

FILED

JUN 15 2015

BUREAU OF REAL ESTATE

By *Sheryl Danner*

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

ARMIK MIKAILIAN,

Respondent.

) CalBRE No. H-39583 LA
)
) OAH No. 2014120962
)

DECISION

The Proposed Decision dated May 21, 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.

Pursuant to Section 11517(c)(2) of the Government Code, the following corrections are made to the Proposed Decision:

Factual Findings, Page 2, Paragraph No. 4, Line 1, "March 26, 2009," is amended to read "March 26, 2009".

Legal Conclusions, Page 6, Paragraph No. 11, Line 1, "the Department's criteria" is amended to read "the Bureau's criteria".

The Decision suspends or revokes one or more real estate licenses.

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 06 2015.

IT IS SO ORDERED 6/10/2015

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 of

ARMIK MIKAILIAN,

Respondent.

BRE Case No. H-39583 LA

OAH No. 2014120962

PROPOSED DECISION

Thomas Y. Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 9, 2015, in Los Angeles, California.

Maria Suarez, complainant, was represented at the hearing by Diane Lee, Staff Counsel.

Armik Mikailian, respondent, was self-represented.

Oral and documentary evidence was received. The record was left open, and respondent was granted leave until close of business on April 16, 2015, to file and serve checks relating to building income and expense. Respondent timely filed: (i) copies of such checks, front and back, on pages numbered 31 through 107, each with information at the top right corner of the page regarding account numbers (redacted) and dates, among other things, some with other brief explanatory notes, as on pages 67, 68, 90, and 91, as well as a one-page introductory note, all of which were marked for identification collectively as Exhibit G; (ii) a one-page undated note addressed to the court, marked for identification as Exhibit H, (iii) as well as a March 12, 2003 note from one Moshe F. Rubinstein, Ph.D., to respondent, marked for identification as Exhibit I. Complainant was granted until close of business on April 23, 2015 to object. On April 15, 2015, complainant submitted a "Reply to Respondent's Additional Documents," which was marked for identification as Exhibit 9. Complainant did not object to Exhibit G, but did object to Exhibits H and I as hearsay and because respondent had not been granted leave to present evidence other than checks. Exhibit G was admitted into evidence. The hearsay objection to Exhibit H was sustained. The objections to Exhibit I were overruled and it was admitted into evidence pursuant to Government Code section 11513, subdivision (d).

The record was closed, the hearing was deemed completed, and the matter was submitted for decision on April 23, 2015.

FACTUAL FINDINGS

1. Complainant brought the accusation in her official capacity as the Deputy Real Estate Commissioner of the Bureau of Real Estate (the Bureau). Respondent filed a timely Request for Hearing.

2. Respondent was granted his real estate salesperson license September 7, 1984 and his broker license July 10, 2006. His broker license expired July 9, 2014. (Exhibit 2.) Jurisdiction over discipline continues after license expiration. (Bus. & Prof. Code sec. 10103.)

3. On October 24, 2013, in case no. GA084781 in the Superior Court of California, County of Los Angeles, respondent was convicted, on a plea of nolo contendere, under Penal Code section 487, subdivision (a) (grand theft), a felony. The court ordered a suspended sentence, formal probation of five years expiring in October 2018, one day in County jail, fines and fees totaling \$82, 30 days of community labor, and, pursuant to stipulation, restitution to the victim, Dr. Hrach Yousefian, of \$50,591. The court indicated that "when all restitution is paid in full and the defendant [respondent] has complied with all orders of the court and probation . . . the court will reduce the charge to a misdemeanor pursuant to 17(b) of the Penal Code . . . retroactive to the plea date of 10/24/13." (Exhibit 3.)

4. The facts and circumstances underlying the March 26, 2009, conviction go back several years, starting with a purchase and sale of real property.

(A) In 2003, respondent, a broker at Coldwell Banker Commercial, negotiated the purchase and sale of the multi-story commercial building at 541 West Colorado Boulevard, Glendale, California (the "Property"), on behalf of his client in the transaction, Dr. Yousefian.

(B) Effective July 1, 2003, respondent and the new owner of the Property, Dr. Yousefian, entered into a Property Management Agreement (PMA). (Exhibits B and C.) The PMA is on a fill-in form, "C.A.R. (California Association of Realtors) Form PMA (revised 4/03)," to which few changes were made or filled in. Under section 1, the broker (respondent and his employer, Coldwell Banker Commercial) had "the exclusive right to rent, lease, operate, and manage the property . . ."

(C) Under the PMA's section 3, subsection D, the broker was granted "the authority and power, at Owner's expense, to . . . [m]ake, cause to be made, and/or supervise repairs . . . ; purchase, and pay bills for, services and supplies. Broker shall obtain prior approval of Owner for all expenditures over \$500 for any one item. . . ." This \$500 figure was a fill-in, not pre-printed, on the form. During his years-long management of the Property, respondent paid expenditures on several occasions exceeding \$500 without approval of the owner, Dr. Yousefian. In his testimony, respondent admitted wrong in this regard.

(D) Under section 3, subsection F, the broker was authorized to “[c]ontract, hire, supervise and/or discharge firms and persons, including utilities, required for the operation and maintenance of the Property.” Respondent hired a firm controlled by him to perform maintenance.

(E) Under section 3, subsection I, the broker was authorized to “[d]eposit all receipts collected for Owner, less any sums properly deducted or disbursed, in a financial institution whose deposits are insured by an agency of the United States government. The funds shall be held in a trust account separate from Broker’s personal accounts.” Respondent did not hold funds collected for Dr. Yousefian in trust.

(F) Under section 6, subsections A: “Owner agrees to pay Broker fees: (1) “Management: 5% of gross leases” [¶] (2) “Renting or Leasing: 5% of term of the lease.” How much in fees was paid to respondent is not clear, but it was established that respondent failed to provide information sufficient for Dr. Yousefian and his accountant to determine payments, a substantial amount of which were improper, as established by respondent’s criminal conviction.

5. Respondent disputed calculations of revenue from the Property and the amounts paid Dr. Yousefian from that revenue. The dollar figures are set out in a “Master Income List” table (the Table) prepared by Dr. Yousefian’s accountant. (Exhibit D.) The Table indicates that in 2003 respondent paid Dr. Yousefian \$35,643 more than the income reportedly generated by the Property, but in each year afterwards, through 2009, there were significant shortfalls, in two years, 2005 and 2008, exceeding \$200,000, so that for the period ending 2009, Dr. Yousefian should have been paid significantly more. Dr. Yousefian testified credibly, consistent with his declaration submitted to the Bureau. (Exhibit 6). His loss was at least \$180,344. Dr. Yousefian added credibly that the loss is likely much greater, but unknown precisely, because his accountant did not have complete information from respondent. There were also losses, not calculated by the accountant after he had done his work for the criminal proceedings against respondent, attributable to security deposits in the thousands of dollars each that respondent collected from tenants and failed to return to them upon their terminating tenancy.

6. Respondent countered the Table with his testimony, supplemented by Exhibits E, F, and G. His evidence was that Exhibit D included bank transaction records and tax information indicating that Dr. Yousefian suffered no dollar loss. However, the records presented by respondent are incomplete and insufficient, especially in the absence of expert testimony, such as from an accountant, to mitigate in any substantial degree respondent’s wrongdoing.

7. Respondent’s evidence in Exhibit F indicates he paid substantial sums for maintenance of the Property, as permitted under the PMA, section 3, subsections D and E, *ante*. Some of the payments for the Property’s maintenance were made to persons not employed by Wilshire Realty & Investments, Inc., the company controlled by respondent.

8. Respondent's financial evidence, Exhibits F and G and his testimony, does have some mitigating effect, in that the PMA gave him wide latitude in managing the Property and its income and expenses. Without expert testimony and much more accuracy, if not precision, regarding to whom monies over the years were paid and for what purposes, any mitigating effect of respondent's evidence is limited and moderate at best.

9. When first accused of theft, respondent agreed he would pay Dr. Yousefian \$20,000. Accordingly he signed a Promissory Note dated November 3, 2009, under which respondent was to pay \$20,000 without interest to a corporation controlled by Dr. Yousefian no later than March 31, 2010. (Exhibits 4 and 7.) Respondent failed to pay the \$20,000 as promised. Respondent had no convincing explanation for his agreement to pay this money despite his assertions of innocence.

10. Respondent unsuccessfully attempted to impeach Dr. Yousefian regarding his testifying in English, whereas Dr. Yousefian had testified only through an interpreter in criminal court. Dr. Yousefian gave the believable and reasonable explanation that he had relied on his native tongue because in criminal court there was much at stake, and he hoped to ensure that his accusations against respondent were as accurate as possible and he was uncomfortable with the legal terminology in the criminal court.

11. Respondent completed his court-ordered community labor. On one occasion respondent donated hours serving the disadvantaged at the Los Angeles Mission on Thanksgiving. On page 2 of 5 of the "Confidential - Interview Information Statement" (Exhibit 5), which respondent submitted to the Bureau, he indicated he was active in no "social, civic, or community groups."

12. Respondent is 56 years old and it would be difficult for him to switch careers.

13. Complainant incurred reasonable costs of \$1,865 in investigation and of \$890 in enforcement relating to this case, a total of \$2,755. (Exhibit 8.)

14. Respondent has paid approximately \$1,790 and owes approximately \$48,800 in restitution to Dr. Yousefian. Employed at Hall & Chambers Real Estate as a broker associate in La Canada, California, respondent expects to see closed at some future date some purchase and sale transactions of commercial properties, income which should allow him to pay restitution in obedience of the criminal court's order.

15. On page 2 of 5 of the "Confidential - Interview Information Statement" dated May 21, 2014 (Exhibit 5), respondent advised the Bureau that he had past due debt, specifically a personal tax lien, and that he does not own his own home or other real property or his own car. Respondent will not likely be able in the foreseeable future to pay restitution to his victim, let alone the costs of these proceedings.

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LEGAL CONCLUSIONS

1. Cause exists to discipline the real estate broker's license of respondent, Armik Mikailian, pursuant to Business & Professions Code sections 490 and 10177, subdivision (b), based on conviction of a crime substantially related to the functions and duties of the licensed activity, as set forth in Findings 3 through 8.

2. Cause exists to grant complainant's request for reimbursement of the costs of investigation and enforcement pursuant to Business & Professions Code section 10106, as set forth in Finding 13.

3. Complainant has met her burden, applicable here, to show by "clear and convincing proof to a reasonable certainty and not a mere preponderance of the evidence" that license revocation or suspension is appropriate. (*Ettinger v. Medical Board of Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

4. Despite denial, the conviction is conclusive of respondent's guilt. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449 ["the conviction . . . stands as conclusive evidence of appellant's guilt of the offense charged"].)

5. Business & Professions Code section 490, subdivision (a), empowers the Bureau to "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." Under subdivision (b), a conviction "means a plea or verdict of guilty or a conviction following a plea of nolo contendere."

6. Business & Professions Code section 10177, subdivision (b), provides that the Bureau "may suspend or revoke the license of a real estate licensee . . . who has done . . . any of the following: [¶] . . . [¶] (b) Entered a plea of guilty or nolo contendere to . . . a crime substantially related to the qualifications, functions, or duties of a real estate licensee . . ."

7. Under Business & Professions Code section 10106, a licensee, in the discretion of the Administrative Law Judge, may be ordered to "pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case . . ." and "[¶] may include the amount of investigative and enforcement costs up to the date of the hearing . . ."

8. Under criteria the Bureau has developed, "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 [Business & Professions] Code if it involves: (1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person. [¶] . . . [¶] (8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator . . ." (Cal. Code Regs., tit. 10, §2910, subd. (a)(1) & (8)). "If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or acts were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the

action to be taken with respect to the applicant or licensee.” (*Id.*, Cal. Code Regs., tit. 10, §2910, subd. (b).)

9. The crime underlying respondent’s conviction was substantially related to functions and duties of a licensee. His dealings with Dr. Yousefian began when respondent represented him in a real estate purchase and sale transaction. It was by virtue of being a licensed real estate broker that respondent owed Dr. Yousefian a fiduciary duty in the transaction, a duty of the highest good faith. (*Salahutdin v. Valley of California, Inc.* (1994) 24 Cal.App.4th 555, 563.)

10. Substantial relationship between the crime and respondent’s functions and duties is evident as well from respondent’s agreement and responsibility to manage the Property, which he did for years. He performed under a written management agreement, the PMA, whose terms are common enough in the real estate business to be ready-provided on a C.A.R. form.

11. Respondent does not meet the Department’s criteria for a finding that he is rehabilitated, as set out in California Code of Regulations, title 10, section 2912, with the exception of subdivision (m)(4): “Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by [¶] . . . [¶] (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.” There was no evidence that respondent has any subsequent conviction.

12. Respondent’s rehabilitation efforts have been minimal, consisting of his court-ordered community labor and one occasion when he served the disadvantaged at the Los Angeles Mission on Thanksgiving. Pertinent here is the California Supreme Court’s observations in a case involving, as here, misappropriation of clients’ funds, failure to maintain adequate safeguards in dealings with clients, failure to act competently on behalf of clients, and failure to preserve and segregate client funds, *Rimel v. State Bar* (1983) 34 Cal.3d 128, 132:

Petitioner offers little in the way of mitigating circumstances. The fact that he has suffered no prior discipline ordinarily is important. (*Bradpiece v. State Bar* (1974) 10 Cal.3d 742, 747, 111 Cal.Rptr. 905, 518 P.2d 337.) Yet, while petitioner admits he has broken some technical rules, he does not acknowledge that his actions involved moral turpitude. His failure to appreciate the gravity of his acts is disturbing and may indicate petitioner’s willingness to repeat his misconduct. (See *Jackson v. State Bar, supra*, 15 Cal.3d at p. 382, 124 Cal.Rptr. 185, 540 P.2d 25.)

13. Not a mitigating factor is respondent’s age and the difficulty of his switching careers. When courts have considered age in mitigation, consideration is generally given to the inexperience or naiveté of the offender. See *In re Demergian* (1989) 48 Cal.3d 284, 295. Respondent’s decades as a real estate licensee gave him maturity and judgment, and “it does

not require unusual maturity or judgment to understand that theft from a client . . . is wrong.” *Ibid.*, 48 Cal.3d at 295.

14. Respondent has not taken responsibility for his wrongdoing, with the minor exception, his acknowledgement he should have sought approval for expenditures over \$500. His testimony sought to deflect blame from himself onto Dr. Yousefian and others and was otherwise similar to his response to the “Conviction Detail Report” dated May 21, 2014, providing these “Details of Crime(s)” to the Bureau:

Due to the fact that the ownership property in this matter was slow paying expenses on the building some of the rents on the property was [sic] directed to my company account were [sic] I was able to pay the expenses on the building and keep the building in a running condition and upon paying the expenses the balance of funds were returned to the ownership, during my management period of subject property utility services to the building were turned off three times and elevator service was shut down by the State of California for lack of maintenance [sic] and not having a proper emergency notification system. Attached are checks and money orders amounting to over \$70,000 that were used to pay expenses and balance of rents that was [sic] returned to the ownership.

15. Respondent’s evidence was not sufficient to dispel the conclusion, supported by his conviction, that he failed to disclose a great deal to his client, Dr. Yousefian, though he was duty-bound to do so. See *Salahutdin v. Valley of California, Inc.*, *supra*, 24 Cal.App.4th at 563.

16. Due process requires that an order regarding costs must be “tailored . . . to ‘the capacities and circumstances of those who are to be heard,’ . . .” (*Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 46, citing *Mathews v. Eldridge* (1976) 424 U.S. 319, 349.) It would impose undue hardship upon respondent to order that he pay costs in his present circumstances. (Findings 14 and 15.)

ORDER

1. All licenses and licensing rights of respondent, Armik Mikailian, under the Real Estate Law, are revoked.

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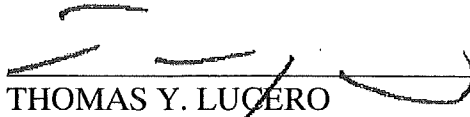
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2. Respondent shall have no current liability for costs, but shall pay the Bureau's costs, \$2,755, in the event that he applies for and obtains a real estate license in the future. Payment of these costs shall be a condition of respondent's being granted a real estate license, which shall not be valid until payment to the Bureau.

Dated: May 21, 2015


THOMAS Y. LUCERO
Administrative Law Judge
Office of Administrative Hearings

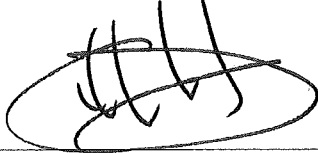
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NOW, THEREFORE, IT IS ORDERED that the Default Order of October 8, 2014, is set aside and the Decision of October 28, 2014, is vacated, and that the Matter of the Accusation filed herein on August 21, 2014, be remanded to the Office of Administrative Hearings.

This Order is effective immediately.

DATED: DEC 22 2014

REAL ESTATE COMMISSIONER

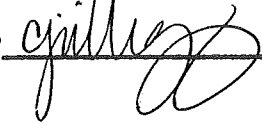


By: JEFFREY MASON
Chief Deputy Commissioner

FILED

NOV - 7 2014

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)	
)	No. H-39583 LA
ARMIK MIKAILIAN,)	
)	
Respondent.)	
_____)	

DECISION

This Decision is being issued in accordance with the provisions of California Government Code section 11520 on evidence of compliance with California Government Code section 11505 and pursuant to the Order of Default issued on October 8, 2014 and the findings of fact set forth herein are based on one or more of the following: (1) Respondent's express admissions; (2) affidavits; and (3) other evidence.

This Decision revokes a real estate license on grounds of a conviction for a crime and the failure to report the filing of the felony information and conviction.

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

FINDINGS OF FACT

1.

On August 18, 2014, an Accusation was made by Maria Suarez in her official capacity as a Deputy Real Estate Commissioner of the State of California. On August 21, 2014, the Accusation, Statement to Respondent, and Notice of Defense were mailed by certified mail, return receipt requested, and regular mail to Respondent's last known mailing address on file with the Bureau of Real Estate. The packet mailed via regular mail was returned to sender with

the label stating, "RETURN TO SENDER/NOT DELIVERABLE AS ADDRESSED/UNABLE TO FORWARD."

On October 8, 2014, no Notice of Defense having been filed herein within the time prescribed by California Government Code section 11506, Respondent's default was issued herein.

2.

Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code as a real estate broker. Respondent's license expired on July 9, 2014. The Bureau of Real Estate retains jurisdiction over the license pursuant to California Business and Professions Code section 10103.

(CRIMINAL CONVICTION)

3.

On or about October 24, 2013, in Superior Court of California, County of Los Angeles, case no. 12CF2350, Respondent was convicted of violating California Penal Code section 487(a) (grand theft), a felony.

4.

The evidence established that the crime of which Respondent was convicted, as set forth in Paragraph 3, above, is substantially related to the qualifications, functions, and duties of a real estate licensee under Section 2910, Title 10, Chapter 6, California Code of Regulations.

DETERMINATION OF ISSUES

1.

Cause for disciplinary action against Respondent exists pursuant to California Business and Professions Code sections 490 and 10177(b).

2.

The standard of proof applied was clear and convincing proof to a reasonable certainty.

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ORDER

The license and license rights of Respondent ARMIK MIKAILIAN under the provisions of California Business and Professions Code Division 4, Part I are revoked.

This Decision shall become effective at 12 o'clock noon on NOV 27 2014.

DATED: OCT 28 2014.

REAL ESTATE COMMISSIONER

A handwritten signature in black ink, appearing to read 'JEFFREY MASON', is written over a horizontal line.

By: JEFFREY MASON
Chief Deputy Commissioner

1 Bureau of Real Estate
2 320 West Fourth Street, Suite 350
3 Los Angeles, CA 90013
4 (213) 576-6982

FILED

OCT - 8 2014

BUREAU OF REAL ESTATE

By *[Signature]*

7
8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) NO. H-39583 LA
12 ARMIK MIKAILIAN,)
13)
14 Respondent,)
15)

16 Respondent ARMIK MIKAILIAN, having failed to file a Notice of Defense within the time
17 required by Section 11506 of the Government Code, is now in default. It is, therefore, ordered that
18 a default be entered on the record in this matter.

19 IT IS SO ORDERED OCTOBER 8, 2014.

22 WAYNE S. BELL
23 Real Estate Commissioner

24 By: *[Signature]*
25 PHILLIP IHDE
26 Regional Manager
27