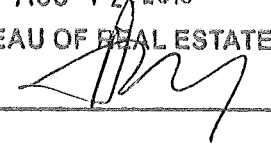


Sent

FILED

AUG 12 2015

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of	)	No. H-39207 LA
	)	
	)	OAH 2014020680
OLIVER J. MANRIQUE,	)	
	)	
Respondent.	)	

ORDER STAYING EFFECTIVE DATE

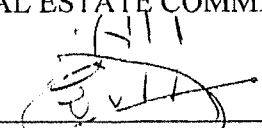
On July 16, 2015, a Decision was rendered by the Bureau of Real Estate to become effective on August 14, 2015.

IT IS HEREBY ORDERED that the effective date of the Decision is stayed for an additional period of 10 days to allow time for review of Respondent's petition for reconsideration.

The Decision shall become effective at 12 o'clock noon on August 24, 2015.

IT IS ORDERED August 14, 2015.

WAYNE S. BELL
REAL ESTATE COMMISSIONER


By: JEFFREY MASON
Chief Deputy Commissioner

JUL 24 2015

By John Smith

* * * *

CalBRE No. H-39207 LA
OAH No. 2014020680

WAYNE BELL

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

In the Matter of the Accusation of:

OLIVER J. MANRIQUE,

Respondent.

Case No. H-39207 LA

OAH No. 2014020680

PROPOSED DECISION

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on June 8, 2015.

James R. Peel, Staff Counsel, represented Complainant Robin Trujillo, Deputy Real Estate Commissioner in the Bureau of Real Estate (Bureau).

Attorney Mareike Schmidt represented Respondent Oliver J. Manrique, who testified through a Spanish interpreter.

Oral and documentary evidence was received and the matter was submitted June 8, 2015.

Complainant brings this Accusation to revoke Respondent's real estate broker license. For the reasons set out below, the license is revoked.

FACTUAL FINDINGS

Jurisdiction

1. Complainant issued this Accusation solely in her official capacity.
2. Respondent obtained a real estate broker license on June 16, 2005. It expired June 15, 2009, and was renewed January 17, 2011. It expires January 16, 2019. On December 13, 2013, Complainant brought this Accusation to revoke his license, and Respondent timely requested a hearing.

Criminal Conviction

3. On April 16, 2012, in the Superior Court of California, County of Ventura, case number 2012009147 MA, Respondent was convicted on his no contest plea of failing to report transactions in second-hand personal property to the police department (Bus. & Prof. Code, § 21628¹), a misdemeanor. Respondent's shop was buying second-hand gold without reporting the purchases. According to the police report, Respondent told a detective that he knew about the reporting requirement, and knew that he had to ask sellers for identification and record identifying information about them, but had not trained his employees about those requirements. Respondent was fined \$775 and placed on unsupervised probation for two years.

Aggravation, Mitigation and Rehabilitation

4. At hearing, Respondent denied responsibility for his conviction. He testified that he knew nothing about a pattern of not reporting purchases, never told the detective that he had failed to instruct his employees about the reporting requirements, and in fact had no employees at his business, called El Lingote de Oro ("the gold ingot"), which he was the only person authorized to run. On the day his shop was cited for buying gold without reporting it, Respondent was in transit to Colombia. The person who was originally cited was not an employee, a woman he had met while she was with her child in a park, crying because she had been evicted from her home. He allowed her to stay in his shop so she would have a roof over her head. She did some cleaning, but he did not pay her. The shop was in a building Respondent owned, in which he also had his real estate office and ten other spaces that he rented out to "independent contractors." None of his testimony explained why a non-employee would be in his shop buying gold on behalf of his business, with access to his cash register (unless a woman who could not afford a place to live was buying gold with her own money), if she was not his employee. His testimony was not credible and shows an unwillingness to take responsibility for his actions. He cannot impeach his conviction, which is conclusive evidence of his guilt of the offense charged. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.)

5. Respondent paid the fine, and completed probation in April 2014. The conviction has not been expunged.

6. Respondent still owns El Lingote de Oro. He is also a distributor for a brand of pots and pans.

7. Respondent is 59 years old. He is not involved in community or charitable activities. He was married, for the first time, in October 2014.

¹ All statutory references are to the Business and Professions Code. Section 21628 requires a "secondhand dealer" (as defined in section 21626) to report within one day on each receipt or purchase of tangible personal property, including a description of the property (including serial number or identifying mark) and name, address and verified identification of the seller or pledger.

8. The extent of Respondent's activity in real estate was not clear from the evidence. He testified that he shows houses, goes around looking for sellers, helps in refinancing, and has a salesperson working for him, but he has closed only one transaction, for a nephew.

9. Respondent offered no evidence other than his own testimony.

10. Complainant introduced no evidence of its costs of investigation or enforcement.

LEGAL CONCLUSIONS

1. There is cause to revoke or suspend Respondent's license under sections 490 and 10177, subdivision (b), as paragraph 6 of the Accusation alleges. Section 490, subdivision (a) allows a board to revoke a license if 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." Section 10177, subdivision (b), which applies specifically to the Bureau, similarly allows it to revoke a license if the licensee has been convicted of "a crime substantially related to the qualifications, functions, or duties" of a real estate licensee. His conviction for failing to report transactions in second-hand personal property was substantially related under CCR section 2910, subdivision (a)(7),² because it was "unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator[.]"

2. Respondent has the burden of showing rehabilitation. (*Martin v. Alcoholic Beverage Appeals Board* (1959) 52 Cal.2d 259.) He meets some but not most of the applicable criteria of rehabilitation that are set out in CCR section 2912:

a. More than two years have passed since his conviction. (Factual Finding 3; CCR § 2912, subd. (a).)

b. He has completed probation (CCR § 2912, subd. (e); Factual Finding 5), but his conviction has not been expunged. (CCR § 2912, subd. (c); Factual Finding 5.)

c. Respondent demonstrated stability of family life (CCR § 2912, subd. (j); Factual Finding 7), but there was no evidence of new and different social and business relationships since his conviction. (CCR § 2912, subd. (h).)

d. He does not have significant involvement in programs designed to provide social benefits or to ameliorate social problems. (CCR § 2912, subd. (i); Factual Finding 7.)

e. He has not shown a change in attitude from that which existed at the time of the crime (CCR § 2912, subd. (m)), maintaining instead that all the blame belongs elsewhere.

² "CCR" refers to the title 10 of the California Code of Regulations.

3. Failing to report purchases of personal property is a more significant crime for a real estate broker, who is charged with the essential task of ensuring that real property transactions are properly documented, than it would be for someone in another occupation. Despite a decade as a licensee, Respondent has not shown a level of experience as a real estate broker sufficient to show mitigation. Nor has he demonstrated the sort of rehabilitation that shows the public would be protected if he were to continue as a licensee.

ORDER

1. All licenses and licensing rights of Respondent Oliver J. Manrique under the Real Estate Law are revoked.
2. Complainant's request for costs of investigation and enforcement is denied.

DATED: July 1, 2015



HOWARD POSNER
Administrative Law Judge
Office of Administrative Hearings