

FILED

OCT 27 2015

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

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|------------------------------------|---|-----------------------|
| In the Matter of the Accusation of |) | CalBRE No. H-39763 LA |
| |) | |
| JORGE CARLOS CACERES, |) | OAH No. 2015040361 |
| |) | |
| Respondent. |) | |

DECISION

The Proposed Decision dated September 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:

Order, Page 4, Paragraph 2, line 1: number "5." shall read "2." and the word "license" shall be inserted after the word "reinstated".

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 November 16, 2015

IT IS SO ORDERED OCT 25 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 of:

JORGE CARLOS CACERES,

Respondent.

Case No. H-39763 LA

OAH No. 2015040361

PROPOSED DECISION

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on August 24, 2015.

Steve Chu, Staff Counsel, represented Complainant Veronica Kilpatrick, Deputy Real Estate Commissioner of the Bureau of Real Estate (Bureau).

Respondent Jorge Carlos Caceres represented himself.

Oral and documentary evidence was received at the hearing, and the matter was submitted August 24, 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

1. Complainant issued this Accusation solely in her official capacity.
2. Respondent obtained a real estate salesperson license in 1992, and has been licensed as a real estate broker since April 20, 1995. His license expires June 13, 2019. On March 4, 2015, Complainant brought this Accusation to revoke his license, and Respondent timely requested a hearing.

Criminal Conviction

3. On February 7, 2014, in the Superior Court of California, County of Los Angeles, case number BA400187, Respondent was convicted on his guilty plea of taking advance fees for foreclosure consulting (Civ. Cod, § 2945.4, subd. (a)), a felony.

Respondent was assessed fines and fees of \$350, ordered to perform 200 hours of community service and pay 12 victims restitution aggregating \$40,710, and placed on formal probation for three years.

Failure to Report Conviction

4. Respondent did not report his felony conviction to the Bureau within 30 days of the conviction date. As of February 2, 2015, nearly a year later, the Bureau had received no report of the conviction from Respondent.

Mitigation, Aggravation and Rehabilitation

5. Respondent's conviction arose out of an association with Elizabeth Bianca, who held herself out as an "FHA/HUD counselor," implying a federal government certification or licensure; there is no such thing. Respondent, whose business specialized in short sales of homes on which notices of default had already been sent, became associated with Bianca in 2011. Respondent referred some clients to Bianca, and collected fees for services from clients before any work was done.

6. In his hearing testimony, Respondent minimized his involvement in illegal activities. He testified that the first time he ever saw Bianca was at a court hearing in the criminal case, and that Art Garcia, a real estate salesperson in his office, handled the loan modification referral paperwork. He admitted that he should have been more diligent in checking out Bianca. Respondent testified at hearing that he knew it was illegal to take advance fees for mortgage modification services, but said he believed that Bianca's fee was legal because her printed contract described it as a "membership fee" rather than a fee for mortgage modification work. He did not explain how he could have held that belief when he knew it was an advance fee for mortgage modification.

7. Contrary to the impression he tried to convey at hearing, Respondent's involvement in the illegal mortgage modification scheme was extensive. He collected deposits from clients and forwarded them to Bianca. When Bianca called him to complain that a client was in arrears in fees, Respondent would call the client and urge payment. He distributed a flier that said, "Allow us to introduce ourselves. We are Team Caceres, George Caceres and Art Garcia from Realty World[.]" The flier had pictures of Respondent and Garcia, and went on, "During these troubled times many of you may be having difficulties with your mortgage payment. We can assist you with these issues. We work with a Certified FHA Counselor who is an expert in Loan Modifications (See reverse side.) We would be happy to put you in contact with her." The reverse side has a picture of Bianca, and says, "I am a certified counselor by the Federal Housing Administration[.]" Respondent's share of the fees paid for mortgage modification services between August 2010 and September 2011 was more than \$40,000. Respondent thus directed clients to a mortgage modification "counselor" who was fraudulently representing herself as having some sort of government credential; accepted advance fees that he knew were illegal; advertised the service, putting the weight of his professional reputation behind the illegal activity; and took

a split of the illegal fees. He was a joint venturer in an illegal venture. His version of events was less than candid, and shows an unwillingness to take responsibility for his actions.

8. On August 6, 2015, the court found that Respondent had paid the required restitution to the victims. It denied his motion to terminate probation, but reduced the conviction to a misdemeanor and changed the probation to summary probation. Respondent remains on probation until February 2017.

9. Respondent is 55 years old. He is married with five adult children. He is not involved in community or charitable activities, and has not undertaken education or vocational training since his conviction.

Costs

10. Complainant introduced evidence that it incurred \$1,705.04 in investigation costs, nearly all of it comprising 37 hours spent by Special Investigator Lori Lisanti (at \$62 per hour). Complainant also introduced evidence that the Bureau incurred enforcement costs of \$667.50, consisting of 7.5 hours of attorney Steve Chu's time at \$89 per hour. All these costs are reasonable.

LEGAL CONCLUSIONS

1. There is cause to revoke or suspend Respondent's license under Business and Professions Code sections 490 and 10177, subdivision (b),¹ as paragraph 5 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. Taking illegal advance fees for loan modification services (Factual Finding 3) is a substantially related crime under CCR section 2910, subdivision (a)(8), because it is an "unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator."

2. As paragraph 6 of the Accusation alleges, there is cause to revoke or suspend Respondent's license under section 10186.2, which requires a licensee to report "the conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor" to the Bureau in writing within 30 days of the conviction. Failure to report is cause for discipline. (§ 10186.2, subd. (b).) Respondent did not report his conviction to the Bureau. (Factual Finding 4.)

3. Respondent has the burden of showing rehabilitation. (*Martin v. Alcoholic Beverage Appeals Board* (1959) 52 Cal.2d 259.) He meets few of the rehabilitation criteria

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.

set out in CCR section 2912: he has shown stability of family life (CCR § 2912, subd. (j); Factual Finding 9) and has paid restitution. (CCR § 2912, subd. (b); Factual finding 8.) Respondent does not meet other criteria of rehabilitation:

- a. Two years have not passed since his conviction. (CCR § 2912, subd. (a); Factual Finding 3.)
- b. He has not completed probation (CCR § 2912, subd. (e); Factual Finding 8), so his conviction cannot be expunged. (CCR § 2912, subd. (c).)
- c. He has not shown significant involvement in programs designed to provide social benefits or to ameliorate social problems. (CCR § 2912, subd. (l); Factual Finding 9.)
- d. He has not shown enrollment in "formal education or vocational training courses for economic self-improvement. (CCR § 2912, subd. (k).)
- e. He has not shown "[n]ew 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[.]" (CCR § 2912, subd. (i).)
- f. He has not shown a change in attitude from that which existed at the time of the crime. (CCR § 2912, subd. (m).) He instead makes himself out to be as much a victim as wrongdoer.

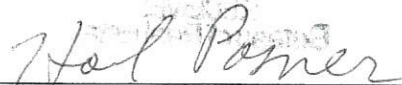
4. Respondent's crime was an abuse of his broker license, which put him in a position to steer his clients into an illegal venture. He is less than forthcoming about his role in that venture, and did not report the conviction to the Bureau as the law requires. The evidence shows that his continued licensure would be a threat to the public.

ORDER

1. All licenses and licensing rights of Respondent Jorge Carlos Caceres under the Real Estate Law are revoked.

5. Before any new or reinstated is issued, Respondent shall pay Complainant its costs of \$2,372.54.

DATED: September 21, 2015



HOWARD POSNER
Administrative Law Judge
Office of Administrative Hearings