

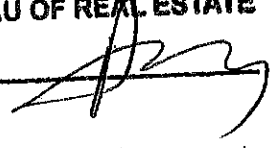
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**FILED**

**MAR 18 2016**

**BUREAU OF REAL ESTATE**

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BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of )  
CHARLES EDWARD WHITEHEAD, )  
Respondent. )

No. H-39665 LA

ORDER DENYING RECONSIDERATION

On February 12, 2016, a Decision was rendered to become effective March 9, 2016. Said Decision was stayed by separate order to March 18, 2016.

On March 2, 2016, Respondent petitioned for reconsideration of the Decision of February 12, 2016.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of February 12, 2016, and reconsideration is hereby denied.

IT IS SO ORDERED

3/18/2016

WAYNE S. BELL  
Real Estate Commissioner



*Sauto*

**FILED**

**MAR - 8 2016**

**BUREAU OF REAL ESTATE**

By *[Signature]*

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BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

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| In the Matter of the Accusation of | ) | No. H-39665 LA |
| CHARLES EDWARD WHITEHEAD,          | ) |                |
| Respondent.                        | ) |                |

ORDER STAYING EFFECTIVE DATE

On February 12, 2016, a Decision was rendered by the Bureau of Real Estate to become effective March 9, 2016.

IT IS HEREBY ORDERED that the effective date of the Decision is stayed for a period of 10 days to allow review of Respondent's Petition for Reconsideration.

The Decision shall become effective at 12 o'clock noon on March 18, 2016.

IT IS SO ORDERED March 8, 2016.

WAYNE S. BELL  
Real Estate Commissioner

*[Signature]*



BEFORE THE  
BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

CHARLES EDWARD WHITEHEAD,  
  
Respondent.

Case No. H-39665 LA

OAH No. 2014120452

**PROPOSED DECISION**

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on December 17, 2015, at Los Angeles, California.

James Peel, Counsel for the Bureau of Real Estate (Bureau), appeared and represented complainant Veronica Kilpatrick (Commissioner), Deputy Real Estate Commissioner of the State of California.

Kenneth G. Bernard, attorney at law, appeared and represented respondent Charles Edward Whitehead, who was present throughout the hearing.

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

**FACTUAL FINDINGS**

1. On July 3, 1991, the Bureau issued real estate salesperson license 01113753 to respondent. On July 10, 1997, the Bureau issued broker license number B/01113753 to respondent. Respondent's license is valid and will expire on September 18, 2017, unless renewed.
2. Complainant brought the Accusation in her official capacity. Respondent timely submitted a Notice of Defense.
3. In November 2011, respondent and his wife made an offer to purchase real property on their own account and not on behalf of a client or consumer. The proposed purchase price was \$145,000. The seller's outstanding balance on the mortgage loan to Bank

of America exceeded the offered price. Accordingly, respondent communicated directly with the bank to negotiate a "short sale."<sup>1</sup>

4. On December 22, 2011, Bank of America asked respondent to furnish proof of funds. Respondent testified that he had only 24 hours to respond and that the bank would only accept bank statements to show proof of funds. In his written explanation to the Bureau, respondent stated "all other forms of Proof of Funds (POF) were 'Deemed Unacceptable' by negotiators." (Ex. 3.)

5. Respondent told his wife about the request because she pays all household bills and maintains all household financial records. At the time of the bank's request, respondent and his wife had a checking account at Bank of America (Account xxx-15726). The most recent bank statement for Account xxx-15726 reflected a balance of \$9,992.11 on December 12, 2011. Respondent's wife altered the statement to reflect a balance of \$305,685.99.

6. Respondent presented the altered bank statement for Account xxx-15726 to Bank of America in response to its request for proof of funds. Respondent did not credibly testify that he did so without actual knowledge of the alterations based on the following evidence:

(A) Respondent furnished a written statement to the Bureau on May 20, 2014, to explain the incident. He wrote: "Our dilemma was that the actual and most recent statement did not show enough funds even though 'there were enough funds' in the bank on the date in question to cover the purchase. . . . There had been deposits into the account in the 11 days between the Dec. 12, 2011 statement date and . . . Dec. 23, 2011. I admit that 'I did alter, BUT DID NOT MISREPRESENT OR FALSIFY MY ABILITY TO CLOSE. There was no intention to deceive.' Given my bank accounts are all with [Bank of America], I assumed [the bank] would check the account balances, see there were sufficient funds and we would move on without any issues. I realize now that was a BIG MISTAKE." (Emphasis in original.)

(B) During the hearing, respondent recanted his written admission that he altered the bank statement. His wife's testimony that she made the alterations on the statement corroborated his recantation. However, respondent made the written admission with time to reflect and under no duress. Respondent did not recant or modify his statement until after the Bureau initiated disciplinary proceedings against him. Respondent is motivated to shift blame for the misconduct to his unlicensed wife because it serves to shield and preserve his licensing rights. Moreover, in his testimony, respondent reaffirmed the urgency in short sale transactions and his expectation that the bank would be able to verify his liquidity by its internal records. This testimony imputes to respondent his awareness that

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<sup>1</sup> A "short sale" is a sale of real property that generates sales proceeds in an amount less than the balance owed on debts secured by liens against the property. A short sale is subject to the consent of the secured creditor to accept a loss on a debt in lieu of foreclosure.

presenting the unaltered bank statement would impede the transaction. Courts look upon recantation with suspicion. (*Johnson v. United States* (1961), 291 F.2d 150, 154.) Based on the weight of the evidence in this case, respondent's admission is given more weight than his recantation.

(C) Comparing the altered statement with the unaltered statement reveals that the document was not only altered with respect to the closing balance, but also altered in the following respects: Respondent's wife changed the opening balance from \$7,664.84 to \$81,000.76; she changed the total deposits from \$18,531.92 to \$443,500.55; she changed the total debits from \$14,180.83 to \$218,821.06; she changed the interest paid from \$1.18 to \$5.74; she deleted the service charge in the amount of \$25; she changed the annual percentage yield from 0.08% to 0.09%; she changed the interest paid year-to-date from \$177.19 to \$136.46; and she changed the number of purchase transactions from 14 to 18. She made all these alterations on her computer, using the same type size and font used on the original statement. She testified that she made these changes to make the altered statement appear to be a Bank of America statement. In fact, the format of the altered statement was identical to the original statement and an untrained eye would be unable to see that the numbers had been manipulated.

(D) Attached to his written explanation, respondent furnished the Bureau with a copy of the bank statement of Account xxx-15726 for the period between December 13, 2011 and ending January 11, 2012. (Ex. 3.) The transaction detail reflected all deposits and debits between December 12, 2011, the closing date from the prior statement, and December 22, 2011, the date of the bank's request for proof of funds. The statement reflects one deposit in the amount of \$179,479.35, not \$443,500.55 as reflected on the altered statement. The statement reflects four purchase transactions, not 18 as reflected on the altered statement. The total amount of checks paid and withdrawals was \$8,485, not \$218,821.06, as reflected on the statement. Taking into account all deposits and debits on this subsequent bank statement, the balance in Account xxx-15726 on the date of the request was \$180,986.46, not \$305,685.99, as reflected on the altered statement. This subsequent statement appears to be a Bank of America statement and the format is identical in all respects to a Bank of America statement. However, the untrained eye of this administrative law judge is unable to ascertain whether the numbers on the subsequent statement have also been manipulated. The evidence has established that respondent and his wife have the resources to replicate the appearance of bank statements. Respondent made untruthful representations to Bank of America when the altered statement was presented. Respondent's testimony contradicted his written statement to the Bureau. Accordingly, the evidence is not reliable to show that respondent had the funds reflected on the statement. Moreover, even if accepted as true and accurate, the evidence does not explain or justify the extraordinary measures that were taken to falsify the prior statement and present it to the bank as proof of funds.

(E) Respondent presented the second page from another Bank of America account (Account xxx-07318) for the period of December 13, 2011 through January 11, 2012. (Ex. E.) The transaction detail reflected a balance of \$171,836.82 on December 23,

2011. Respondent testified that the funds in Account xxx-07318 were also available to him. Respondent did not furnish a bank statement from Account xxx-07318 to Bank of America in response to its request for proof of funds. The face page of Account xxx-07318, which would reveal the vesting of the account, was not presented as evidence. Because weaker and less satisfactory evidence was offered when it was within the power of respondent to produce stronger and more satisfactory evidence in the form of a complete bank statement, Exhibit E is viewed with distrust. (Evid. Code, § 412.)

(F) Respondent and his wife testified that the amounts reflected on the altered statement accurately reflect the actual availability of their funds as of December 22, 2011. Based on the preceding paragraphs of Factual Finding 6, the testimony is given little weight.

7. Bank of America discovered the alterations. The bank declined the short sale offer and respondent did not purchase the property. No evidence was presented to show that Bank of America sustained any actual damage.

8. There is no evidence that respondent has any criminal record or prior disciplinary action against him.

9. Friends and professional acquaintances testified about respondent's character. A licensed salesperson who works with respondent testified that she never knew respondent to be fraudulent and considers respondent to be a person of high integrity. A business acquaintance who has known respondent for 15 years testified that he has never known respondent to commit any unethical act and never received any instruction from respondent to falsify documents in any real estate transaction. A licensee who invests in properties with respondent as a business partner testified that she has always known respondent to be of high moral character. Each witness was aware of the allegations against respondent. None attempted to explain respondent's deviation from the high moral character about which they testified.

10. The founder of Prosthetic Hope International, a charity that provides prosthetic and orthotic services in Belize, wrote a character reference letter attesting to the volunteer activities of respondent and his wife. The executive director of the International Society for Prosthetics and Orthotics confirmed that respondent and his wife traveled with the organization on a humanitarian trip to Cuba. Respondent volunteers as a football coach for a local Pop Warner league, having "donated countless hours and resources." (Ex. D.)

11. Complainant prayed for the recovery of costs, but presented no evidence to show that the Bureau incurred costs to investigate and enforce the case against respondent. Accordingly, respondent is not liable for costs under Business and Professions Code section 10106.

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## LEGAL CONCLUSIONS

1. Complainant has the burden of proving cause for discipline by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.)
2. The Bureau may discipline the license of a licensee who willfully disregarded or violated the law or any related rules or regulations. (Bus. & Prof. Code, § 10177, subdivision (d).)
3. The Bureau may discipline the license of a licensee who has engaged in any conduct that constitutes fraud or dishonest dealing. (Bus. & Prof. Code, § 10177, subdivision (j).)
4. In this case, respondent represented to Bank of America that he had a balance of \$305,685.99 in account number xxx-15726 on December 12, 2011. He made the representation by furnishing the bank with a statement that was replete with false information. By using the same font and type size, the alterations were designed to deceive the bank into believing that the presented statement was an actual bank statement. Contrary to the testimony of respondent and his wife, the amounts reflected on the altered statement did not accurately reflect the actual account activity as of December 22, 2011. All data inserted onto the statement was false and dishonest. Although respondent's wife made the actual alterations, the evidence reveals that respondent was aware that the unaltered statement would impede the transaction. Respondent made a willful misrepresentation by acting carelessly and in a manner unwarranted by the information available to him. (Civ. Code, § 1572, subd. (2).)
5. Accordingly, cause exists to discipline respondent's license under Business and Professions Code section 10177, subdivisions (d) and (j). (Factual Findings 1-6.)
6. Respondent has presented some evidence of mitigation and rehabilitation. (Cal. Code Regs., tit. 10, § 2912.) He has been licensed by the Bureau for 25 years without any prior record of discipline. Respondent has not been charged with any crime with respect to the transaction and no evidence was presented to show that he has any prior criminal record. Respondent has exhibited honesty and integrity to those who have had the opportunity to observe his conduct over the course of years. Bank of America sustained no actual damage and respondent was not representing a consumer. No evidence was presented to show that respondent has engaged in fraud or dishonesty in any other real estate transaction. Respondent has shown substantial and conscientious involvement in community athletic programs and international charitable missions designed to provide social benefits.
7. However, misrepresenting financial data in connection with a real estate transaction is serious misconduct and substantially related to respondent's license, even though he was not representing a consumer and the incident was not prosecuted as a crime. The more serious the misconduct, the stronger the evidence must be to show rehabilitation.



(*In re Gossage* (2000) 23 Cal.4th 1080.) Respondent has failed to present sufficiently strong evidence of rehabilitation. Respondent has not convincingly acknowledged the wrongfulness of his past actions, an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933.) Respondent has presented no evidence to show any change in attitude from that which existed at the time of the incident or any change in his practice of marshalling financial information in support of real estate transactions. He has presented no evidence of activities designed to prevent a recurrence, such as education, training, or counseling.

8. The weight of the evidence shows that respondent has been dishonest and untruthful. Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee. (*Golde v. Fox* (1979) 98 Cal.App.3d 167.) Imposing discipline on respondent's license furthers a particular social purpose: the protection of the public. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757.) Until respondent is able to present more compelling evidence of rehabilitation, the public can only be protected by the revocation of respondent's license.

9. Any licensee found to have violated the law may be assessed and ordered to pay the Bureau's reasonable costs incurred to investigate and prosecute the action. (Bus. & Prof. Code, §10106.)

10. Complainant has presented no evidence that the Bureau incurred any costs to investigate and enforce the case against respondent. Accordingly, respondent is not liable for costs under Business and Professions Code section 10106.

#### ORDER

All licenses and licensing rights of respondent Charles Edward Whitehead under the Real Estate Law are revoked. Respondent is not liable for costs under Business and Professions Code section 10106.

DATED: January 11, 2016

DocuSigned by:  
*Matthew Goldsby*  
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MATTHEW GOLDSBY  
Administrative Law Judge  
Office of Administrative Hearings