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FILED

DEC 23 2014

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H-39093 LA
)	2014030706
CHRIS RUIZ MALLARI,)	
)	
Respondent.)	
)	

DECISION AFTER REJECTION

This matter came on for hearing before Matthew Goldsby, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California, on August 11, 2014. Amelia V. Vetrone, Counsel, represented the Complainant, Maria Suarez, Deputy Real Estate Commissioner for the State of California Bureau of Real Estate ("Bureau"). The Respondent, CHRIS RUIZ MALLARI aka Christopher Lawrence Ruiz Mallari ("Respondent"), appeared in person, and represented himself. Oral and documentary evidence were received.

On August 14, 2014, the Administrative Law Judge issued a Proposed Decision which I declined to adopt.

My Decision is set forth herein.

Pursuant to California Government Code section 11517(c), Respondent was served with notice of my determination not to adopt the Proposed Decision of the

1 Administrative Law Judge along with a copy of said Proposed Decision. Respondent was
2 notified that the case would be decided by me upon the record, the transcript of proceedings held
3 on August 11, 2014, and upon any written argument offered by Respondent and Complainant.
4 Complainant timely submitted further written argument, but to date, Respondent has not
5 submitted a written argument.

6 I have given careful consideration to the record in this case including the
7 transcript of the proceedings of August 11, 2014. I have also considered the Argument
8 submitted by Complainant.

9 The following shall constitute the Decision of the Real Estate Commissioner in
10 this proceeding.

11
12 FINDINGS OF FACT

13 1. On June 7, 2000, the Bureau issued a real estate salesperson license to
14 Respondent. Thereafter, on June 29, 2005, the Bureau issued a real estate broker license to
15 Respondent. Respondent's real estate broker license is currently valid until March 22, 2016.

16 2. Complainant brought the Accusation against Respondent in the
17 Complainant's official capacity. Respondent's Notice of Defense was filed on October 24,
18 2013.

19 3. On October 24, 2012, in the Superior Court of California, County of
20 Orange, in case no. 12WF2857, a Felony Complaint was filed, and charged Respondent with
21 Count 1,¹ which is as follows:

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27 ¹ The Felony Complaint also alleged a Count 2 for violating California Penal Code section 487(a), which was later dismissed in the interest of justice.

1 On or about and between September 30, 2011 and December 31, 2011, in
2 violation of Section 368(d) of the Penal Code (THEFT FROM ELDER), a
3 FELONY, CHRISTOPHER LAWRENCE RUIZ MALARI did willfully
4 and unlawfully violate a provision of law proscribing theft, embezzlement,
5 forgery, fraud, and section 530.5 proscribing identity theft, with respect to
6 the property and personal identifying information, when the money, labor,
7 goods, services, and the real and personally property taken and obtained
8 was of a value exceeding nine hundred fifty dollars (\$950) from JESSIE
9 A., who was an elder of sixty-five (65) years of age and older, and the
10 defendant knew and reasonably should have known JESSIE A. was an
11 elder of sixty-five (65) years of age and older.

12 3. On July 8, 2013, in the Superior Court of California, County of Orange,
13 in case no. 12WF2857, Count 1 was reduced to a misdemeanor pursuant to California Penal
14 Code section 17(b), and Respondent was convicted on a guilty plea to Count 1 for violating
15 California Penal Code section 368(d) (theft from an elder), a misdemeanor.

16 4. Imposition of sentence was suspended, and Respondent was placed on
17 informal probation for 3 years under certain terms and conditions, which include, but are not
18 limited to, 30 days of Cal Trans/physical labor, payment of fines and fees in the total amount of
19 approximately \$350, and staying away from the victim, Jessie A.

20 5. The facts and circumstances underlying the conviction are as follows: In
21 late-August 2011 to early-September 2011, Respondent was working at a mortgage company,
22 and assisted the victim, a 73-year-old widow, with her application to refinance her mortgage.
23 During their interaction, they discovered they were both of Filipino descent. As a part of his
24 job, Respondent analyzed the victim's application by looking at her bank statement, mortgage
25 statement, and credit report. Thereafter, Respondent offered to invest \$10,000 in cash from the
26 victim for an alleged investment in land development in the Philippines, and promised a return
27 on her investment. On September 30, 2011, the victim gave \$10,000 in cash to Respondent with
the expectation that she would receive her original \$10,000 investment as well as interest
payments up to December 31, 2011. Respondent took the cash, and had it wired to the

Philippines. Respondent did not provide a deed or other documentation to the victim. Despite the victim's demands, the victim received no money in return for her investment.

6. Respondent remains on informal probation until July 20, 2016.

Respondent completed 30 days of physical labor as required as part of his sentence. Prior to Count 1 being reduced from a felony to a misdemeanor, Respondent repaid \$10,000 to the victim.

7. Respondent is married with four children. He is in his second year of law school at "University College of Law." He donates time to the Filipino Minority Immigration and a local school board election campaign.

8. At hearing, Respondent testified his criminal conduct was an "honest mistake" which was done with "no willful or no intent to do any harm." Respondent initially stated the underlying facts of the criminal conviction were based on Respondent errantly committing a lower mortgage interest rate than he could provide to the victim thereby somehow affecting a \$10,000 check that was deposited in an escrow account. He denied receiving \$10,000 in cash from the victim. However, upon further examination, Respondent admitted he received \$10,000 in cash from the victim for a land development investment in the Philippines. Furthermore, Respondent denied soliciting funds from the victim, and stated she "presented" them to him.

9. Complainant did not introduce evidence of costs of investigation and enforcement.

LEGAL CONCLUSIONS

1. Cause exists pursuant to California Business and Professions Code sections 490 and 10177(b) to revoke or suspend Respondent's real estate license as alleged in the Accusation. California Business and Professions Code section 490 provides a board, such as the Bureau, may revoke a license if "the licensee has been convicted of a crime, if the crime is

1 substantially related to the qualifications, functions, or duties of the business or profession for
2 which the license was issued.” California Business and Professions Code section 10177(b),
3 which applies specifically to the Bureau, similarly allows the Bureau to revoke a license if the
4 licensee has been convicted of “a crime substantially related to the qualifications, functions, or
5 duties of a real estate licensee.” Respondent’s conviction for violating California Penal Code
6 section 368(d) (theft from an elder) is substantially related under California Code of
7 Regulations, title 10, sections 2910(a)(1) (the fraudulent taking, obtaining, appropriating, or
8 retaining of funds or property belonging to another person), 2910(a)(4) (the employment of
9 bribery, fraud, deceit, falsehood, or misrepresentation to achieve an end), and 2910(a)(8) (doing
10 of any unlawful act with the intent of conferring a financial or economic benefit upon the
11 perpetrator or with the intent or threat of doing substantial injury to the person or property of
12 another) because Respondent fraudulently obtained and deprived \$10,000 from the victim for
13 an alleged land development investment in the Philippines.

14 2. A plea of guilty constitutes an admission of every element entering into
15 the offense charged, and constitutes a conclusive admission of the defendant’s guilt. *People v.*
16 *Outcault*, 90 Cal. App. 2d 25, 29 (1949); *People v. Gannaro*, 216 Cal. App. 2d 25 (1963).

17 3. The Bureau has developed criteria for the purpose of evaluating the
18 rehabilitation of a licensee when considering whether to revoke or suspend a license on account
19 of a crime committed by a licensee. California Code of Regulations, title 10, section 2912
20 provides, in pertinent part:

- 21 (a) The passage of not less than two years from the most recent
22 criminal conviction that is “substantially related” to the
23 qualifications, functions[,] or duties of a licensee of the
24 department. (A longer period will be required if there is a history
25 of criminal convictions or acts substantially related to the
26 qualifications, functions[,] or duties of a licensee of the
27 department.)
 (b) Restitution to any person who has suffered monetary losses
 through “substantially related” acts or omissions of the licensee.

- 1 (c) Expungement of the conviction or convictions which culminated in
the administrative proceeding to take disciplinary action.
- 2 ...
- 3 (e) Successful completion or early discharge from probation or parole.
- 4 ...
- 5 (g) Payment of any fine imposed in connection with the criminal
conviction that is the basis for revocation or suspension of the
license.
- 6 (h) Correction of the business practices responsible in some degree for
the crime or crimes of which the licensee was convicted.
- 7 (i) New and different social and business relationships from those
which existed at the time of the commission of the acts that led to
criminal conviction or convictions in question.
- 8 (j) Stability of family life and fulfillment of parental and familial
responsibilities subsequent to the criminal conviction.
- 9 (k) Completion of, or sustained enrollment in, formal education or
vocational training course for economic self-improvement.
- 10 (l) Significant and conscientious involvement in community, church[,]
or privately-sponsored programs designed to provide social
benefits or to ameliorate social problems.
- 11 (m) Change in attitude from that which existed at the time of the
commission of the criminal acts in question as evidenced by ... (1)
[t]estimony of applicant. ...

12 4. Respondent has failed to meet his burden of showing rehabilitation. Less
13 than two (2) years has passed from the criminal conviction. He has not completed probation.
14 Respondent did not show payment of fine, any correction of any business practices, or any new
15 and different social and business relationships. Furthermore, Respondent failed to show a
16 change in attitude. Respondent attempted to diminish the severity of the criminal acts. During
17 his testimony at hearing, he minimized his criminal conduct by stating it was only a "mistake"
18 which was done with "no willful or no intent to do any harm," and that it was based solely on
19 the victim's mortgage refinancing application rather than a separate land development
20 investment.
21

22 5. To Respondent's credit, Respondent paid restitution to the victim, and is
23 involved in his community. However, these criteria, in light of all the other evidence, do not
24 meet Respondent's burden of showing rehabilitation.
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6. It would not be in the public's interest to allow Respondent to remain licensed with the Bureau. "One's character train for honesty and integrity is an important qualification to be a real estate salesperson insomuch as clients rely on the licensee's integrity in representing them, disclosing important facts about the properties he is privy to and holding monies in a fiduciary capacity." *Harrington v. Department of Real Estate*, 214 Cal. App. 3d, 394, 406 (1989). Respondent entrusted the victim with her personal information to help her refinance her home, but Respondent abused his newfound knowledge to unlawfully steal from the victim in a separate transaction.

ORDER

All licenses and licensing rights of Respondent CHRIS RUIZ MALLARI under
the Real Estate Law are revoked.

This Decision shall become effective at 12 o'clock noon on

JAN 12 2015

IT IS SO ORDERED

12/17/2014

REAL ESTATE COMMISSIONER

Wayne S. Bell

FLAG

FILED

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BUREAU OF REAL ESTATE

By Nona

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

CHRIS RUIZ MALLARI,

Respondent.

No. H-39093 LA

OAH No. 2014030706

NOTICE

TO: CHRIS RUIZ MALLARI, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated August 14, 2014, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated August 14, 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 August 11, 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 August 11, 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: _____

9/15/2015

7 REAL ESTATE COMMISSIONER

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WAYNE S. BELL

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

In the Matter of the Accusation of:

CHRIS RUIZ MALLARI,

Respondent.

Case No. H-39093 LA

OAH No. 2014030706

PROPOSED DECISION

This matter was heard by Matthew Goldsby, Administrative Law Judge, Office of Administrative Hearings, State of California, on August 11, 2014, in Los Angeles.

Amelia V. Vetrone, Counsel, represented Maria Suarez, Deputy Real Estate Commissioner (Complainant), Bureau of Real Estate (Bureau).

Chris Ruiz Mallari (Respondent) was present and represented himself.

The record was closed and the matter was submitted for decision at the conclusion of the hearing.

FACTUAL FINDINGS

1. On June 7, 2000, the Bureau issued to Respondent a real estate salesperson license. Thereafter, on June 29, 2005, the Bureau issued to Respondent his real estate broker license. Respondent's license is currently valid until March 22, 2016.
2. Complainant brought the Accusation against Respondent in the Complainant's official capacity. Respondent timely submitted a Notice of Defense, which contained a request for a hearing.
3. On July 8, 2013, in the Superior Court of California, County of Orange, in case number 12WF2857, Respondent was convicted on a guilty plea of violating Penal Code section 368, subdivision (d) [theft from an elder], a misdemeanor.

4. Imposition of sentence was suspended and Respondent was placed on informal probation for three years under certain terms and conditions, including 30 days of physical labor for Cal Trans and payment of fines and fees in the total amount of \$385.

5. Respondent's conviction arose from the following facts and circumstances. In August 2011, Respondent was working for a mortgage loan broker. A 73-year-old widow contacted Respondent after receiving a written solicitation in the mail about refinancing the loan on her property. Respondent met with the woman for the purpose of applying for a loan. Respondent examined the woman's bank records while completing a loan application. He received from the woman a check payable to his employer in the amount of \$10,000 as a principal payment towards her application for a loan.

6. During their meeting, Respondent and the woman discovered they were both Filipino. The woman had plans to travel to the Philippines in the near future. Respondent described his personal investment in a land development opportunity in the Philippines and offered to make a similar investment for the woman. The woman gave Respondent \$10,000 in cash. Respondent took the cash to a financial advisor who deposited the money and wired the funds to the Philippines. The woman was given no deed, certificate, or document of ownership in exchange for the cash. The woman received no money in return on her investment.

7. After his conviction, Respondent repaid the woman the sum of \$10,000 and completed his community service. He paid all fines and fees imposed by the court. He remains on informal probation until July 20, 2016.

8. Respondent is married with four children. He is in his second year of law school. He donates time to activities in the Filipino community and his local school board. He has been a licensee of the Bureau for 14 years with no other record of discipline.

9. Despite a prayer for cost recovery in the Accusation, Complainant introduced no evidence of her costs of investigation and enforcement.

LEGAL CONCLUSIONS

1. Cause exists pursuant to Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b), to discipline Respondent's license because the conviction was substantially related to the qualifications, functions and duties of a real estate licensee. (Factual Findings, paragraphs 3 through 6)

2. Cause does not exist to award Complainant costs of investigation and enforcement pursuant to Business and Professions Code section 10106, subdivision (b). (Factual Findings, paragraph 9)

///

3. The crime for which Respondent was convicted is substantially related to the qualifications, functions or duties of a real estate licensee pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(8), because Respondent committed an unlawful act with the intent of substantial injury to the woman.

4. Business and Professions Code section 490, subdivision (a), provides that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

5. Pursuant to Business and Professions Code section 10177, subdivision (b), the Real Estate Commissioner may suspend or revoke the license of a real estate licensee who has entered a plea of guilty or nolo contendere to a crime substantially related to the qualifications, functions, or duties of a real estate licensee.

6. California Code of Regulations, title 10, section 2910, subdivision (a), provides in pertinent part:

When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, . . . the crime shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Bureau within the meaning of Sections 480 and 490 of the Code if it involves:

[¶ . . . ¶]

(8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

7. "Theft" is ordinarily the felonious taking of property of another without his consent with intent to deprive him thereof. (Pen. Code, §§ 484, 490a; *People v. Goodman*, (1958) 159 Cal.App.2d 54.)

8. A plea of guilty constitutes an admission of every element entering into the offense charged, and constitutes a conclusive admission of defendant's guilt. (*People v. Outcault* (1949), 90 Cal.App.2d 25, 29, 202 P.2d 602, 604; *People v. Gannaro* (1963) 216 Cal.App.2d 25.)

9. Complainant has the burden of proving cause for discipline by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Med. Quality Assurance* (1982) 135 Cal.App.3d 853, 857.)

10. The burden of producing evidence as to a particular fact is on the party against whom a finding on that fact would be required in the absence of further evidence. (Evid. Code § 550, subd. (a).)

11. Complainant has established by clear and convincing evidence to a reasonable certainty that the conviction was substantially related to the qualifications, functions and duties of a real estate licensee. Respondent willfully and unlawfully committed a theft of property over \$950 in value from a person 65 years or older. Although there was no evidence to show that Respondent either actually benefitted or intended to benefit from the transaction, his conviction and guilty plea establish the intent of depriving her of \$10,000, a substantial injury to the woman. The burden of producing evidence as to any mitigating facts and circumstances relating to the conviction shifted to Respondent because he is the party against whom a finding of criminal intent is required in the absence of further evidence.

12. California Code of Regulations, title 10, section 2912, sets forth criteria developed by the Bureau for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee.

13. Facts tending to disprove rehabilitation under the criteria established by the Bureau are as follows:

- (A) The conviction was made on July 8, 2013, less than two years ago. (*Id.*, subd. (a).)
- (B) The conviction has not been expunged. (*Id.*, subd. (c).)
- (C) Respondent has not completed all of the terms of probation. He remains on probation through July 20, 2016. (*Id.*, subd. (e).)
- (D) Respondent presented no evidence from family members or business associates to show a change in attitude from that which existed at the time of the commission of the criminal act. (*Id.*, subd. (m).)

14. Facts tending to show rehabilitation under the criteria established by the Bureau are as follows:

- (A) Respondent paid restitution to the woman. (*Id.*, subd. (b).)
- (B) Respondent completed his court ordered community service and has paid all fines imposed in connection with the criminal conviction. (*Id.*, subd. (g).)
- (C) Respondent credibly testified that he is committed to improving his character through education, having entered law school. (*Id.*, subd. (k).)

- (D) Respondent is in a stable family relationship with a wife and four children. There is no evidence that he has failed to fulfill his parental and familial responsibilities subsequent to the criminal conviction. (*Id.*, subd. (j).)
- (E) Respondent donates time to activities in the Filipino community and his local school board, a significant and conscientious involvement in his community which provides social benefits or ameliorates social problems. (*Id.*, subd. (l).)
- (F) Respondent testified on his own behalf that he recognizes his wrongdoing and that he has developed a change in his attitude. (*Id.*, subd. (m).)

15. Although Respondent's conduct cannot be condoned, Respondent has demonstrated progress in rehabilitation and has no prior or subsequent convictions. Over the course of 14 years, Respondent has no record of license discipline other than this Accusation. On the other hand, Respondent's progress is insufficient to satisfy all the terms of rehabilitation after his misdemeanor conviction. Although an isolated incident, the transaction involved a woman who was elderly and vulnerable to undue influence. Allowing him to retain an unrestricted license at this early juncture would pose a risk to the public. When all the evidence is considered, a probationary period with terms of oversight and restrictions on Respondent's licensing rights should suffice to protect the public health, safety and welfare.

ORDER

All licenses and licensing rights of Respondent Chris Ruiz Mallari under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Business and Professions Code section 10156.5 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. 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. 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.

160 Adopted

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

DATED: August 14, 2014


MATTHEW GOLDSBY,
Administrative Law Judge
Office of Administrative Hearings