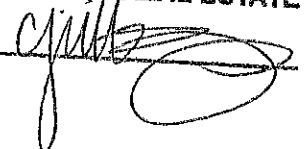


FILED

MAY 27 2016

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	CalBRE No. H-39934 LA
)	
GREGORY JAMES TOUSSIENG,)	OAH No. 2016020859
)	
Respondent.)	
_____)	

DECISION

The Proposed Decision dated April 22, 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.

Factual Findings, Page 1, Paragraph No. 1, Line 3, "July 26, 2005" is amended to read "September 14, 2009".

Order, Page 7, Paragraph No. 6, Line 3, "Box 37000, Sacramento, CA 95813-7000" is amended to read "Box 137013, Sacramento, CA 95813-7013".

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 JUN 16 2016.

IT IS SO ORDERED 5/18/2016

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 Against:

GREGORY JAMES TOUSSIENG,

Respondent.

Case No. H-39934 LA

OAH No. 2016020859

PROPOSED DECISION

Administrative Law Judge Ralph B. Dash heard this matter in Los Angeles, California on April 13, 2016.

Judith Vasan, Real Estate Counsel, Bureau of Real Estate (Bureau), represented Maria Suarez, Supervising Special Investigator (Complainant)

Gregory James Toussieng (Respondent) represented himself.

Oral and documentary evidence having been received, and the matter having been submitted, the Administrative Law Judge makes the following Proposed Decision.

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 broker, license number B/01495415. He first obtained that license on July 26, 2005, and it is due to expire on September 16, 2017. On August 7, 2015, Complainant filed an Accusation against Respondent, alleging as grounds for discipline that Respondent had been convicted of crimes that are substantially related to the qualifications, functions, or duties of a real estate licensee. (Ex. 1 [Accusation p. 2].) Complainant filed the Accusation in her official capacity.

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

2. Respondent submitted a Notice of Defense on Accusation on January 28, 2016.

Respondent's Conviction

3. On August 14, 2014, in the Superior Court of California, County of Orange, Case No. 13HF3591 F A, Respondent was convicted, based on his guilty plea, of one felony count of possession for sale of a controlled substance (Health & Saf. Code, § 11351), and one felony count of possession of a controlled substance (Health & Saf. Code, § 11350). The court suspended imposition of sentence and placed Respondent on formal probation for three years, under various terms, including that he serve 90 days in the Orange County Jail, that he pay fines and fees totaling \$680, that he attend and complete an outpatient program at Hoag Chemical Dependency Program, and that he forfeit \$28,553 in currency seized at the time of his arrest.

4. The facts and circumstances of Respondent's crimes were not established with any particularity. On August 7, 2013, police were summoned to Respondent's home based on an informant's telephone call that Respondent and his wife were engaged in some form of domestic disturbance. During an interrogation at the scene, Respondent admitted to the arresting officer that he had used cocaine during the past "couple of weeks" and that he was going to the Betty Ford Center to get help. Respondent's wife permitted a search of a storage closet in which police noted a "strong odor of marijuana." Police also found several five gallon buckets and a scale with the residue of a white powder. At the hearing of this matter, Respondent stated that the scale was a "meat scale" and that he used the flat scale surface to pulverize drugs he was ingesting. He insisted that he never sold cocaine. He did admit that he grew marijuana in a warehouse in Long Beach.

Mitigation and Rehabilitation

5. Respondent has been clean and sober since August 8, 2013. He completed the court-ordered chemical dependency program and continues to go to the program's "alumni meetings." He attends Alcoholics Anonymous meetings "two to three times a week." Respondent and his wife, who is an alcoholic, have two children. Respondent provides care for his children and had been raising them alone while his wife was in a recovery program in Arizona. Respondent volunteers four days per week as an assistant coach in the Matt Leinart flag football league. On April 5, 2016, the court granted Respondent's motion to withdraw his guilty plea to count one of the criminal complaint (possession for sale) and granted the People's motion to dismiss that count pursuant to a plea agreement. On the same date, the court terminated Respondent's probation on count two of the criminal complaint and entered an order under Penal Code section 1203.4 whereby the court vacated Respondent's guilty plea, entered a plea of not guilty, and dismissed count two of the criminal complaint.

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Costs

4. The Bureau incurred reasonable costs of \$1,409.15 to investigate and prosecute this matter.

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 to a reasonable certainty. (*The Grubb Co., Inc. v. Dept. of Real Estate* (2011) 194 Cal.App.4th 1494, 1505; 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 felony convictions of possession of a controlled substance, and possession for sale of a controlled substance. 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 plea of nolo contendere (§§ 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, the “[d]oing 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.” (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).)

3. There is cause to suspend or revoke Respondent’s real estate license for conviction of a crime that is 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 on one count of possession of controlled substances for sale, which involved the “[d]oing of an[] unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator” (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).)

4. With grounds for discipline established, Respondent bears the burden of establishing that he is sufficiently rehabilitated from his criminal activities to retain his real estate license. (See *Howard v. State Bar* (1990) 51 Cal.3d 215, 222.) 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.) [¶] . . . [¶]
- (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.
- (f) Abstinence from the use of controlled substances or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance or alcohol. [¶] . . . [¶]
- (j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction. [¶] . . . [¶]
- (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 has satisfied most of the relevant rehabilitation criteria. While it has been less than two years since Respondent's conviction, it has been well over two years since the conduct that led to that conviction occurred. One conviction was dismissed and the other expunged, leading to an early termination of Respondent's criminal probation. Respondent has no prior history of criminal convictions or acts that warrant a longer rehabilitation period. He has abstained from controlled substances for well over two years, and no longer sells controlled substances to others. He has a stable family life with his children, and has significant involvement in charitable programs designed to ameliorate social problems, particularly his attendance at the alumni program of his former drug treatment facility and his coaching of youth flag football. Respondent testified persuasively that he has a changed attitude about his addiction, but he offered only his testimony on this point. He also has not had any subsequent felony or misdemeanor convictions, although that fact is entitled to "little weight" here because Respondent is "required to behave in exemplary fashion" while on probation (*In re Gossage* (2000) 23 Cal.4th 1080, 1099), and his probation terminated just two weeks prior to this hearing.

6. Given the nature and severity of Respondent's crimes, their recent occurrence, and Respondent's insufficient evidence of his full rehabilitation, revocation of Respondent's broker's license is warranted. Neither suspension nor restriction of Respondent's broker's license would sufficiently protect the public during Respondent's ongoing rehabilitation. But given Respondent's positive steps toward full rehabilitation, he should instead be issued a restricted real estate salesperson license, to allow close monitoring of his real estate activities during the period of restriction.

7. Complainant also requests \$1,409.15 in investigation and enforcement costs. "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 the Bureau's investigation was "disproportionately large" compared to the violation, and whether the licensee: (i) committed some misconduct but "used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed;" (ii) had a "subjective good faith belief in the merits of his or her position;" (iii) raised a "colorable challenge" to the proposed discipline; and (iv) "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].)

8. Here, complainant's investigation was proportional to the violation, and Respondent did not obtain dismissal of any charges in the Accusation. 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. Accordingly, it is reasonable to require Respondent to pay \$1,000 in cost recovery.

ORDER

All licenses and licensing rights of Respondent Gregory James Toussieng 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 two 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 shall pay the Bureau's investigation and enforcement costs of \$1,000 at such time and in such manner as the Bureau may, in its discretion, direct.

DATED: April 22, 2016

DocuSigned by:
Ralph B. Dash
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RALPH B. DASH
Administrative Law Judge
Office of Administrative Hearings

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JAN 21 2016

BUREAU OF REAL ESTATE

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BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)
GREGORY JAMES TOUSSIENG,) CalBRE NO. H-39934 LA
Respondent.)

ORDER VACATING DECISION AND SETTING ASIDE DEFAULT

On October 16, 2015, a Decision was rendered revoking the real estate broker license of Respondent, GREGORY JAMES TOUSSIENG, effective November 9, 2015.

On December 17, 2015, good cause was presented to vacate the Decision of October 16, 2015, and to have the matter remanded to the Office of Administrative Hearings as a contested matter.

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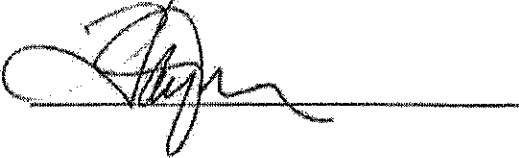
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NOW, THEREFORE, IT IS ORDERED that Decision of October 16, 2015, is vacated and that the Matter of the Accusation filed on August 7, 2015, is remanded to the Office of Administrative Hearings.

This Order shall be effective immediately.

IT IS SO ORDERED 1/20/2016

WAYNE S. BELL
REAL ESTATE COMMISSIONER



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BUREAU OF REAL ESTATE
By *Chel Solis*

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of
GREGORY JAMES TOUSSIENG,
Respondent.

No. H-39934 LA

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on September 28, 2015, 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 the grounds of a criminal conviction.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension 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.

///

ACCUSATION OF GREGORY JAMES TOUSSIENG
H-39934 LA

FINDINGS OF FACT

1.

On July 22, 2015, Maria Suarez made the Accusation in her official capacity as a Supervising Special Investigator of the State of California. The Accusation, Statement to Respondent, and Notice of Defense were mailed by certified mail, return receipt requested, and by regular mail to Respondent's last known mailing address on file with the Bureau of Real Estate on August 5, 2015. Respondent has not submitted a Notice of Defense to date.

On September 28, 2015, no Notice of Defense having been filed herein within the time prescribed by Section 11506 of the Government Code, Respondent's default was entered herein.

2.

Respondent presently has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code ("Code"), as a real estate broker.

3.

On or about August 4, 2014, in the Superior Court of California, County of Orange, Case No. 13HF3591, Respondent pled guilty to and was convicted for violation of California Health & Safety Code Sections 11351 (possession of a controlled substance with an intent to sell) and 11350 (possession of controlled substances), both felonies. Respondent was placed on formal probation for 3 years and ordered to serve 90 days in jail. In addition, Respondent was ordered to complete the Hoag Chemical Dependency Program. These convictions bear a substantial relationship under Section 2910, Title 10, Chapter 6, California Code of Regulations to the qualifications, functions or duties of a real estate licensee.

DETERMINATION OF ISSUES

1.

The crimes, of which Respondent was convicted, as described in Paragraph 3 above, constitute cause under Sections 490 and 10177(b) of the Code for the suspension or revocation of the license and license rights of Respondent under the Real Estate Law.

2.

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

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ACCUSATION OF GREGORY JAMES TOUSSIENG
H-39934 LA

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ORDER

The license and license rights of Respondent GREGORY JAMES TOUSSIENG under the provisions of Part I of Division 4 of the Business and Professions Code are revoked.

This Order shall become effective at 12 o'clock noon on NOV 09 2015.

DATED: OCTOBER 16, 2015

WAYNE S. BELL
REAL ESTATE COMMISSIONER



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

SEP 28 2015

BUREAU OF REAL ESTATE

By 

7 BEFORE THE BUREAU OF REAL ESTATE

8 STATE OF CALIFORNIA

9 * * *

10
11 In the Matter of the Accusation of) NO. *H-39934 LA*
12 GREGORY JAMES TOUSSIENG,) DEFAULT ORDER
13 Respondent.)
14 _____)

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

18 IT IS SO ORDERED *SEPTEMBER 28, 2015*

19 REAL ESTATE COMMISSIONER

20
21
22 By: 

23 PHILLIP IHDE
24 Regional Manager
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26
27