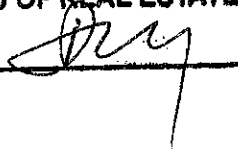


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BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of	)	No. H-39966 LA
	)	
JOHN REFAAT HABASHY,	)	OAH No. 2015100932
	)	
Respondent.	)	
	)	

STIPULATION AND WAIVER AND DECISION AFTER REJECTION

I, JOHN REFAAT HABASHY, Respondent herein, acknowledge that I have received and read the Statement of Issues filed by the Bureau of Real Estate on September 11, 2015, and the Statement to Respondent sent to me in connection with the Statement of Issues.

I hereby admit that the allegations contained in the Statement of Issues filed against me are true and correct and constitute a basis for the denial of my real estate broker license application.

I further acknowledge that the Real Estate Commissioner held a hearing on this Statement of Issues on December 22, 2015, before the Office of Administrative Hearings for the purpose of proving the allegations therein. I was present at the hearing in which I was represented by counsel and participated therein. Further, I have had an opportunity to read and review the Proposed Decision of the Administrative Law Judge.

1 I understand that pursuant to Government Code Section 11517(c), the Real
2 Estate Commissioner has rejected the Proposed Decision of the Administrative Law Judge.
3 I further understand that pursuant to the same Section 11517(c), the Real Estate Commissioner
4 may decide this case upon the record, including the transcript, without taking any additional
5 evidence, after affording me the opportunity to present written argument to the Real Estate
6 Commissioner.

7 I further understand that by signing this Stipulation and Waiver, I am waiving
8 my right to obtain a dismissal of the Statement of Issues through proceedings under
9 Government Code Section 11517(c) if this Stipulation and Waiver is accepted by the Real
10 Estate Commissioner. However, I also understand that I am not waiving my rights to further
11 proceedings to obtain a dismissal of the Statement of Issues if this Stipulation and Waiver is not
12 accepted by the Real Estate Commissioner.

13 I hereby request that the Real Estate Commissioner in his discretion deny my
14 application for a real estate broker license and issue to me a restricted real estate broker license
15 under the authority of Section 10156.5 of the Business and Professions Code.

16 I agree that by signing this Stipulation and Waiver, the conditions, limitations,
17 and restrictions imposed on my restricted license, identified below, may be removed only by
18 filing a Petition for Removal of Restrictions ("petition") with the Real Estate Commissioner,
19 and that my petition must follow the procedures set forth in Government Code Section 11522.

20 I further understand that the restricted license issued to me shall be subject to all
21 of the provisions of Section 10156.7 of the Business and Professions Code and to the following
22 limitations, conditions, and restrictions imposed under authority of Section 10156.6 of the
23 Business and Professions Code.

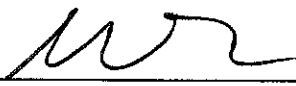
24 By reason of the foregoing and solely for the purpose of settlement of the
25 Statement of Issues without further administrative proceedings, it is stipulated and agreed that
26 the Commissioner shall adopt the following Order:

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1 license to Respondent. Respondent shall not be eligible to apply for any
2 unrestricted licenses until all restrictions attaching to the license have
3 been removed.

- 4 3. Respondent shall notify the Commissioner in writing within 72 hours of
5 any arrest by sending a certified letter to the Commissioner at the Bureau
6 of Real Estate, Post Office Box 137013, Sacramento, CA 95813-7013.
7 The letter shall set forth the date of Respondent's arrest, the crime for
8 which Respondent was arrested and the name and address of the arresting
9 law enforcement agency. Respondent's failure to timely file written
10 notice shall constitute an independent violation of the terms of the
11 restricted license and shall be grounds for the suspension or revocation of
12 that license.

13
14 DATED: 4-6-2016


15 Steve Chu, Counsel
16 Bureau of Real Estate

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1 I have read the Stipulation and Waiver and its terms are agreeable and
2 acceptable to me. I understand that I am waiving my rights given to me by the California
3 Administrative Procedure Act (including but not limited to Section 11506, 11508, 11509, and
4 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those
5 rights, including the right to seek reconsideration and the right to seek judicial review of the
6 Commissioner's Decision and Order by way of a writ of mandate. I can signify acceptance and
7 approval of the terms and conditions of this Stipulation and Waiver by faxing a copy of the
8 signature page, as actually signed by me, to the Bureau at fax number (213) 576-6917. I agree,
9 acknowledge and understand that by electronically sending to the Bureau a fax copy of my
10 actual signature as it appears on this Stipulation and Waiver, that receipt of the faxed copy by
11 the Bureau shall be as binding on me as if the Bureau had received the original signed
12 Stipulation and Waiver.

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14 DATED: 4-6-14


JOHN REFAAT HABASHY
Respondent

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16 DATED: 4-9-16


Frank M. Buda
Counsel for Respondent
Approved as to Form

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1 I have read the Statement of Issues filed herein, the Proposed Decision of the
2 Administrative Law Judge dated January 21, 2016, and the foregoing Stipulation and Waiver
3 signed by Respondent. I am satisfied that it will not be inimical to the public interest to issue a
4 restricted broker license to Respondent.

5 Therefore, IT IS HEREBY ORDERED that the application for real estate broker
6 license of Respondent be denied and a restricted real estate broker license be issued to
7 Respondent if Respondent has otherwise fulfilled all of the statutory requirements for licensure.
8 The restricted license shall be limited, conditioned and restricted as specified in the foregoing
9 Stipulation and Waiver.

10 This Order shall become effective at 12 o'clock noon on May 23, 2016.

11 IT IS SO ORDERED 4/28/2016

12 WAYNE S. BELL
13 REAL ESTATE COMMISSIONER

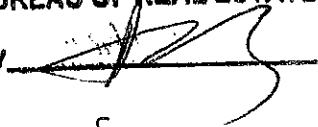
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FILED

FEB 18 2016

BUREAU OF REAL ESTATE

By



BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Application of

JOHN REFAAT HABASHY,

Respondent.

) CalBRE No. H-39966 LA

) OAH No. 2015100932

NOTICE

TO: JOHN REFAAT HABASHY, Respondent, and FRANK M. BUDA, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated January 21, 2016, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated January 21, 2016, is attached hereto for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on December 22, 2015, and any written argument hereafter submitted on behalf of respondent and complainant.

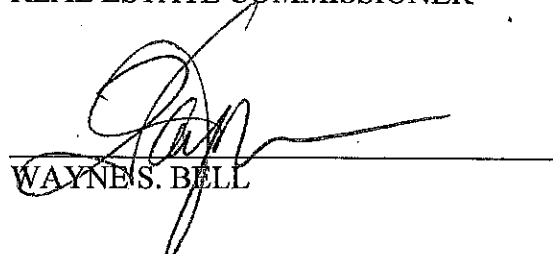
Written argument of respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of December 22, 2015, at the Los Angeles

1 office of the Bureau of Real Estate unless an extension of the time is granted for good cause shown.

2 Written argument of complainant to be considered by me must be submitted within
3 15 days after receipt of the argument of respondent at the Los Angeles Office of the Bureau of Real
4 Estate unless an extension of the time is granted for good cause shown.

5 DATED: 2/10/2016.

6 REAL ESTATE COMMISSIONER

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9 WAYNE S. BELL
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BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Application of:

JOHN REFAAT HABASHY,

Respondent.

No. H-39966 LA

OAH No. 2015100932

PROPOSED DECISION

Thomas Y. Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on December 22, 2015, in Los Angeles.

Maria Suarez, complainant, was represented at the hearing by Steve Chu, Staff Counsel.

John Refaat Habashy, respondent, was represented by Frank M. Buda, attorney at law.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on December 22, 2015.

FACTUAL FINDINGS

1. Complainant brought the statement of issues in her official capacity as a Supervising Special Investigator of the State of California. Respondent filed a timely Request for Hearing.

2. On November 19, 2014, respondent submitted an application to the Bureau of Real Estate (the Bureau) to be licensed as a real estate broker. The application included a copy of a Decision of the State Bar Court of California, Los Angeles Hearing Department, filed on March 20, 2013 in case nos. 11-O-18357-RAH, 12-O-10962 and 12-O-14399 (Decision). (Exhibit 2.) As the Decision indicates, respondent was licensed to practice law on June 7, 2005. The Decision recommended discipline against respondent's State Bar license. As explained below, the Decision was later adopted by the California Supreme Court.

3. On January 16, 2015, the Bureau sought more information from respondent. On April 15, 2015, in response to the Bureau's request, respondent submitted a Confidential Interview Information Statement with the following information:

I was president of a company that offered loan modification services. I oversaw over 40 employees and 3500 open files from November 2008 to November 2011. Passing of legislation forbid [sic] upfront fees and I provided clients with a "stage retainer" – which provided clients with a fee for consultation (ie [sic] \$500) and a final fee for the modification (ie [sic] \$2500); however, state bar categorized retainer fee for consultation as an illegal upfront fee. Prosecutor was overzealous and fabricated several charges. Court sentenced on SB94 [California Senate Bill 94, commonly known as the California Homeowner Bill of Rights (CHBR)] – 30 day [suspension from practice of law].

4. The Bureau did not issue a license and instead, on September 11, 2015, filed the statement of issues.

5. On September 6, 2013, the California Supreme Court adopted the Decision and issued a disciplinary order against respondent's State Bar license (Order, that is, the Decision and disciplinary order collectively).

A. Four counts of misconduct were upheld against respondent, arising from three client matters: (i) charging an advance fee for loan modification services, (ii) seeking withdrawal of a disciplinary complaint, (iii) failing to return unearned fees, and (iv) failing to provide an accounting.

B. Respondent was suspended from the practice of law for one year, stayed, with an actual 30-day suspension.

C. Respondent was also placed on two years' probation, during which he was required to report in writing quarterly to the State Bar Probation Department.

D. Respondent was ordered to take, within one year of the Order, the Multistate Professional Responsibility Examination (MPRE).

E. Respondent was ordered to pay the State Bar's costs.

6. The facts and circumstances underlying the Order are that respondent engaged in misconduct while representing homeowners facing foreclosure.

A. For some three years, 2009 through late 2011, respondent worked on loan modifications for many clients for several years. He was aware that on January 1, 2013, CHBR became law, codified at Civil Code sections 2920.5 et seq. It specifically prohibits advance fees for loan modification work in Civil Code section 2944.7.

B. Respondent made inquiry to the State Bar's ethics hotline regarding his loan modification work. He also hired counsel to advise him on ethics. Counsel advised that by "unbundling" services, respondent might lawfully charge advance fees for certain work deemed preliminary to actually obtaining loan modification. Respondent therefore separated his services into three categories. He typically charged \$750 in advance for each of the first two categories of work, the work he considered preliminary. He charged more fees if he completed the work, that is, when a loan was actually modified.

C. In one matter, respondent charged a client an advance fee of \$1,500 for work in the first two categories, before loan modification was obtained. He did not charge a final payment because loan modification was not obtained.

D. In another matter, a client complained to the State Bar about respondent. Respondent sent the client a refund of fees with a note for the client to sign that stated the client was withdrawing his complaint. When respondent realized the note was improper, he told the client not to sign and rather to destroy the note.

E. In a third matter, respondent failed to return \$2,399 in unearned fees to a client for more than eight months after she fired him. He also failed to provide the client an accounting of the fees charged.

F. The Order noted that respondent's multiple acts of misconduct were an aggravating factor. The Order noted, in mitigation, that respondent had agreed with the State Bar to a partial stipulation of facts, which saved the State Bar resources. In addition, respondent presented several credible witnesses who attested to his good character. The Order also noted that respondent had demonstrated that he had already begun the process of rehabilitation in that in two of the matters he had made full restitution by refunding all of the fees he collected.

7. Except that he continues to pay costs, respondent has complied with the Order.

A. On August 9, 2014, respondent obtained a passing score on the MPRE.
(Exhibit F.)

B. On October 23, 2014, respondent successfully completed Ethics School as required under his probation. (Exhibit H.)

C. On September 11, 2015, the Probation Department of the State Bar advised respondent that, as there were "no further conditions requiring our monitoring efforts, we will close our file." (Exhibit I.)

D. Respondent paid several thousands of dollars in disciplinary costs to the State Bar in 2014 and 2015. (Exhibit K.)

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E. On December 8, 2015, the State Bar Court granted respondent's motion for an extension of time to pay disciplinary costs. The motion was based on financial hardship. Respondent is to pay one quarter of the remaining disciplinary costs each year from 2015 through 2018. (Exhibit J.)

Rehabilitation

8. Respondent has been married for nearly three years. As his wife described at the hearing, he works long hours and is at the same time devoted to family, respectful of his parents and parents-in-law and intent on being a good example to his younger siblings.

9. Several lawyers who have worked with respondent and have referred him clients submitted declarations to the State Bar Court attesting to respondent's good character, his involvement in the community, the good and skillful services he has rendered clients, and his remorse for the conduct that led to the charges against him. Several lawyers and one of respondent's recent clients, all of whom were aware of the Order, submitted letters of recommendation describing respondent's remorse, his resolve not to engage in conduct that could lead to similar charges, and his involvement in various community organizations and charities. (Exhibits L, M, N, O, P, and Q.) In addition, several lawyers appeared at the hearing, some of whom have known respondent since before he was admitted to practice law. Each spoke of respondent's remorse, his good character, and the specialized knowledge and skill, including in real estate matters, he has used for the benefit of clients.

10. In 2014 and 2015, respondent completed several courses in continuing legal education (CLE). (Exhibit D.)

11. Respondent is significantly involved in community and church programs for the benefit of others. In addition to bar associations and bar-related activities, he has been a long-time volunteer at annual fundraising events at his church. When his sister-in-law was recently diagnosed with cancer, he helped organize a running event to bring attention to the disease and to raise funds for the fight against it.

12. Respondent's law firm employs four people, not the dozens it employed in 2009. Respondent has changed procedures at his law firm to provide clients information more quickly and efficiently. He has invested in computer software that automates his accounting of fees and costs for each legal matter the firm handles. The firm now also provides a more detailed description of services rendered to its clients. Respondent's legal assistant has worked for the firm since October 2009. He confirmed that since 2011, respondent no longer handles loan modification work of any kind.

LEGAL CONCLUSIONS

1. Respondent has the burden of proof to show by a preponderance of the evidence that issuance of a real estate broker's license to him would be consistent with the

Bureau's mandate to protect the public and ensure that its licensees are responsible and law-abiding. *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051, fn. 5.

Pertinent Law and Regulations

2. Business and Professions Code section 10177, subdivision (f), provides in pertinent part:

The commissioner may . . . deny the issuance of a license to an applicant, who has done any of the following . . . :

(f) [H]ad a license issued by another agency of this state . . . revoked or suspended for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, . . . and only upon an express finding of a violation of law by the agency or entity.

Cause to Deny the Application

3. Cause exists to deny respondent a real estate broker's license under Business and Professions Code section 10177, subdivision (f). The State Bar is a California state agency. The State Bar Court made express findings that respondent was in violation of law, specifically CHBR. Based on the findings, the California Supreme Court suspended respondent's State Bar license. Respondent thus had a license issued by another agency of this state that was suspended. The suspension was for acts relating to real property loan modifications. These were acts that, if done by a real estate licensee, would be grounds for suspension of a California real estate license.

Rehabilitation

4. The Bureau's criteria for evaluating rehabilitation are set out in California Code of Regulations, title 10, section 2911, providing in pertinent part:

The following criteria have been developed by the Bureau pursuant to Section 482(a) of the Business and Professions Code for the purpose of evaluating the rehabilitation of an applicant for issuance . . . of a license in considering whether or not to deny the issuance . . . on account of a crime or act committed by the applicant:

(a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the Bureau action sought. (A longer period will be required if there is a history of acts or conduct substantially related to the qualifications, functions or duties of a licensee of the Bureau.)

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant. [¶] . . . [¶]

(e) Successful completion or early discharge from probation or parole. [¶] . . . [¶]

(h) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the Bureau action sought.

(i) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement. [¶] . . . [¶]

(l) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought.

(n) Change in attitude from that which existed at the time of the conduct 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 applicant's previous conduct and with his 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. [¶] . . . [¶]

(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.

5. The acts that led to the Order occurred more than two years ago, so that respondent has met the rehabilitation criterion of California Code of Regulations, title 10, section 2911, subdivision (a). In addition, the Order noted that the restitution respondent paid to clients indicated he had "already begun his process of rehabilitation." (Exhibit 3, p. 14 of the Decision.)

6. Respondent has completed probation, with the minor exception, owing to financial hardship, that he still owes part of the disciplinary costs. Respondent has thus substantially met the criterion for rehabilitation in California Code of Regulations, title 10, section 2911, subdivision (e).

7. Respondent's fulfillment of familial responsibilities indicates rehabilitation under the criterion in California Code of Regulations, title 10, section 2911, subdivision (h).

8. As indicated in Finding 11, respondent is significantly involved in community and church activities for the benefit of others. He thus meets the criterion for rehabilitation in California Code of Regulations, title 10, section 2911, subdivision (l).

9. Though pertinent to California Code of Regulations, title 10, section 2911, subdivision (i), little weight is given to respondent's CLE classes, as indicated in Finding 10. As a lawyer, he is required to complete such classes.

10. Pertinent to California Code of Regulations, title 10, section 2911, subdivision (m), respondent demonstrated a change in attitude from that which existed at the time of the conduct that led to the Order. The change was evidenced not only by credible testimony from many witnesses, including respondent himself, but also from respondent's conduct in changing his law firm's procedures to ensure that clients have detailed information regarding his firm's services and charges. With respect to changes in his firm, respondent also meets the criterion for rehabilitation in California Code of Regulations, title 10, section 2911, subdivision (n).

11. Respondent's legal skill and experience in real estate matters, as indicated in Finding 9, bodes well for his providing services as a licensed broker.

12. Respondent has met his burden of proof with respect to rehabilitation. Respondent's efforts at rehabilitation are sufficient for the issuance of a restricted real estate broker's license.

ORDER

Respondent's application for a real estate broker license is denied; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code. The restricted license issued to the 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 said Code:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

(a) The conviction of respondent (including a plea of nolo contendere) of a crime which is substantially related to respondent's fitness or capacity as a real estate licensee; or

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(b) The receipt of evidence 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 this restricted license; or

2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations, or restrictions attaching to the restricted license until two years have elapsed from the date of issuance of the restricted license to respondent.

Dated: January 21, 2016

DocuSigned by:

Thomas Lucero

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THOMAS Y. LUCERO
Administrative Law Judge
Office of Administrative Hearings