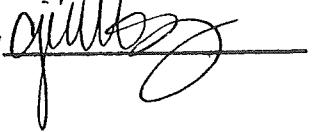


FILED

JUN 30 2015

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of

HOSSEIN AFSHARI,

Respondent.

CalBRE No. H-39414 LA

OAH No. 2014060713

DECISION

The Proposed Decision dated June 4, 2015, 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, but the right to a restricted license is granted to Respondent.

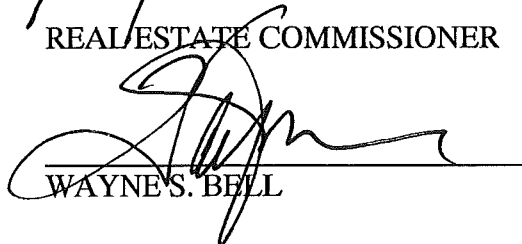
The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on JUL 20 2015.

IT IS SO ORDERED

6/26/2015

REAL ESTATE COMMISSIONER


WAYNE S. BELL

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

In the Matter of the Accusation Against:

HOSSEIN AFSHARI,

Respondent.

Case No. H-39414 LA

OAH No. 2014060713

PROPOSED DECISION

Administrative Law Judge Thomas Heller, State of California, Office of Administrative Hearings, heard this matter in Los Angeles, California on April 22, 2015.

Amelia V. Vetrone, Counsel, Bureau of Real Estate, represented complainant Robin Trujillo, Deputy Real Estate Commissioner.

Frank M. Buda, Law Offices of Frank M. Buda, represented respondent Hossein Afshari.

At the close of the hearing, the Administrative Law Judge ordered the parties to submit written closing arguments by May 6, 2015. Complainant attempted to send the written closing argument electronically on May 6, 2015, but did not actually send it until the next day due to a technical issue. Respondent sent his closing memorandum by facsimile on May 6, 2015, after the close of business. Complainant's written closing argument was marked for identification as Exhibit 11, and respondent's written closing argument was marked for identification as Exhibit W. Both pleadings were filed on May 7, 2015, and the matter was submitted that day.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Respondent presently has license rights under the Real Estate Law, Business and Professions Code, division 4, part 1 (§ 10000 et seq.),¹ as a real estate salesperson,

¹ All further statutory references are to the Business and Professions Code, unless otherwise indicated.

license number 01416937. He first obtained that license on September 15, 2004, and it is scheduled to expire on September 14, 2016.

2. On April 18, 2014, complainant filed an Accusation against respondent, alleging as grounds for discipline that respondent had been convicted of crimes that were substantially related to the qualifications, functions or duties of a real estate licensee. (Ex. 1 [Accusation, at p. 2].) Complainant filed the Accusation in complainant's official capacity as a Deputy Real Estate Commissioner of the Bureau.

3. Respondent submitted a Notice of Defense on Accusation, postmarked on May 28, 2014, and a Notice of Defense – Objections, filed on November 10, 2014.

Respondent's Convictions

4. On February 19, 2013, in the United States District Court for the Central District of California, Case No. CR 01-0209(C)-DOC, respondent was convicted, based on his plea of guilty, of two counts of violating title 18 United States Code section 2339B(a)(1), conspiracy to provide and providing material support or resources to a designated foreign terrorist organization, both felonies.² The court sentenced respondent to prison for time served (about 10 days), and placed him on supervised release for three years, under various terms, including that he pay a \$200 special assessment, provide a DNA sample, not possess any firearm, explosive device, or other dangerous weapon, and comply with the rules and regulations of the United States Probation Office.

5. Respondent's convictions arose from a conspiracy to raise money for an organization known as the Mujahedin-e Khalq (MEK) between October 1997 and February 2001. During all of that time, the United States government designated MEK as a foreign terrorist organization. Respondent is of Iranian descent, and MEK sought the overthrow the Iranian government. But according to the United States Department of State, MEK also was involved "in the killing of U.S. citizens in Iran in the 1970s and an attack on U.S. soil in 1992." (Ex. N.)

6. Respondent and his co-conspirators engaged in fundraising activities for MEK at the Los Angeles International Airport, approaching travelers and asking them to donate to the Committee for Human Rights in Iran (CHR), stating that the funds would be used for humanitarian relief. The CHR was a registered tax-exempt organization, but in fact funneled money to MEK. Respondent would show potential donors a binder of photos and other information about alleged human rights violations in Iran, and the humanitarian services that their donations would allegedly support. Unless asked expressly, respondent did not disclose that the funds would actually go to MEK. He also did not disclose to the unwitting donors

² While the court records in evidence do not state that the convictions are felony convictions, the crimes are felonies under federal law because the maximum prison term for each crime exceeds one year. (18 U.S.C. §§ 2339B(a)(1), 3559.)

that MEK was a designated foreign terrorist organization, although respondent knew of the designation. At least some of the time, respondent received monthly payments for his fundraising activities, although he wore identification suggesting that he was a volunteer.

7. Respondent was arrested in February 2001, and the criminal case against him was filed the same year. Thereafter, the case had a lengthy and convoluted 12-year history that included dismissal and subsequent reinstatement by the United States Court of Appeals for the Ninth Circuit. Respondent was on pretrial release under the supervision of federal officials for almost all of the time between 2001 and respondent's conviction in February 2013.

Mitigation and Rehabilitation

8. Respondent presented evidence that he thought MEK would only use the donations that he solicited for humanitarian purposes. This is not a substantial mitigating factor; money is fungible, and MEK could channel money it received for humanitarian purposes to engage in terrorist activities. Respondent also presented evidence that the federal government de-designated MEK as a foreign terrorist organization in 2012, and asserted that primary objective of MEK – the overthrow of the Iranian government – aligned with the United States government's interests. These are not mitigating factors at all; MEK was a designated foreign terrorist organization during the entire period of respondent's crimes, and this proceeding is not a proper forum to debate the merits of that designation.

9. Respondent's rehabilitation evidence has more substance. He was convicted over two years ago, for crimes that took place between 1997 and 2001. He paid his criminal fine and complied fully with his post-conviction supervised release obligations, to the point that the federal court terminated his supervised release early, in April 2015. His probation officer supported early termination. He has no other criminal convictions, and has worked as a real estate salesperson while on pre-trial release and supervised release; in fact, he first received his salesperson's license while he was on pre-trial release. He has established new and different business relationships since obtaining that license.

10. Respondent's sponsoring broker provided a letter attesting to his good character, as did respondent's wife of 15 years and a close family friend who was a real estate client. Respondent also presented many other letters from friends and family attesting to his good character that were submitted to the federal court before his sentencing. Respondent has stayed current on his real estate educational requirements. He now advocates legally for actions to stop human rights abuses in Iran, and gathers letters from pastors about the issue to submit to the United States Congress. He also participates annually in an Iranian community festival. He testified that he is sorry for his crimes, did not pay enough attention to the legal consequences of his actions, and would not commit the crimes again. While he feels he was caught in the criminal system "by mistake," because he believes MEK was improperly designated as a foreign terrorist organization, he realizes that what he did was wrong. His straightforward and contrite demeanor while testifying made him credible when he asserted that he had a changed attitude.

Costs

11. Complainant incurred reasonable costs of \$2,354 in the investigation and prosecution of this matter. Respondent testified that if he retains his license, he is financially able to pay those costs over one year's time.

LEGAL CONCLUSIONS

1. Complainant has the burden of proving the alleged grounds for discipline in the Accusation. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) The standard of proof to be applied is "clear and convincing evidence." (*The Grubb Co., Inc. v. Dept. of Real Estate* (2011) 194 Cal.App.4th 1494, 1505, italics omitted; see also *Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212.) "Clear and convincing evidence" requires a finding of high probability. The evidence must be so clear as to leave no substantial doubt. It must be sufficiently strong to command the unhesitating assent of every reasonable mind. [Citations.] (*In re David C.* (1984) 152 Cal.App.3d 1189, 1208.)

2. The grounds for discipline alleged in the Accusation are respondent's convictions of two counts of conspiracy to provide and providing material support or resources to a designated foreign terrorist organization. (Ex. 1 [Accusation, at p. 2].) The Real Estate Commissioner may suspend or revoke the license of a person who has been convicted of a crime that is "substantially related to the qualifications, functions or duties" of a real estate licensee. (§ 490, subd. (a); § 10177, subd. (b).) The conviction can be based on a guilty plea (§ 490, subd. (c); § 10177, subd. (b)), and need not occur as part of the licensee's practice of the licensed profession. (See *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772.) A crime is deemed "substantially related" to a real estate licensee's qualifications, functions or duties if it involves, among other things:

- (1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person.

[¶] . . . [¶]

- (4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end.

[¶] . . . [¶]

- (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.

[¶] ... [¶]

- (10) Conduct which demonstrates a pattern of repeated and willful disregard of law. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(1), (4), (8), & (10).)

3. There is cause to suspend or revoke respondent's real estate license for conviction of crimes that are substantially related to the qualifications, functions, or duties of a real estate licensee. (§ 490, subd. (a); § 10177, subd. (b).) Complainant presented clear and convincing evidence of respondent's conviction of such crimes. Those crimes presented "the threat of doing substantial injury to the person or property of another," by supporting a designated foreign terrorist organization. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) Respondent's crimes also involved the employment of fraud and the fraudulent obtaining of funds, because respondent knowingly failed to disclose to unwitting donors that their donations would go to a designated foreign terrorist organization. (*Id.*, subd. (a)(1), (4).) Respondent's conspiracy to raise money for MEK also occurred over a several years, and involved "a pattern of repeated and willful disregard of law." (*Id.*, subd. (a)(10).) Indeed, respondent admits that his crimes were substantially related to the qualifications, functions, or duties of a real estate licensee. (Ex. W at p. 4.)

4. With grounds for discipline established, respondent bears the burden of proving that he is sufficiently rehabilitated from his criminal activities to retain his real estate license. (See *Harford v. State Bar* (1990) 52 Cal.3d 93, 101.) The Bureau has adopted criteria to evaluate the rehabilitation of a licensee who is subject to an administrative revocation or suspension proceeding on account of committing a crime. (Cal. Code Regs., tit. 10, § 2912.) The relevant criteria here are:

-
- (a) The passage of not less than two years from the most recent criminal conviction that is "substantially related" to the qualifications, functions or duties of a licensee of the Bureau. (A longer period will be required if there is a history of criminal convictions or acts substantially related to the qualifications, functions or duties of a licensee of the Bureau.)
 - (b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee.
 - (c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action.

[¶] ... [¶]

- (e) Successful completion or early discharge from probation or parole.

[¶] . . . [¶]

- (g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.
- (h) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.
- (i) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.
- (j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.
- (k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.
- (l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.
- (m) Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by any or all of the following:
 - (1) Testimony of applicant.
 - (2) Evidence from family members, friends or other persons familiar with the licensee's previous conduct and with subsequent attitudes and behavioral patterns.
 - (3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.

- (4) Evidence from psychiatrists, clinical psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.
- (5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question. (Cal. Code Regs., tit. 10, § 2912.)

5. Respondent presented evidence proving that he has satisfied most of the Bureau's relevant rehabilitation criteria. It has now been more than two years since respondent's convictions, for crimes that occurred between 14 and 18 years ago. Respondent has no prior history of criminal convictions or acts that warrant a longer rehabilitation period.³ Respondent complied with the terms of his supervised release, and received an early discharge from it with his probation officer's approval. He paid his criminal fine, and was not ordered to make restitution.⁴ While his conviction was not expunged, that remedy is available for federal convictions only in "extreme circumstances," such as an unlawful or invalid conviction, or where the government engaged in misconduct. (*United States v. Smith* (1991) 940 F.2d 395, 396.)

6. In addition, no real estate business practices contributed to respondent's crimes; indeed, he was not licensed until after he committed them. Respondent has new and different business relationships by virtue of his licensing as a real estate salesperson.⁵ He has a stable relationship with his wife of 15 years, and has remained current on his continuing real estate educational requirements. He advocates lawfully for actions to stop human rights abuses in Iran, and participates annually in an Iranian community festival. He testified persuasively to a change in attitude, and provided favorable character references as to his changed attitude, including from his sponsoring broker. He also had not had any subsequent felony or misdemeanor convictions, although that fact is entitled to "little weight" here because he was "required to behave in exemplary fashion" while under pre-trial and post-conviction supervision. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

³ While respondent's criminal conspiracy was lengthy, this itself is not evidence of a history of criminal convictions or acts, as complainant incorrectly asserts. (Ex. 11 at p. 5.)

⁴ Respondent's plea agreement references restitution, but the court's actual sentence does not.

⁵ Whether respondent also has new and different social relationships is unclear.

7. Complainant notes, correctly, that respondent's crimes were dishonest, but the dishonest nature of the crimes is not one of the criteria of rehabilitation in the Bureau's regulations. (Cal. Code Regs., tit. 10, § 2912; see also *Singh v. Davi* (2012) 211 Cal.App.4th 141, 152 [the dishonest nature of a crime is not among the Bureau's analogous rehabilitation criteria for license applicants].) Complainant also asserts that respondent has not had a change of attitude, citing as evidence his efforts at the hearing to prove that MEK was improperly designated as a foreign terrorist organization. But while much of respondent's evidentiary presentation about MEK was misguided, that presentation itself does not show that respondent has the same attitude as when he committed his crimes. Respondent repeatedly testified that he regrets his crimes, did not pay enough attention to the legal consequences of his actions, and would not commit the crimes again. Given his forthright and contrite demeanor while testifying, and his decade-plus federal criminal case, this testimony is credible.

8. Nothing in this decision means that respondent's crimes were not serious. They were. But the federal court has already punished respondent, and the purpose of this proceeding is to protect the public, not to punish respondent further. (*Donaldson v. Dept. of Real Estate* (2005) 134 Cal.App.4th 948, 958, fn. 10.) In addition, respondent has satisfied most of the Bureau's own regulatory criteria for rehabilitation. Given these considerations, the maximum discipline of revocation of respondent's license is unwarranted. Instead, the proper level of license discipline to protect the public is revocation, stayed, with a probationary license period.

9. "Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before the [Bureau], the [Real Estate] [C]ommissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case." (§ 10106, subd. (a).) In evaluating a request for costs, the administrative law judge must consider whether complainant's investigation was "disproportionately large" compared to the violation, and whether the licensee: (1) committed some misconduct but "used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed;" (2) had a "subjective good faith belief in the merits of his or her position;" (3) raised a "colorable challenge" to the proposed discipline; and (4) "will be financially able to make later payments." (*Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45 [quoting *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 342, 345].)

10. Here, complainant's investigation was proportional to the violation, and respondent did not obtain dismissal of any charges. While respondent had a subjective good faith belief in the merits of his position, he did not raise a colorable challenge to suspension or revocation of his license. But respondent did obtain a reduction in the severity of the discipline imposed below the maximum discipline of revocation. Furthermore, payment of complainant's \$2,354 in costs all at once would cause some financial hardship. However, it is reasonable to require respondent to pay complainant's costs on a payment schedule during the first year of his restricted license.

ORDER

All licenses and licensing rights of respondent Hossein Afshari under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code 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. 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.

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 three 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.

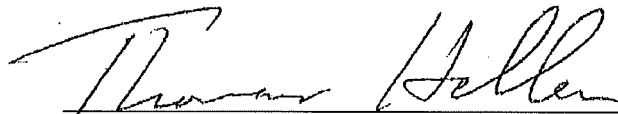
5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education 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 the 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. 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 137000, Sacramento, CA 95813-7000. 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 grounds for the suspension or revocation of that license.

7. Respondent pay complainant's investigation and enforcement costs of \$2,354, in 12 equal monthly installments, in such manner as the Bureau of Real Estate may direct.

DATED: June 4, 2015

A handwritten signature in cursive script, appearing to read "Thomas Heller", written over a horizontal line.

THOMAS HELLER
Administrative Law Judge
Office of Administrative Hearings