

**FILED**

BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

SEP 09 2016  
BUREAU OF REAL ESTATE

By   H dw  

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In the Matter of the Accusation of

ALBERT GRIGORIAN,

Respondent.

) CalBRE No. H-40055 LA

) OAH No. 2015120858

DECISION

The Proposed Decision dated August 5, 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:

Order, page 8, paragraph No. 1, line 1, "... respondent Albert Grigori an" is amended to read "...respondent Albert Grigorian".

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 SEP 30 2016.

IT IS SO ORDERED

9/8/2016

WAYNE S. BELL

A handwritten signature in black ink, appearing to read 'Wayne S. Bell', is written over a horizontal line.

REAL ESTATE COMMISSIONER

BEFORE THE  
BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

ALBERT GRIGORIAN,

Respondent.

Case No. H-40055 LA

OAH No. 2015120858

**PROPOSED DECISION**

This matter was heard by Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings, on July 7, 2016, in Los Angeles, California.

Complainant was represented by Judith Vassan, Counsel for the Bureau of Real Estate (Bureau). Albert Gregorian (respondent) appeared personally and was represented by Scott J. Harris, Attorney at Law.

Evidence was received and the matter was submitted for decision on July 7, 2016. The Administrative Law Judge finds as follows:

**FACTUAL FINDINGS**

1. Veronica Kilpatrick (complainant) made the First Amended Accusation in her official capacity as Deputy Real Estate Commissioner of the State of California.
2. Respondent is presently licensed and/or has licensing rights as a real estate salesperson under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code.
3. On December 16, 2013, in the Superior Court of California, County of Los Angeles, Case No. 3BR03706, a misdemeanor complaint was filed against respondent charging a violation of Penal Code section 487, subdivision (a), petty theft. On September 10, 2014, pursuant to a plea agreement, respondent entered a plea of nolo contendere and was convicted of violating Penal Code section 602, subdivision (m), trespass, a misdemeanor. Imposition of sentence was suspended and respondent was placed on informal probation for 36 months on certain conditions including, inter alia, that respondent pay fines and fees totaling \$220 and complete 90 days of community labor. Respondent has paid the fines and completed the community labor.

4. The facts and circumstances underlying the conviction were that respondent filled a shopping cart with numerous items worth approximately \$1,000. Respondent walked throughout the store and passed an exit which was manned by a security guard. Respondent kept walking toward another exit and walked through an unmanned register and into the Starbucks located inside the store. He then walked through the exit near the Starbucks, passing the first and second set of glass doors without paying for the items in the shopping cart. At that point, respondent was detained by security personnel. He was taken to the security office and questioned by security personnel. Respondent told the loss prevention officer that he exited the store to look for his wife who was supposed to meet him there. The loss prevention officer contacted the Burbank Police Department. The investigating police officer questioned respondent who repeated his statement that he went outside the store to look for his wife. Respondent was detained, arrested, and taken by the police officer to the police station. Respondent's wife arrived at the department store parking lot and saw respondent in the police car. She followed the police car to the station. Once there, respondent's wife asked the officer what had occurred, the officer answered, "we caught him shoplifting."

5. Respondent's testimony was consistent with his statements to security personnel and to the arresting police officer. In his testimony, respondent again stated that he did not intend to steal the items in the shopping cart. He had been Christmas shopping and was waiting for his wife who had agreed to meet respondent and help him to decide on Christmas gifts for their children. Respondent's wife did not arrive at the agreed-upon time because she had been detained at work. Respondent had not yet paid for the items because he wanted his wife's opinion on the appropriateness of the items as Christmas gifts for their children. While waiting for his wife, respondent walked past numerous registers and entered the Starbucks area to buy coffee. Then, without thinking, respondent walked out of the store to see if his wife had arrived. At that point, security personnel arrived and detained respondent. Respondent testified that he was in shock when he was detained and accused of theft. Respondent testified that he had plenty of cash in his pocket and numerous credit cards in his possession.<sup>1</sup> Based on the facts set forth in Factual Findings 7 and 8 below, respondent's testimony that he did not intend to shoplift is rejected.

6. It is noted that respondent's wife did arrive at the department store at approximately 4:00 p.m. as respondent was being transported by the police officer. In fact, she arrived at the location despite the fact that respondent did not call or otherwise communicate with her during the time he had been detained and in custody.

7. The surveillance video from the store (Exhibit 5) shows respondent walking past numerous manned registers, walking through an unmanned register, and entering the Starbucks area to buy a drink. He was in Starbucks for approximately two minutes. He then left Starbucks with a cartful of merchandise, walked through a first set of glass doors

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<sup>1</sup> The police report indicates that respondent had more than \$300 in cash and numerous credit cards in his possession when he was detained and arrested.

then through a second set of glass doors. Respondent walked five steps past the second set of doors at which time he was stopped by security personnel. The surveillance video clearly shows respondent's face as he leaves the store. Based on a careful review of the video, respondent does not exhibit the demeanor or the facial expression of someone looking for the arrival of another person. The fact that respondent and his wife agreed to meet at the department store does not preclude respondent from forming the intent to steal while he was in the store and placing merchandise in the shopping cart.

8. After considering all of the evidence, including the testimony of witnesses and the surveillance video, the undersigned finds that respondent at some point while in the store, formed the specific intent to take the merchandise without paying for the items (theft).

9. Respondent filed a salesperson renewal application with the Bureau on March 12, 2014. Question 5 of the application asked: "ARE THERE ANY CRIMINAL CHARGES PENDING AGAINST YOU AT THIS TIME? IF YES TO EITHER ITEM 4 OR 5, COMPLETE ITEM 17 ON PAGE 2." Respondent answered no and failed to reveal the December 13, 2013 criminal charges set forth in the misdemeanor complaint filed in the Los Angeles County Superior Court. Respondent testified that the Bureau was aware of his arrest and submitted a letter addressed to him from Ginsheng Lee, a special investigator for the Bureau. This letter, dated April 4, 2014, states in part:

[Your] real estate license is under review and has been assigned to me for investigation and appropriate action.

You can help expedite the review of your license by obtaining certified copies of the arrest report and the court documents for each offense. The arrest report can be obtained from the arresting agency. The certified court documents must include the complaint, plea and sentencing.

10. The letter referenced in Factual Finding 9 supports respondent's assertion that the Bureau was aware of his arrest at the time he filed his renewal application. However, there was insufficient evidence establishing how the Bureau became aware of respondent's arrest. Respondent testified that the Bureau "was aware of the arrest and that [he] was in constant communication with the BRE about the arrest." Respondent's testimony was vague on this issue. In any event, respondent's answer of "no" to question 5 of the renewal application was a knowing and willful misstatement. Respondent contends that since an arrest cannot form the basis for discipline, his failure to reveal the arrest is not a material misstatement. Respondent's contention is consistent with the reporting requirements of Business and Professions Code section 10186.2, subdivision (a). This section requires a licensee, who has not been convicted of a crime, to report only felony charges or indictments. A licensee is not required to report misdemeanor arrests and/or pending charges under this statute.

11. As of August 31, 2015, respondent failed to report the conviction set forth in Factual Finding 3, in violation of Business and professions Code section 10186.2, subdivision (a)(1). Respondent testified that the Bureau was aware of the conviction. He stated that he disclosed the conviction in his application for a real estate broker's license. However, respondent did not state when he filed this application, nor did he introduce a copy of this application. Nevertheless, based on Ms. Lee's letter, the Bureau was aware of respondent's arrest and conviction. Respondent's failure to file a written notice of his conviction amounts to a technical violation of section 10186.2, subdivision (a)(1).

12. Respondent is 47 years old. He has been licensed as a real estate salesperson for 14 years with no previous discipline and there was no evidence of any other convictions. He specializes in short sales and default property sales. Respondent and his wife run a successful real estate firm with ten employees. They have operated their real estate business for the past ten years. Respondent testified that he would never engage in conduct that would set a bad example for his children, or that would jeopardize his license and the family business.

13. Respondent presented evidence that he completed psychotherapy sessions with Marisa Graiwer, a Marriage and Family Therapist in June 2015. Ms. Graiwer issued a written report opining that respondent does not fit the criteria associated with kleptomania, noting that respondent's feelings of anxiety, confusion, hopelessness and remorse are inconsistent with kleptomania. Further, Ms. Graiwer noted that one who has been diagnosed with kleptomania will commonly have an extensive history of theft, which is not present here. Finally, Ms. Graiwer opined that, based on her examination, respondent's conduct is a one-time event. Respondent also voluntarily completed a "shoplifter's alternative course" provided by the National Association of Shoplifting Prevention. In addition, respondent completed a three-hour ethics course provided by Real Estate License Services.

14. Respondent submitted numerous reference letters, including letters from his employing broker, a fellow real estate salesperson, a police officer, and former clients, all of whom attested to respondent's professionalism, competence, integrity and honesty.

15. Pursuant to Business and Professions Code Section 10106, complainant requests costs of investigation of this matter in the amount of \$1,056.10, and costs of enforcement in the amount of \$890.00. These costs are reasonable under section 10106.

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## LEGAL CONCLUSIONS

1. Cause exists to suspend or revoke respondent's real estate salesperson license under Business and Professions Code sections 490, and 10177, subdivision (b), for a misdemeanor conviction set forth in Factual Finding 3. Pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(8), and based on the underlying facts and circumstances, respondent's conviction is substantially related to the duties functions and qualifications of a licensee in that respondent had the intent to take merchandise from a department store without paying for items. (*Robbins v. Davi* (2009) 175 Cal.App.4th 118; *Lone Star Security and Video v. Bureau of Security and Investigative Services* (2009) 176 Cal.App.4th 1249.)

2. Cause does not exist to suspend or revoke respondent's real estate salesperson license under Business and Professions Code sections 475, 480 and 10177, subdivisions (a) and (j), for failing to disclose the misdemeanor charge pending in the superior court. Code section 475, subdivision (a), provides that an applicant may be denied licensure for "knowingly making a false statement a material fact" in the application. Under Business and Professions Code section 10186.2, a licensee who has not been convicted of a crime is only required to report felony charges or indictments. A licensee is not required to report misdemeanor arrests and/or pending charges under this statute.<sup>2</sup> Therefore, respondent's failure to disclose his pending misdemeanor charge was not a material misstatement in this application.

3. Cause exists to suspend or revoke respondent's real estate salesperson license under Business and Professions Code section 10186, subdivisions (a) and (b), for his failure to report his conviction to the Bureau, as set forth in Factual Finding 11. In mitigation, the Bureau had already been made aware of the charges against respondent as set forth in Factual Findings 9 and 10.

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<sup>2</sup> Business and Professions Code section 10186.2, subdivision (a)(1)(B), states:

- A licensee shall report any of the following to the department:
- (A) The bringing of an indictment or information charging a felony against the licensee.
  - (B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.
  - (C) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government.
- (2) The report required by this subdivision shall be made in writing within 30 days of the date of the bringing of the indictment or the charging of a felony, the conviction, or the disciplinary action.
- (b) Failure to make a report required by this section shall constitute a cause for discipline.

4. Complainant submitted reasonable costs of investigation under Business and Professions Code section 10106. Therefore, cause exists to grant complainant's request for the costs of investigation and enforcement.

5. California Code of Regulations, title 10, section 2912, sets forth criteria for rehabilitation. The factors set forth in section 2912 are applied as follows:

*(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 department.*

Respondent's conviction occurred September 10, 2014.

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

This factor is not applicable as the department store recovered all of the merchandise.

*(c) Expungement of the conviction or convictions resulting from immoral or antisocial acts.*

Respondent's conviction has not been expunged.

*(d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of section 290 of the Penal Code.*

This factor is not applicable to this case.

*(e) Successful completion or early discharge from probation or parole.*

Respondent is still on summary probation.

*(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.*

This factor is not applicable in this case.

*(g) Payment of any fine imposed in connection with the criminal conviction.*

Respondent has paid the fine imposed by the Superior Court.

*(h) Correction of business practices responsible in some degree for the crime or crimes for which the licensee was convicted.*



The evidence suggests that this is a one-time offense. Respondent is 47 years old with no prior record of convictions. Further, the evidence established that respondent is a competent salesperson with no previous complaints or discipline

*(i) New 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 or convictions in question.*

Respondent's misconduct was an individual act that did not involve social or business relationships.

*(j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial.*

Respondent has a stable family life. He receives complete support from his wife who is a real estate broker.

*(k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.*

Respondent presented evidence that he completed psychotherapy sessions last year and has completed a course in shoplifting prevention.

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

Respondent testified of some community involvement but not of a sustained nature.

*(m) Change in attitude from that which existed at the time of the commission of the criminal acts. . .*

Respondent considers his conduct of taking the merchandise from the store without paying for the items a mistake, which is at odds with the concept of rehabilitation.

6. Respondent satisfied some of the applicable criteria of rehabilitation set forth in regulation section 2912. Respondent has paid the fine in his criminal case and has completed the specific terms of his probation. He has voluntarily completed a "shoplifters' alternative course" and has sought treatment from a psychotherapist. Based on the totality of the evidence, a reasonable inference can be made that Respondent's attempt to shoplift on

the day of the incident was an aberration from his usual conduct. Respondent is 47 years old with no prior convictions or history of misconduct. Recidivism is unlikely. However, respondent did not completely accept responsibility for his actions as he attempted to minimize his misconduct during his testimony. In consideration of all of the facts and circumstances of this case, the public would be adequately protected with an order of revocation and the issuance of restricted license under appropriate conditions, including a period of suspension.

### ORDER

All licenses and licensing rights of respondent Albert Grigori an, 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 thereof 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. Any restricted license issued to respondent pursuant to this Decision shall be suspended for 30 days from the date of issuance of said restricted license.
2. 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.
3. 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.
4. 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 three years have elapsed from the effective date of this Decision.
5. Respondent shall submit with any application for a 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.

6. Respondent shall pay to the Bureau of Real Estate the costs of investigation and enforcement of this matter in the amount of \$1,946.10. In its discretion, the Bureau may allow respondent to pay this amount in installments.

7. 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 respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

8. 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, California 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 suspension or revocation of that license.

DATED: August 5, 2016



HUMBERTO FLORES  
Administrative Law Judge  
Office of Administrative Hearings