BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

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FILED

MAR 22 2016

BUREAU OF REAL ESTATE

By ________

In the Matter of the Accusation of) CalBRE No. H-39910 LA

RONALD R. SARMIENTO,) OAH No. 2015080002

Respondent.)

DECISION

The Proposed Decision dated February 17, 2016, 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.

Legal Conclusions, Page 4, Paragraph No. 3e, Line 2, "CCR § 2912, subd. (e)" is amended to read "CCR § 2912, subd. (j)".

The Decision suspends or revokes one or more real estate licenses, but the right to a restricted salesperson license is granted to Respondent.

Pursuant to Government Code section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The Bureau's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first. 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 Sections 11521 and 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 APR 11 2016.

IT IS SO ORDERED 3/16/2016

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: RONALD R. SARMIENTO, Respondent.	Case No. H-39910 LA OAH No. 2015080002

PROPOSED DECISION

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on January 19, 2016.

Judith Vasan, Staff Counsel, represented Complainant Maria Suarez, Deputy Real Estate Commissioner of the Bureau of Real Estate (Bureau).

Respondent Ronald Sarmiento represented himself.

During the hearing, the Accusation was amended on Complainant's motion to delete the allegations of "wire fraud" and "aiding and abetting" in paragraph 3. Oral and documentary evidence was received at the hearing, and the matter was submitted January 19, 2016.

Complainant brings this Accusation to revoke Respondent's real estate salesperson license. For the reasons set out below, the license is revoked, but a restricted salesperson license is granted.

FACTUAL FINDINGS

1. Complainant issued this Accusation solely in her official capacity.

2. Respondent was granted a real estate salesperson license on October 6, 2010. His license expired October 5, 2014. Until October 4, 2016, Respondent has the right to renew the license (Bus. & Prof. Code, § 10201), and the Bureau retains jurisdiction to discipline the license during that time. (Bus. & Prof. Code, § 10103.) On July 13, 2015, Complainant brought this Accusation to revoke his license, and Respondent timely requested a hearing.

Criminal Conviction

3. On March 28, 2012, the United States District Court for the Central District Court of California, in case number SA CR 11-252-JVS (A), accepted Respondent's plea of guilty to mail fraud (18 U.S.C., § 1341), a felony. The indictment was filed in 2011. Respondent signed a plea agreement on March 15, 2012. Between 2005 and February 2006, Respondent had worked for Wanda Coleman, who was an organizer of a scheme to defraud mortgage lenders by having confederates buy real estate for more than the properties were worth. Coleman and her associates fabricated evidence of the buyers' financial capacity and creditworthiness to induce lenders to make loans for the inflated sales price, part of which would be kicked back to the schemers (or entities they controlled) from escrow by a co-conspirator escrow officer. The nominal buyers would default on the loans after making a few payments.

4. Respondent was fined $1,000, sentenced to eight months of home confinement and placed on supervised probation for two years. Probation conditions prohibited his employment in any position that required being licensed by any government agency, or any business involving loans, investments or solicitation of funds, unless his probation officer approved it. He was the only defendant in the case who was not required to pay restitution.

Mitigation and Aggravation

5. Respondent paid the fine and served the home detention. His probation ended in January 2016. He has no other convictions.

6. Respondent worked as private investigator from about 1998 until 2004, when he began working for Coleman's film company, which was producing a film called "Lady Samurai." Over time he became Coleman's personal assistant, and an assistant in the real estate fraud operation. His role in the scheme was to search real estate sales listings and find sellers willing to take an increased sale price and kick back a part of the increase. He was aware of how Coleman's scheme worked "almost immediately," but at first did not think it was illegal or wrong. After some research, he came to believe that the operation was illegal; even though Coleman told him it was "a gray area." The federal court found that he participated in four fraudulent transactions, which caused "losses in excess of $1.4 million." (Exhibit 3, p. 37.) He admitted, with considerable candor, that he remained in the job even after he thought he was participating in an illegal act, and that he quit in 2006 to pursue better employment and leave behind the pervasive, consuming occupation of working for Coleman (who paid his rent and car payments) rather than because what he was doing was part of an illegal conspiracy.

7. Respondent was forthright and forthcoming in his testimony, and made a credible witness. He acknowledged several times that he understands why the Bureau would find him a cause for concern.

8. The evidence indicates that Respondent was a minor participant in a fraud scheme. The federal court recognized as much in imposing light penalties, including an

unusually small fine by federal court standards —the court's minutes (exhibit 3, p. 37) noted that federal sentencing guidelines called for a "fine of $2,000 to $20,000" — and not requiring him to pay restitution, normally an integral part of a plea agreement in federal court when a fraud has caused substantial damages. Notably, the only specific act of mail fraud alleged against any of the defendants was Coleman's mailing of a $1,981.62 check to Morgan Stanley on June 28, 2007, more than a year after Respondent left Coleman's employ. In applying the federal sentencing guidelines the court applied a "2-level minor role reduction" and "3-level reduction for accepting responsibility" in determining the offense level (exhibit 3, p. 36) and departed from federal sentencing guidelines because of Respondent's cooperation with the government by explaining how the scheme was organized, despite the "risk of violence" from a leader of the scheme. (Exhibit 3, pp. 36-37.)

9. Between 2007 and 2010 Respondent worked for an automobile financing and leasing company in Orange County, doing skip tracing and calling defaulting borrowers to arrange payment. He left that job to study for his real estate license. He practiced in real estate for about a year after getting his license in October 2010. In November 2010, he signed an agreement in which he agreed to stop practicing in real estate in exchange for being released on his own recognizance while charges were pending. He has no previous history of license discipline.

10. Since about three months after he ceased working in real estate, Respondent has worked as a salesperson for Big Purple Dot, a company that supplies customer relation's management software. In the course of his employment, he is learning computer-programming language from the company's programmers without formal training.

11. Respondent is 40 years old. He has been married since 2008. He and his wife have a three-year-old son. His wife is a licensed real estate salesperson who does two or three transactions, mostly with family and friends, in a typical year.

Costs

12. Complainant incurred investigative costs of $880.10, $688.20 of which consisted of 11.1 hours of a Bureau investigator's time at $62 per hour. Complainant also incurred $302.60 in costs of enforcement, consisting of 3.4 hours of staff attorney Judith Vasan's time at $89 per hour. These costs, totaling $1,182.70, are reasonable.

LEGAL CONCLUSIONS

1. Complainant has the burden of establishing cause for license discipline by clear and convincing evidence to a reasonable certainty (*The Grubb Co., Inc. v. Dept. of Real Estate* (2011) 194 Cal.App.4th 1494, 1505; *Ettinger v. Board of Med. Quality Assurance* (1982) 135 Cal.App.3d 853, 857.)

2. As paragraph 4 of the Accusation alleges, there is cause to revoke or suspend Respondent's 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, 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. A conviction for mail fraud (Factual Finding 3) is substantially related because it involves "the uttering of a false statement" (CCR § 2910, subd. (a)(2)), and "employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end." (CCR § 2910, subd. (a)(4).)

3. Respondent has the burden of showing rehabilitation from his conviction. (*Martin v. Alcoholic Beverage Appeals Board* (1959) 52 Cal.2d 259.) He meets relevant criteria of rehabilitation in the Bureau's regulations:

a. Not quite four years have passed since his conviction, but about ten years have passed since Respondent's involvement in the scheme underlying the conviction (Factual Finding 3; CCR § 2912, subd. (a).)

b. Respondent paid the fine. (CCR § 2912, subd. (g); Factual Finding 5.)

c. Respondent has completed probation, albeit recently. (CCR § 2912, subd. (e); Factual Finding 5.) A federal conviction cannot be expunged. (CCR § 2912, subd. (c).)

d. He has ceased participating in the business practice that caused the conviction (CCR § 2912, subd. (h)); and has new and different social and business relationships since leaving the circle surrounding Coleman (CCR § 2912, subd. (i).) (Factual Findings 3 and 8).

e. He has established stability of family life and fulfillment of parental and familial responsibilities since the conviction. (CCR § 2912, subd. (e); Factual Finding 9).)

f. He has shown a change in attitude from that which existed at the time of the crime (CCR § 2912, subd. (m)), admitting responsibility for his actions without attempting to excuse his motivation for them. (Factual Finding 5.)

4. Respondent was a minor player, and salaried employee, in a serious fraud scheme ten years ago. In the ensuing decade, he has abided by the law, spent a year working as real estate licensee without causing harm to clients or the public, gotten married and started a family. The circumstances of his conviction leaves a residual concern that he may be led astray by a willingness to follow instructions from unscrupulous persons, but such concerns are not overwhelming, and are best addressed by restricting his license, rather than revoking it.

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[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.

5. As paragraph 5 of the Accusation alleges, the Bureau is entitled, under section 10106, to have Respondent pay reasonable costs of investigation and enforcement. The Bureau's request for $1,182.70 in costs is reasonable. (Factual Finding 12.)

ORDER

Respondent Ronald R. Sarmiento's license and licensing rights under the Real Estate Law[2] are revoked; but a restricted real estate salesperson license shall be issued under Business and Professions Code section 10156.5 if Respondent applies for and pays to the Bureau the appropriate fee for the restricted license within 90 days from this Decision's effective date. The restricted license shall be subject to the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under section 10156.6 of that Code:

1. The Real Estate Commissioner may suspend the restricted license if Respondent is convicted or pleads nolo contendere to a crime substantially related to Respondent's fitness or capacity as a real estate licensee.

2. The restricted license may be suspended before hearing by order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated 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 or for the removal of any of the conditions, limitations or restrictions of a restricted license until three years after this Decision's effective date.

4. Within nine months from this Decision's effective date, Respondent shall 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.

5. 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, and Sacramento, CA 95818-7000. The letter shall state the arrest date, 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 be grounds to suspend or revoke that license.

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[2] Section 10000 et seq.

6. Respondent shall submit with any application for license under a real estate employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing broker, on a form approved by the Bureau of Real Estate, certifying:

(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 restricted licensee relating to activities for which a real estate license is required.

6. Within one year of this Decision's effective date, Respondent shall pay the Bureau $1,182.70 for its costs of investigation and enforcement.

DATED: February 17, 2016

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howard posner
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HOWARD POSNER
Administrative Law Judge
Office of Administrative Hearings