

FILED

OCT 07 2014

BUREAU OF REAL ESTATE

By *[Signature]*

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
LUIS EDUARDO OLIVER,)
)
Respondent.)

No. H-39074 LA

OAH No. 2014020251

DECISION

The Proposed Decision dated April 1, 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:

Page 9, Order, paragraph 7 of the Proposed Decision is not adopted and shall not be part of the Decision.

Page 9, Order, paragraph 8, "Post Office Box 187000, Sacramento, CA 95818-7000" shall read "Post Office Box 137013, Sacramento, CA 95813-7013".

The Decision suspends or revokes the real estate license and/or license rights; however, the right to a restricted real estate salesperson license is granted to Respondent.

The right to reinstatement of a revoked real estate license or to the reduction of a penalty 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 OCT 27 2014

IT IS SO ORDERED 10/1/2014

REAL ESTATE COMMISSIONER

[Signature]
Wayne S. Bell

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

In the Matter of the Accusation Against:

LUIS EDUARDO OLIVER,
A Licensed Real Estate Salesperson,

Respondent.

Case No. H-39074 LA

OAH No. 2014020251

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, on July 28, 2014, in Los Angeles. Complainant was represented by Amelia Vetrone, Counsel. Respondent Luis Eduardo Oliver was present and represented himself.

At the conclusion of the hearing, the record was held open until August 18, 2014, to allow respondent to file a letter from his employing broker. Respondent did not file a letter with the Office of Administrative Hearings. However, on August 19, 2014, complainant filed an objection to an August 15, 2014 letter that was filed by respondent with the Bureau of Real Estate. Complainant attached a copy of respondent's letter to the objection. Complainant's objection is hereby marked as Exhibit 5 and respondent's letter is marked as Exhibit A. The Administrative Law Judge hereby admits Exhibit A into evidence pursuant to Government Code section 11513, subdivision (d), to supplement and explain respondent's testimony and complainant's License History Certification (Exh. 2).

Oral and documentary evidence having been received, the Administrative Law Judge submitted this matter for decision on August 19, 2014, and finds as follows:

FACTUAL FINDINGS

1. The Administrative Law Judge takes official notice that, on October 3, 2013, the Accusation, Case No. H-39074 LA, was made and filed by Maria Suarez in her official capacity as a Deputy Real Estate Commissioner, Bureau of Real Estate, State of California (Bureau).

2. On May 10, 2006, the Bureau issued real estate salesperson license number S01742044 and licensing rights to Luis Eduardo Oliver (respondent). Said license expires on October 24, 2017, unless renewed, and is in full force and effect. At all times relevant herein, respondent has been licensed under the Real Estate Law as a real estate salesperson.

3. As of May 1, 2009, respondent's employing real estate broker was Juan J. Barbosa (Barbosa) of Rancho Cucamonga. On May 10, 2013, respondent's employing real estate broker became Diversified Real Estate Group in Rancho Cucamonga. Barbosa is the designated broker of Diversified Real Estate Group.

4. (A) On or about February 10, 2012, in the Superior Court of California, County of San Bernardino, in *People v. Luis Eduardo Oliver*, case number FSB1103563, respondent was convicted on his plea of guilty of the unlawful driving or taking of a vehicle in violation of Vehicle Code section 10851, subdivision (a), as a misdemeanor. The crime of unlawfully taking or driving a vehicle is a crime involving moral turpitude.¹

(B) As a result of respondent's plea, the court withheld the pronouncement of judgment and placed him on conditional and revocable release and probation for 60 months on condition, in part, that he violate no law, pay fines and fees totaling approximately \$202, pay restitution in the amount of \$43,455 at a rate of \$500 per month plus a 10 percent administrative fee of \$4,345.50, not drive a motor vehicle unless properly licensed and insured, submit to a search upon request of a peace officer, and serve 120 days in the county jail with credit for having already served two days. The court referred respondent for electronic monitoring in lieu of jail time and found him eligible for the weekend and work release program.

5. (A) The facts and circumstances of respondent's conviction were that, on or about October 23, 2008, an unknown person or persons stole a 2008 Land Rover from the dealer's lot at Land Rover Anaheim Hills in Orange County. On October 27, 2008, after inventorying its vehicles, the dealership filed a stolen vehicle report with the Anaheim Police Department. Later, the dealership was paid for the loss of the vehicle by its insurance company.

(B) On or about October 27, 2008, respondent was shopping for a vehicle on the internet when he saw the 2008 Land Rover listed for sale for \$40,000 on the Craig's List website. Respondent contacted the seller and met him in Bell Gardens to inspect the Land Rover. Respondent noted that the vehicle had 1,200

¹ Vehicle Code section 10851, subdivision (a), provides, in pertinent part, that any person who drives or takes a vehicle not his or her own, without the consent of the owner thereof, and with intent either to permanently or temporarily deprive the owner thereof of his or her title or possession of the vehicle, whether with or without intent to steal the vehicle, is guilty of a public offense.

miles on its odometer and offered to buy the vehicle for \$38,000. The seller accepted respondent's offer. Shortly thereafter, respondent met the seller again in Van Nuys and purchased the Land Rover by giving the seller a cashier's check for \$38,000.

(C) The seller purportedly changed the title and registered the Land Rover in respondent's name with the Department of Motor Vehicles (DMV) and respondent received a vehicle registration document. After buying the Land Rover, respondent called his insurance agent to obtain automobile insurance for the vehicle. He gave the Land Rover's vehicle identification number (VIN number) to the insurance agent who initially informed respondent that the VIN number was incorrect. A few days later, however, the insurance agent was able to obtain a quote for an automobile insurance policy for the Land Rover from Farmers Insurance. Respondent purchased the policy from Farmers Insurance.

(D) Over the next three years, respondent drove the Land Rover. He purchased automobile insurance for the vehicle every year but did not register or renew the registration for the vehicle with the DMV. Nor did respondent ever receive license plates or title to the vehicle. He kept the vehicle registration that he received from the seller taped to the front windshield on the passenger side and had paper plates on the front and back of the vehicle.

(E) On May 8, 2011, which was Mother's Day, respondent was driving the Land Rover on the 57 Freeway in Los Angeles County when he collided with the rear end of another vehicle. Respondent testified that he was cited for following too closely behind the other car. The Land Rover suffered major damage to the front end. On recommendation of a real estate business colleague, respondent had the vehicle towed to an automobile body repair shop in Fontana to be repaired. Respondent filed a claim with Farmers Insurance. An investigator from Farmers Insurance inspected the damaged Land Rover and was about to declare the vehicle a total loss until the owner of the automobile body repair shop indicated that the vehicle could be repaired for \$15,000 to \$18,000. The Farmers Insurance investigator authorized the repair of the Land Rover. However, the automobile body repair shop could not order any parts for the vehicle because its VIN number was found to be invalid. When informed about the invalid VIN number, the Farmers Insurance investigator contacted the National Insurance Crime Bureau and learned that the Land Rover had been reported stolen in 2008.

(F) On June 6, 2011, a detective from the San Bernardino County Sheriff's Department, who was also assigned to a county automobile theft task force, began an investigation into whether the Land Rover had a switched VIN number. The detective inspected the damaged Land Rover and interviewed several persons, including the owner of the automobile body repair shop, personnel at the Land Rover and Acura dealerships, insurance company employees, and respondent. Upon inspecting the Land Rover at the automobile body repair shop, the detective found that the vehicle had two different sets of VIN numbers. During his interview,

respondent told the detective, in part, that he did not know that the Land Rover had been stolen from a dealership and that he had paid for the vehicle by a cashier's check. He stated he had been too busy working as a real estate agent and did not have time to register the vehicle or to obtain license plates or title to the vehicle. He stated that he kept the registration that he received from the seller taped to the front windshield. Respondent also claimed that he did not know anything about the license plates found in the rear of the Land Rover. Subsequently, the detective prepared an investigative report and referred the matter to the District Attorney of San Bernardino County. A criminal complaint was filed against respondent and he pleaded guilty to violating Vehicle Code section 10851, subdivision (a).

6. Based on Findings 4 – 5 above, and the elements of the crime of which he was convicted, it was established by clear and convincing evidence to a reasonable certainty that, from October 2008 through May 2011, respondent unlawfully drove a vehicle, a 2008 Land Rover, without the consent of the owner, Land Rover Anaheim Hills, and with intent to deprive said owner of title or possession of the vehicle, in violation of Vehicle Code section 10851, subdivision (a). It was not established that respondent took the Land Rover from the dealership.

7. Based on Findings 4 – 6 above, respondent was convicted of a crime substantially related to the qualifications, functions, or duties of a real estate licensee within the meaning of California Code of Regulations, title 10, section 2910, subdivision (a)(1). By driving the Land Rover with intent to deprive the dealership of title or possession of the vehicle, respondent fraudulently retained property, to wit: a motor vehicle, belonging to another person.

8. (A) It was not established by clear and convincing evidence to a reasonable certainty that respondent unlawfully took or stole the Land Rover without consent of the owner and with intent to deprive the owner of title or possession of the vehicle. First, there was no direct evidence that respondent took the vehicle from the dealership. The sheriff department's report (Exh. 4) did not contain any admission by respondent or any observation by law enforcement officials demonstrating that respondent took or stole the Land Rover. (See *Lake v. Reed* (1997) 16 Cal.4th 448.) Respondent told the detective that he purchased the vehicle and did not know that it was stolen. Respondent's statements to the detective were consistent with his testimony at the hearing in this matter.

(B) Second, there was no clear or convincing evidence to support the suggestions in the sheriff department's report that respondent had a registration and license plates for the vehicle that were false or fraudulent. The detective reported that he questioned respondent about a registration but the detective also noted that he could not find a registration in the vehicle. The detective's report about the license plates found in the Land Rover was therefore unclear and inconclusive. Respondent, on the other hand, testified he was not involved in any scheme to illegally register the vehicle and that he received a valid registration after buying the vehicle. He indicated

he kept the registration taped to the windshield. Respondent also asserted that he drove the Land Rover for two and one-half years and always had "paper plates" on the vehicle. The sheriff department's report corroborated that the Land Rover did not have a license number or plate. Furthermore, while driving the Land Rover, respondent was cited for speeding in or about January 2009 and was involved in a major accident in May 2011, as indicated in the sheriff department's report. It was not clear whether law enforcement officers investigated or checked the vehicle's registration or license number on those two occasions. Respondent did not act like a person who knew he was driving a stolen vehicle. He obtained automobile insurance for the vehicle and tried to have the vehicle repaired after he was involved in the accident on the freeway. As such, the evidence as set forth in the sheriff department's report about any false or fraudulent registration or license plates was equivocal and did not constitute probative or persuasive evidence to support a conclusion that respondent was involved in a theft or false registration of the vehicle.

9. For the past 18 months or so, respondent has been paying restitution in accordance with his probationary order. He will remain on probation for his conviction until February 2017.

10. Respondent has been the office manager of Diversified Real Estate Group since May 2010. He has worked for the firm's designated broker Barbosa since he first attained a real estate salesperson license over eight years ago.

11. In a letter dated August 15, 2014, broker Barbosa stated that respondent has been a "strong" office manager of Diversified Real Estate Group, which is affiliated with Century 21 Real Estate, and has never had any problems with any clients or real estate agents. Barbosa indicated respondent is a very honest, hard-working, and loyal person who was nominated in 2012 to be a representative on the Century 21 Real Estate's broker council. Barbosa added that respondent told him about the Land Rover when investigators came to the offices of Diversified Real Estate Group in June 2011 and that he feels comfortable with respondent remaining as the office manager of his real estate company.

12. Respondent was married in November 2012. He and his spouse have five-year-old twin boys and live in Rancho Cucamonga.

13. Respondent is involved with Catholic charities in the Pomona area. Three years ago, he helped raise funds and organize the effort to refurbish a home for charitable purposes. He has also been involved with Toys for Tots and fund-raising for a law enforcement retirement fund.

14. Respondent demonstrated remorse and regret for having purchased the Land Rover from a seller that he met through the internet in October 2008. He stated he learned a difficult lesson about the pitfalls or lack of security when buying an automobile on the internet. He is now leasing a vehicle from a dealership.

15. Respondent does not have any other convictions or any history of disciplinary action on his real estate license. He desires to retain his real estate license so that he can provide for his family. His children are very important to him.

16. No evidence was presented of the costs of investigation and enforcement that may have been incurred by the Bureau in this matter.

* * * * *

Based on the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Grounds exist to revoke or suspend respondent's real estate salesperson license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), in that respondent has been convicted of a crime substantially related to the qualifications, functions, or duties of a real estate licensee, based on Findings 4 - 7 above.

2. Grounds do not exist to direct respondent to pay the Bureau for its investigation and enforcement costs pursuant to Business and Professions Code section 10106, in that, while respondent committed a violation of the Real Estate Law as set forth in Conclusion of Law 1 above, no evidence was presented of the Bureau's costs of investigation or enforcement, as set forth in Finding 16 above.

3. Discussion—It was undisputed that respondent, who is a licensed real estate salesperson, was convicted of a crime substantially related to the qualifications, functions, or duties of a real estate licensee. The primary issue in this matter is the appropriate discipline that should be imposed upon respondent based on the conviction.² The resolution of this issue requires a consideration of the purpose of this disciplinary action, the evidence of mitigation or rehabilitation, and the seriousness of respondent's crime or conduct.

First, the purpose of an administrative proceeding to discipline a professional license is to protect the public, the licensed profession or occupation, maintain professional integrity and high standards, and preserve public confidence in the profession. (*Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Clerici v. Dept. of Motor Vehicles* (1990) 224 Cal.App.3d 1016, 1030-1031.) The purpose of the proceeding is not to punish the licensee. In particular, the statutes relating to real

² Complainant's counsel did not make a recommendation or argument about the proper discipline for this matter.

estate licensees are designed to protect the public from any potential risk of harm. (*Lopez v. McMahon* (1988) 205 Cal.App.3d 1510, 1516; *Arneson v. Fox* (1980) 28 Cal.3d 440.) Moreover, the law looks with favor upon those who have been properly reformed. (*Reisner v. State Bar* (1967) 67 Cal.2d 799, 811.) To that end, the licensee bears the burden of establishing his or her reformation against a history of criminal conduct. (See *Martin v. Alcoholic Bev. App. Bd.* (1950) 52 Cal.2d 259, 265.)

Second, the Bureau has developed criteria for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding has been initiated on account of a crime committed by the licensee. (Cal. Code Regs., tit. 10, § 2912.) Respondent has provided evidence that meet some of these criteria. It has been two years since respondent suffered his conviction and he has been paying restitution to the dealership whose car was stolen. He remains on probation for his conviction. Since his offense and conviction, respondent has married and is supporting his family which includes twin boys. He has learned that it is not safe or secure to buy an automobile online and is now leasing a car from a dealership. Respondent has been involved in a few community and church activities meant to provide social benefits. His broker has written that respondent is an excellent office manager and an honest and hard-working employee. Respondent has no other criminal or disciplinary record.

Third, the evidence of respondent's rehabilitation should be measured against the nature of his crime and conviction. He was placed on five years of probation and ordered to pay a large sum in restitution and spend time in custody or under electronic monitoring. Nevertheless, respondent was convicted of a misdemeanor. He did not steal the vehicle and did not comport himself in a manner that suggested that he knew the vehicle was stolen. He drove the vehicle openly for over two and one-half years with no license plates and a registration taped to the windshield. He obtained and paid for automobile insurance from his insurance agent. When the vehicle was damaged in an accident, he filed a claim and tried to get his insurance company to repair the vehicle. He cooperated with law enforcement in the investigation of the vehicle's VIN number. Respondent did not obtain or renew the registration, not because he was trying to hide the fact that the vehicle was stolen, but because he relied on the seller to give him a registration and he was busy with his real estate activities. Respondent's evidence of rehabilitation is not overwhelmingly substantial but neither is the nature of his crime and conviction.

Under these circumstances, and because respondent remains on probation for his conviction and his misconduct did not involve his real estate activities or clients, it is not likely that respondent will repeat his conduct or commit dishonest acts in his real estate work. As such, and based on Findings 2 and 8 – 15 above, respondent does not represent a risk to the public welfare and should be allowed to retain his real estate license under the terms and conditions of a restricted license, which include a 30-day suspension of the restricted license, that will ensure public safety and facilitate his continued reformation.

* * * * *

Wherefore, the following Order is hereby made:

ORDER

All licenses and licensing rights previously issued to respondent Luis Eduardo Oliver under the Real Estate Law are revoked, based on Conclusions of Law 1 and 3, jointly and for all; provided, however, a restricted real estate salesperson license will be issued to respondent pursuant to Business and Professions Code section 10156.5 if respondent makes application therefor and pays to the Bureau of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision and Order. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions, and restrictions imposed under the authority of Business and Professions Code sections 10156.6:

1. 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.

2. 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.

3. 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 (2) years have elapsed from the effective date of this Decision.

4. Respondent shall submit with any application for 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 Bureau of Real Estate which shall certify:

(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.


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. Within six months from the effective date of this Decision, respondent shall take and pass the Professional Responsibility Examination administered by the Bureau of Real Estate, including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Real Estate Commissioner may order the suspension of respondent's license until he passes the examination.

7. Any restricted real estate license issued to respondent pursuant to this Decision shall be suspended for thirty (30) days beginning on the date of issuance of said restricted license.

8. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Bureau 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 ground for the suspension or revocation of that license.

Dated: September 17, 2014



VINCENT NAFARRETE
Administrative Law Judge
Office of Administrative Hearings

Not Adopted