary evidence were received, and the matter was submitted for decision on February 11, 2014.

**FACTUAL FINDINGS**

1. Complainant acted solely in an official capacity for the Bureau in bringing this Accusation.
2. Respondent was originally issued a real estate salesperson license on March 14, 2005. His current license expired on March 13, 2013. (Exh. 2.) Pursuant to Business and Professions Code section 10201,<sup>1</sup> Respondent has a two-year right of renewal. Under section 10103, the expiration of this license does not deprive the Bureau of jurisdiction to

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<sup>1</sup> All further statutory references are to the Business and Professions Code unless otherwise noted.

proceed with any investigation of, or action or disciplinary proceeding against, Respondent, or to render a decision suspending or revoking his license. Respondent has always worked as a licensed salesperson for his employing broker, Aaron David Loewy.

3. On July 20, 2011, Respondent entered a plea of nolo contendere to, and was thereafter convicted of, grand theft, in violation of Penal Code section 487, subdivision (a), a felony. (*People v. Sergey Oganessian*, Los Angeles Superior Court, Case No. PA069254.)

4. The facts and circumstances underlying this conviction are that, in 2007, Respondent performed part-time work for Guarantee Trust Life Insurance (GTLI), which was in the business of underwriting policies that did not require a qualifying medical examination. Respondent generated leads by obtaining from banks as a paid service the names and addresses of homeowners who had just bought or refinanced their homes. Without first making telephonic contact, Respondent visited these owners to interest them in purchasing term life insurance policies. If the sales presentation was successful, Respondent would have the homeowner fill out and execute an application, along with a voided check, which would then be turned over to GTLI. Respondent also signed these applications as the soliciting agent, and would later receive sales commissions from GTLI. The latter used information on the voided check to set up a monthly automatic debit from the account.

5. Jose Lozano, whose application was on file with GTLI, noticed that his bank account had been monthly debited by GTLI for 12 months in the total amount of \$889.20. Upon being notified by Lozano, GTLI checked its records which showed that the policy, dated December 4, 2007, had been sent to an address which was neither that of Lozano nor any home in the vicinity of where he lived. The application for this policy had been signed by Respondent as the soliciting agent. GTLI later returned to Lozano the debits from his account. GTLI had paid a commission to Respondent in the amount of \$615.

6. The Department of Insurance (DOI) launched an investigation, and ascertained that the signature on the application was not that of Lozano, and that a voided check submitted to GTLI by Respondent was dated sometime in 2001. Identifying personal information, including Lozano's social security number, was accurate. Lozano had never met with an insurance agent. He did have a record of preparing the voided check, but no indication of who received it.

7. An investigator with DOI interviewed Respondent and verified that the signature on the application was his. Respondent claimed to have shredded Lozano's file, even though he was required to keep files of insurance transactions for a minimum of five years. Respondent maintained his innocence, suggesting that Lozano just wanted to get out of his policy. Subsequently, Respondent's attorney at the time provided to the investigator a faxed copy of the file which, according to the attorney, came from the "broker." Respondent did not identify the broker.<sup>2</sup>

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<sup>2</sup> Respondent objected to the DOI investigative report on the grounds of hearsay. That objection was taken under submission and is ruled upon here. In *Lake v. Reed*

8. Respondent's plea was only as to grand theft committed against GTLI.

9. Finding that there was a factual basis for the plea, the Court suspended the imposition of sentence; and placed Respondent on formal probation for a period of three years under terms and conditions that included the following: Respondent was to serve one day in jail with credit for one day already served, pay restitution to GTLI in the amount of \$5,716.62, perform 750 hours of community service, pay fines, fees, and assessments, participate in an anti-theft class, and reimburse DOI \$7,500 for its incurred costs of investigation. The record does not disclose how the court calculated the amount of restitution.

10. Respondent testified that he has fully complied with all of the terms and conditions of his probation, and that his probation officer put him on summary probation 20 months before the hearing. However, he presented no documents supporting these contentions.

11. Respondent submitted a letter of reference from Aaron Loewy, his former broker. (Exh. A.) In his letter, Loewy stated that he was unable to appear in person since he had suffered a disabling accident, was wheelchair bound, and was in such constant pain that he was unable to travel and sit for any period of time. He described Respondent as being hardworking, knowledgeable, honest and professional, and added that no complaints or lawsuits had been filed against him.

12. Respondent testified that he recalled visiting the residence identified in the application, meeting someone who claimed to be Lozano, and receiving the voided check. Rather than admit to the offense, he stated that he had "remorse" for exercising poor judgment and not rechecking the paperwork he was presented or asking for additional information. This stance was amplified in a brief his counsel submitted at the hearing. (Exh. B.) At page 3, it is argued that there is no evidence that Respondent intended to commit any crime, but rather was merely following instructions given to him by GTLI.

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(1997) 16 Cal.4th 448, the California Supreme Court held that a sworn or unsworn statement by a non-arresting officer who was a percipient witness is admissible under Evidence Code section 1280--the public employee record exception to the hearsay rule--at an administrative hearing. In reaching this holding, the Court relied, in part, on Government Code section 11513, subdivision (d), which provides that hearsay evidence that is objected to, and is not otherwise admissible, may be used to supplement or explain other evidence but may not, by itself, support a factual finding. "Administrative hearsay," coupled with direct, though circumstantial, evidence, may be sufficient to support a finding. Here, statements made by Lozano and GTLI to the investigator explain and supplement the circumstances supporting Respondent's plea, his statements to the investigator, and his testimony at the hearing. The objection is overruled.

13. Respondent's position was not found to be credible. For one, Respondent pleaded nolo contendere to grand theft, an offense that has, as an element, a felonious intent. The California Supreme Court noted in *Arneson v. Fox* (1980) 28 Cal.3d 440, 449, that regardless of the motives which impel a plea to a criminal charge, a conviction stands as conclusive evidence of guilt in a subsequent administrative proceeding. The *Arneson* court reasoned, "To hold otherwise would impose upon administrative boards extensive, time-consuming hearings aimed at relitigating criminal charges which had culminated in final judgments of conviction." (*Ibid.*) Moreover, Respondent's claim rests upon a series of very unlikely events which are unsupported by the record. According to Respondent, he obtained Lozano's name and address, went to an address where Lozano did not reside, spoke with an individual who turned out not to be Lozano, and was given by that individual correct personal identifying information of Lozano and a voided check actually prepared by Lozano.

14. Respondent's license as an insurance salesperson was summarily revoked by DOI. (Exh. 5.) Respondent elected at the time not to contest the revocation.

15. Respondent's criminal probation expires in July, 2014.

16. Complainant did not offer any evidence in support of the prayer for costs.

### CONCLUSIONS OF LAW AND DISCUSSION

1. In light of Factual Findings 3-7, cause exists to suspend or revoke the license and license rights of Respondent under sections 490 and 10177, subdivision (b). His conviction for grand theft is substantially related to the qualifications, functions, and duties of a licensee, in that it involved fraud, deceit, falsehood or misrepresentation to achieve an end, within the meaning of California Code of Regulations (CCR), title 10, section 2910, subdivision (a)(4).

2. CCR, title 10, section 2912, sets forth rehabilitation criteria to be considered where, as here, an administrative disciplinary proceeding has been initiated on account of a crime committed by a licensee. Applying these criteria, Respondent has demonstrated some rehabilitation. More than two years have passed since his conviction. In that period, he has not reoffended. His conviction was the only one he has ever incurred. While he did not provide any documentation, there is no reason to believe that he has not complied with the terms and conditions of his probation. His former broker described Respondent as being honest.

3. However, Respondent still remains on probation. He did not present any evidence of significant and conscientious involvement in community, church, or privately-sponsored programs designed to provide social benefits or to ameliorate social problems. Of particular concern, given that his stated remorse stems from his claim that he may have been careless in obtaining the application but did not commit any intentional offense, is whether he has sufficiently demonstrated a change in attitude. The law does not require false

penitence. (Cf. *Hall v. Comm. of Bar Examiners* (1979) 25 Cal. 3d 730.) But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. (*In re Aquino* (1989) 49 Cal.3d 1122, 1133.)

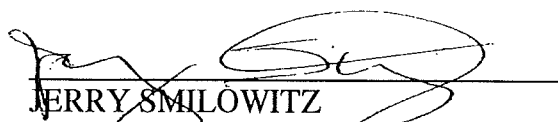
4. Remorse for one's conduct and the acceptance of responsibility are the cornerstones of rehabilitation. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) Cal.3d 1061, 1070.)

5. Respondent has not acknowledged any real culpability for the offense which led to this Accusation. Further, since his probation is still ongoing, he has not demonstrated that he is no longer a threat to public safety absent the judicial constraints under which he has been placed. Because people have a strong incentive to obey the law while under the supervision of the criminal justice system, little weight is generally placed on the fact that an applicant has engaged in good behavior while on probation. (See *In re Gossage* (2000) 23 Cal.4th 1080, 1099.) Here, the monetary loss is relatively small, but the underlying offense is a serious one.

#### ORDER

The license and license rights of Respondent Sergey Oganessian are revoked. Complainant's request for costs recovery is denied.

Date: February 20, 2014

  
JERRY SMILOWITZ  
Administrative Law judge  
Office of Administrative Hearings