

Wayne S. Bell

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

In the Matter of the Accusation of:

EDDIE WAI HUNG WONG,

Respondent.

Case No. H-39208 LA

OAH No. 2014040446

PROPOSED DECISION

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on August 25, 2014.

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

Respondent Eddie Wai Hung Wong represented himself.

Oral and documentary evidence was received at the hearing, and the matter was submitted August 25, 2014.

Complainant brings this Accusation to impose discipline on Respondent's real estate salesperson license. For the reasons set forth below, the license is revoked.

FACTUAL FINDINGS

1. Complainant issued this Accusation in her official capacity.
2. Respondent obtained a real estate salesperson license on May 20, 1994. His license expired May 19, 2014. He retains the right to renew the license until May 19, 2016 (Bus. & Prof. Code, § 10201), and the Bureau retains jurisdiction to discipline the license during that time. (Bus. & Prof. Code, § 10103.) On May 14, 2013, Complainant brought this Accusation to discipline his license, and Respondent timely requested a hearing.

Criminal Conviction

3. On December 5, 2011, in the Superior Court of California, County of Los Angeles, case number GA084139, Respondent was convicted on his no contest pleas of two counts of falsifying documents for use as evidence in an official proceeding (Pen. Code, §

134), a felony. Respondent was sentenced to 90 days in county jail with credit for two days served, fined \$2,150, and placed on formal probation for three years.

Mitigation, Aggravation and Rehabilitation

4. In 2011, Respondent was the owner and operator of City Traffic School, a traffic violators school in Rosemead. On May 24, 2011, Respondent issued a certificate of traffic violator school completion to an undercover deputy who did not attend class and spent no more than 40 minutes inside the school. The deputy brought in a traffic citation that had been issued as part of the undercover operation, and told Respondent he needed to submit a traffic violators school completion certificate to the court by the following day. Respondent accepted \$60 in cash from the deputy, handed him a booklet and a test answer form, and let the deputy fill out the answer form outside the City Traffic School premises. When the deputy returned with the answer sheet an hour later, Respondent told him which answers to change to get a passing score, told the deputy to backdate the registration form to May 23, and then submitted a certificate of completion to the court electronically, verifying it under penalty of perjury. On July 5, 2011, a second undercover deputy came to the school, told Respondent she needed a certificate for court the next day, and paid him \$60. Respondent gave her a booklet for an eight-hour home study course and a test answer sheet. She left the premises and returned an hour later with the answer sheet completed. Again, Respondent directed the deputy to correct several wrong answers, and then submitted a certificate of completion under penalty of perjury. The entire process took less than 90 minutes. Respondent later told a detective that he understood that the court required students to spend at least 400 minutes (6.66 hours) on the home study course; for that reason, Respondent represented to the court that students were not allowed to submit final test materials sooner than 24 hours after beginning the course.

5. Respondent testified at hearing that he did nothing illegal, and that his only “mistake” was letting students finish early. His testimony was not credible, and contradicts his convictions. Respondent may not now impeach his conviction, which stands as conclusive evidence of his guilt of the charged offense. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.) His testimony shows a refusal to take responsibility for his actions.

6. Respondent spent only one day in jail. He has paid the fine. He testified that the felony convictions were reduced to misdemeanors, and his probation changed from supervised to informal, in September 2013. Respondent introduced no evidence other than his own testimony on this — or any other — point, and Respondent was not a credible witness, so his testimony is insufficient to establish that his convictions have been reduced to misdemeanors.

7. Paragraph 7 of the Accusation alleges that the Department of Insurance revoked Respondent’s insurance license on April 16, 2012 under Insurance Code sections 1738 and 1669, subdivision (a) which allow the Department of Insurance to revoke or suspend a license if the licensee is convicted of a felony. The only evidence on the subject was Respondent’s testimony that the Department of Insurance had suspended his license

for failing to report the convictions. The evidence is sufficient to establish only that the Department of Insurance has suspended Respondent's insurance license.

8. Respondent is 59 years old. He is married, with children aged 25 and 23, both of whom are students. His wife is a real estate licensee. She does not want to work with him in real estate. Respondent is not involved in community or charitable activities. There was no evidence that he has been enrolled in education or vocational training since his conviction. There was no evidence as to how much, or in what capacity, he has worked as a real estate licensee.

9. Complainant introduced no evidence of her costs of investigation and enforcement.

LEGAL CONCLUSIONS

1. As paragraph 6 of the Accusation alleges, Respondent's convictions are cause to revoke or suspend his license under Business and Professions Code sections 490 and 10177, subdivision (b).¹ Section 490, subdivision (a) allows a board to revoke a license if the licensee "has been convicted of a crime [that] 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. Respondent's convictions for falsifying documents for use as evidence in an official proceeding (Factual Finding 3) is substantially related under CCR section 2910, subdivision (a)(2), because they involved "forging or altering of an instrument or the uttering of a false statement." They were also substantially related because they involved "fraud, deceit, falsehood or misrepresentation to achieve an end" (CCR § 2910, subd (a)(4)) and because they were unlawful acts "with the intent of conferring a financial or economic benefit upon the perpetrator." (CCR § 2910, subd (a)(8).)

2. Respondent has the burden of showing rehabilitation. He does not meet that burden, although he meets some of the relevant rehabilitation criteria set out in CCR section 2912:

a. He meets the criteria of passage of at least two years from the most recent substantially related criminal conviction. (CCR §2912, subd. (a); Factual Finding 3.)

b. He has paid the fine (CCR §2912, subd. (g); Factual Finding 6), but has not completed probation (CCR §2912, subd. (e); Factual Finding 6), and therefore is not eligible to have his convictions expunged. (CCR §2912, subd. (c).)

¹ Further references to section or "§" are to the Business and Professions Code, unless preceded by "CCR," which refers to title 10 of the California Code of Regulations.

c. Respondent is not involved in programs designed to provide social benefits or to ameliorate social problems (CCR §2912, subd. (l); Factual Finding 8), and has not shown that he has enrolled in education or vocational training since his conviction (CCR §2912, subd. (k).) He made no showing that he has new and different social relationships since his conviction. (CCR §2912, subd. (i).) His family life is stable. (CCR §2912, subd. (j); Factual Finding 8.)

d. Respondent's testimony that he did nothing illegal, despite his felony convictions (Factual Finding 3) shows that Respondent has not changed his attitude since committing the crime. (CCR §2912, subd. (m).) 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.)

3. Cause does not exist to suspend or revoke Respondent's license under section 10177, subdivision (f), which provides that a real estate license may be suspended revoked if the licensee has:

Acted or conducted himself or herself in a manner that would have warranted the denial of his or her application for a real estate license, or has either had a license denied or had a license issued by another agency of this state, another state, or the federal government revoked or suspended for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, if the action of denial, revocation, or suspension by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and only upon an express finding of a violation of law by the agency or entity.

While the Department of Insurance affords licensees due process under the Administrative Procedure Act, and the evidence establishes that Respondent's insurance license was suspended (Factual Finding 8), the discipline against his insurance license can be an independent ground for license discipline under section 10177, subdivision (f) only if the Department of Insurance expressly found a violation of law. There is no evidence of what the Department of Insurance expressly found.²

² The evidence would support a finding that there are grounds to discipline his license because he "conducted himself or herself in a manner that would have warranted the denial of his or her application for a real estate license" (§ 10177, subd. (f)), the Accusation does not allege that ground for discipline.

4. The crime of falsifying documents used in official proceedings is a particularly severe offense for real estate salespersons, who must handle and safeguard documents of vital importance to their clients. Respondent therefore has a substantial burden of showing rehabilitation, which is impossible to meet if he denies wrongdoing. Nor are his 20 years as a licensee a mitigating factor, in the absence of any evidence of his activities as a salesperson.

5. Page 3 of the Accusation requests costs of investigation and enforcement. The request is denied because there has been no evidence of any such costs.

ORDER

1. Respondent Eddie Wai Hung Wong's real estate salesperson license is revoked.

2. Complainant's request for costs of investigation and enforcement is denied.

DATED: September 18, 2014



HOWARD POSNER

Administrative Law Judge

Office of Administrative Hearings