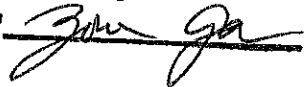


FILED

JUL 13 2016

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

BUREAU OF REAL ESTATE

By 

* * *

In the Matter of the Accusation of	)	CalBRE No. H-40146 LA
	)	
CARTHEL JAMES TOWNS, SR,	)	OAH No. 2016031095
	)	
Respondent.	)	

DECISION

The Proposed Decision dated June 24, 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 7, Paragraph No. 3, Line 3, "...personal property is by definition is an illegal taking..." is amended to read "personal property by definition is an illegal taking..."

Legal Conclusions, Page 8, Paragraph No. 7, Line 1, "He did not obtain Mr. and Mrs. L. required express written consent..." is amended to read "He did not obtain Mr. and Mrs. L.'s required express written consent..."

Order, Page 8, Line 2, "...Real Estate Law is revoked." is amended to read "...Real Estate Law are revoked."

The Decision suspends or revokes one or more real estate licenses.

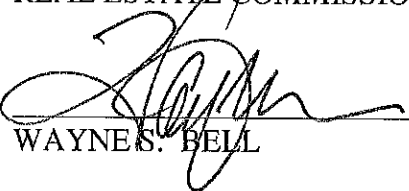
Pursuant to Government Code section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The Bureau's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever 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 AUG -2 2016

IT IS SO ORDERED

7/8/2016
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:

CARTHEL JAMES TOWNS, SR.,

Respondent.

Case No. H-40146- LA

OAH No. 2016031095

PROPOSED DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, heard this matter in Los Angeles, California on May 25, 2016.

Judith Vasan, Real Estate Counsel, represented complainant Maria Suarez, a Supervising Special Investigator of the State of California. Lawrence P. Adamsky, Attorney at Law, represented respondent Carthel James Towns, Sr., who was present at the administrative hearing.

Complainant seeks to discipline the real estate broker license of respondent based on allegations that he has been convicted for grand theft, a crime substantially related to the qualifications, functions, or duties of a real estate licensee, and that he failed to disclose this conviction in an application for renewal of his license.

The matter was submitted for decision on May 25, 2016. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order.

FACTUAL FINDINGS

1. Complainant made the Accusation while acting in her official capacity.

Respondent's License History and Background

2. On October 29, 2005, the Department of Real Estate, now known as the Bureau of Real Estate (Bureau), initially issued real estate broker license number 01709918 to respondent. On October 19, 2013, the Bureau renewed the real estate broker license, which expires October 28, 2017. The real estate broker license was in full force and effect at

all relevant times alleged in the Accusation. The real estate broker license has no prior history of discipline.

3. Respondent is a graduate of California State University, Northridge. He is the sole owner, chief executive officer, and president of Towns Consolidated Enterprise, Inc., (TCE) a California corporation doing business as several entities: "Covenant" offering services related to estate and retirement planning, tax preparation, and insurance; "Genesis" offering financial document preparation consulting services to small businesses; "Trinity" offering travel services; and "Exodus" offering real estate services. In the course of offering these services, respondent consults with and makes referrals to certified public accountants, investment advisors, and attorneys. TCE has no employees.

4a. On February 28, 2012, in the Superior Court of California, Los Angeles County, in case number PA065739, respondent was convicted, on his plea of nolo contendere, of violating one count of Penal Code section 487, subdivision (a) (grand theft of personal property), a felony substantially related to the qualifications, functions, or duties of a real estate licensee. The court found a factual basis for respondent's plea and ordered respondent to pay restitution in an amount not exceeding \$48,800 to the victims of his crime and to complete 20 days of community service no later than November 28, 2012.

4b. On March 21, 2013, having provided the court with proof of payment of restitution in an amount of \$48,600 and proof of completion of community service, the court granted an amendment allowing the felony count to which respondent pled guilty to proceed as a misdemeanor. Thereafter, the court suspended imposition of sentence and placed respondent on summary probation for a period of six months with terms and conditions including paying the restitution balance of \$200 by September 23, 2013.

4c. On September 25, 2013, respondent petitioned the court for dismissal pursuant to Penal Code section 1203.4 on ground that he had fulfilled the conditions of probation.

5a. On October 27, 2013, respondent filed a Broker Renewal Application (application) with the Bureau. Respondent signed the application under penalty of perjury and certified that the information in the application was true and complete. Question No. 4 on the application queries as follows:

**HAVE YOU EVER BEEN CONVICTED OF A MISDEMEANOR OR
FELONY? CONVICTIONS EXPUNGED UNDER PENAL COE
SECTION 1203.4 MUST BE DISCLOSED. HOWEVER, YOU MAY
OMIT TRAFFIC CITATIONS WHICH DO NOT CONSTITUTE A
MISDEMEANOR OR FELONY.**

(Exh. 5; Emphasis in original)

5b. Respondent answered "no." At the administrative hearing, respondent testified in one instance that he understood that "expungement was instantaneous—a part of the plea agreement," and that he "did not know that he had to do anything else." Nothing in

the February 28, 2012 Felony Advisement of Rights, Waiver, and Plea Form respondent executed supports respondent's understanding. (See Exh. A.) In another instance, respondent testified that it was his understanding that he "would have an expungement agreement within months." The language contained in Question 4 of the application clearly states, without limitation, that "convictions expunged under Penal Code 1203.4 must be disclosed."

5c. Respondent failed to disclose his conviction set forth in Factual Findings 4a and 4b. Respondent's sworn application omitted substantial material information, set forth in Factual Findings 4a and 4b, regarding his criminal history. This omission renders respondent's October 27, 2013 Broker Renewal Application incomplete, inaccurate, and otherwise misleading.

6. On November 11, 2013, pursuant to Penal Code section 1203.4, the court set aside and vacated respondent's plea, finding of guilt, and conviction set forth in Factual Findings 4a and 4b. The court also terminated respondent's probation.

7. According to a narrative contained in an October 7, 2008 Los Angeles County Sheriff's Department Incident Report (Sheriff's Incident Report), respondent's conviction arises from the following occurrences between respondent and Mr. and Mrs. L. (the victims):

On 07-23-07, the victim's gave [respondent] a Pasadena Service Federal Credit Union check in the amount of \$50,000 to invest. The victims signed a contract (referred to as Acknowledgement of Cash Receipt and Investment Agreement).¹ The contract states the broker [respondent] must be given written consent by the client (victims) prior to undertaking any investment activity on the client's behalf.

The victims said their \$50,000 were to be held in an investment account pending a resolution of Internal Revenue Service (IRS) issues the victim's [sic] were facing. [Respondent] was allegedly helping resolving the IRS issues for the victims.

The victims said they never received letters or statements regarding their invested money. [Respondent] would call them on occasions [sic] and assure them everything was fine.

¹ See Exh. A. Respondent signed this document as a "Broker" "duly appointed and authorized representative of Covenant Financial Advisors." During the course of his testimony at the hearing, respondent explained that "Broker" means "brokered activity." "Activity comes in and it is brokered out." Respondent additionally explained that the words "duly appointed and authorized representative" signify his "assistance with the estate" from which Mr. and Mrs. L. inherited the \$50,000.

On 08-02-08, the victims had a meeting with [respondent]. During the meeting, [respondent] told the victims he had invested \$48,000 of the victim's money for the expansion of his own company without their consent. The victims requested an accounting of their money.

On 08-06-08, [respondent] sent the victims a letter/agreement for them to sign giving him permission to invest their money into Towns Financial Group. The agreement was for the money he had already invested without their consent/approval. The victims did not sign the document.

On 08-13-08, the victims sent [respondent] a termination letter citing numerous breaches of contract and demanded their money be returned immediately. [Respondent] told the victims their money was invested in a "land deal" with the purpose of expanding his office in Temecula, California. [Respondent] told the victims he would return the money within two weeks. [Respondent] did not return the money.

Per the victims, when they demanded their money be pulled out of this deal immediately, [respondent] told them it could not be done. The victims asked [respondent] for documentation of where their money was being invested (i.e. statements or paperwork naming them as investors *[sic]*). [Respondent] refused to provide the statements and ignored the victims' repeated requests for them.

According to the victims, [respondent] admitted verbally and in writing that he was wrong to take their money to invest without consent.

(Exh. 4.)

8. Respondent testified at the administrative hearing. Respondent does not deny taking \$50,000 from Mr. and Mrs. L. According to respondent, he and Mr. and Mrs. L. were "family" because they worshiped at the same church. Mr. and Mrs. L. inherited the \$50,000, and they investigated several opportunities for its use. Mr. L. wanted to invest in LifeLock, the identity theft business. Mrs. L. wanted to acquire real estate. They considered property located in Azusa, California and Mississippi. The couple could not agree on how best to use their inheritance. The couple lodged their inheritance with respondent and executed the July 27, 2007 Acknowledgement of Cash Receipt and Investment Agreement (Agreement) referenced in the Sheriff's Incident Report. Among other terms, the Agreement provides that "Client must give Broker express written consent prior to Broker undertaking any investment activity on Client's behalf." The Agreement also provides, "Broker shall maintain an accurate and timely accounting of Client funds and disclose all balances, transfers, and other activity upon Client's written request." (Exh. A.)

Respondent testified, "the money sat for a long time" until he presented Mr. and Mrs. L. with a deal in 2009. A physician owned an undeveloped parcel of land in Temecula, California valued at \$620,000. The physician deeded the land to an architect who had

designs for a five-bedroom, five-bathroom, 5,000-square feet residence he intended to construct on the parcel of land. The cost of construction was \$1.8 million.

Respondent claims called Mr. L. and said, "There is an opportunity to make money." Respondent claims he told Mr. L. that their \$50,000 could be used to cover the construction project's "soft costs," which included an appraisal report, grading, salt sample, renderings, and a deed transfer. Upon completion of construction on the parcel of land, respondent was expected to offer the property for sale, and respondent anticipated a commission ranging between \$750,000 and \$1million. In turn, respondent was expected to re-pay Mr. and Mrs. L. their \$50,000 and to give them a 10 percent or \$5,000 profit from his commission. According to respondent, Mr. L. said, "Sounds great; move forward."

Mr. and Mrs. L.'s \$50,000 inheritance paid for an appraisal of the property. The construction of the residence stalled, however, after the real estate market "took a dive." Respondent investigated the value of comparable properties, and the "comps showed that we wouldn't make the profits we wanted."

9. Mr. and Mrs. L. demanded that respondent return their \$50,000 to them. Respondent was unable to satisfy their demand immediately because he was having financial difficulties and could not come up with the money. Mr. and Mrs. L. gave respondent two weeks to re-pay their money. When respondent did not repay Mr. and Mrs. L., they in consultation with the leadership of the church they attended with respondent determined to report respondent to the authorities. Respondent testified, "I'm thinking great, awesome. I didn't know it would be a criminal case for security fraud and embezzlement."

10. At the administrative hearing, respondent's testimony regarding his dealing with Mr. and Mrs. L. was at times confusing, contradictory, and evasive. On one hand, respondent testified, "My job was to list the property" and "I was just a listing agent." Then, contradicting himself, respondent testified, "I was never a listing agent." Respondent also insisted that in his dealings with Mr. and Mrs. L. he "was not acting in a capacity as a broker. The plan was to build up property and sell it. I was never a broker or agent." Respondent claimed that Mr. and Mrs. L. extended "a business loan" to him, and that "it was not an investment deal." According to respondent, "It was an understanding to get 10 percent." Respondent testified, "I would have benefitted from their investment of the \$50,000 had it gotten off the ground."

11. The Sheriff's Department Incident Report supplements respondent's testimony.² It is established that Mr. and Mrs. L.'s prior written consent was required to authorize respondent's use of their \$50,000 inheritance. Mr. and Mrs. L. gave no prior authorization to respondent. Mr. and Mrs. L. evidently learned about respondent's use of their \$50,000 inheritance after the fact.

² See Government Code section 11513, subdivision (d).

12. Respondent testified, "I understand how things look on paper, but it should be taken in context. The person before you is not someone out to defraud or harm the citizens of the State. Everyone deserves a second chance. I have made one mistake in 50 years." Respondent further testified that the outcome of his dealing with Mr. and Mrs. L. "really bothered me a lot, which is why I stopped doing so much real estate. That is why I went back to school. It takes a heavy toll on you." Mr. and Mrs. L. were respondent's "friend whose children call[ed] [him] uncle." Respondent answered "I shouldn't have invested their inheritance" in response to the query "Did you do anything wrong?"

13. Respondent and Mr. and Mrs. L. no longer worship at the same church. Currently, respondent is an executive minister at another church where he also serves as a trustee managing the church's fiscal matters. He is pursuing a doctorate degree. Respondent cares for his children while his spouse works, and he is seeking an adjunct faculty appointment teaching business law at a community college.

14. At the hearing, respondent offered three character reference letters written in connection with his attempt to secure an adjunct faculty position. The authors of the letters have a personal history with respondent and have previously transacted business with respondent. All hold respondent in high esteem. None of the authors addresses respondent's dealings with Mr. and Mrs. L.

15. Respondent's community service includes serving as the executive founder of Financial Empowerment, an entity empowering inner city youths to pursue business ownership as well as working with several other philanthropic organizations, including the Center for Non-Profit Development (assisting with grant-writing), the Pastor Network (assisting a community of pastors to meet demands on their resources), and Get Your House in Order (assisting seniors in hospice care to get their affairs in order before death).

Costs of Investigation and Prosecution

16. The Bureau incurred costs of investigation and prosecution totaling \$714.65. These costs are reasonable pursuant to Business and Professions Code section 10106.

17. No evidence of respondent's finance or ability to pay a cost award was offered at the administrative hearing.

LEGAL CONCLUSIONS

1. Business and Professions Code sections 490 and 10177, subdivision (b), authorize the suspension or revocation of a license on the ground that 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.

2. When considering whether a license should be suspended or revoked on the basis of the conviction of a crime, the crime is deemed substantially related to the qualifications, functions or duties of a Bureau licensee if the crime involves, among other things, "[t]he fraudulent taking, obtaining, appropriating or retaining of funds . . . belonging to another person," or "[t]he employment of . . . fraud, deceit, falsehood or misrepresentation to achieve an end," or "[d]oing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator" (See Cal. Code Regs., tit.10, § 2910, subs. (a) (1), (a)(4), and (a)(8).) In the case where the crime is substantially related to the qualifications, functions or duties of a Bureau licensee, the context in which the crime was committed goes only to the question of the weight to be accorded to the crime when considering the action to be taken with respect to the licensee. (Cal. Code Regs., tit.10, § 2910, subd. (c).)

3. Respondent's criminal conviction set forth in Factual Findings 4a is substantially related to the qualifications, functions or duties of a Bureau licensee. Grand theft of personal property is by definition is an illegal taking of another's property without the owner's consent with the intent to benefit the perpetrator. Without the written consent of Mr. and Mrs. L., respondent appropriated funds totaling \$50,000 for his financial and economic benefit. Significant weight is accorded the grand theft of personal property crime for which respondent has been convicted.

4. Cause exists pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), and California Code of Regulations, title 10, section 2910, subdivisions (a)(1), (a)(4), (a)(8), and (c), to discipline real estate broker license number 01709918 issued to respondent by reason of Factual Findings 4a and 4b and Legal Conclusions 1 through 3.

5. Business and Professions Code sections 498 and 10177, subdivision (a) authorize the suspension or revocation of a license on grounds the licensee procured, or attempted to procure, a license renewal for himself by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for license renewal.

6. Cause exists pursuant to Business and Professions Code sections 498 and 10177, subdivision (a), to discipline real estate broker license number 01709918 issued to respondent by reason of Factual Findings 5a, 5b, and 5c, and Legal Conclusion 5.

7. Since cause exists to discipline respondent's real estate broker license, he bears the burden of establishing his rehabilitation. (Evid. Code, § 500.) Application of the Bureau's rehabilitation criteria, which is codified in California Code of Regulations, title 10, section 2912, indicates that respondent has not met his burden. Four years have elapsed since respondent's 2012 conviction. Respondent has repaid Mr. and Mrs. L. their \$50,000 inheritance. Respondent's conviction has been expunged and respondent's probation has been terminated. Nonetheless, respondent has failed to offer sufficient evidence of his continuing qualification to perform the functions and duties of a licensed real estate broker. The evidence strongly suggests that his business practices with Mr. and Mrs. L. were fraught

with impropriety, if not outright dishonesty. He did not obtain Mr. and Mrs. L. required express written consent prior to using their inheritance to cover the soft costs associated with a property in which he had a financial interest. His anticipated sale of the property was expected to earn him a \$1 million commission. He insisted that Mr. and Mrs. L. loaned him their inheritance notwithstanding evidence of an investment agreement. Ultimately, whether the matter involved a loan or an investment does not mitigate the unmistakable fact that respondent's business practices were contrary to the public interest as evinced in his resulting conviction. This administrative proceeding is not to impose additional punishment on respondent. Rather, its purpose is to protect the public. (*Camacho v. Youde* (1979) 95 Cal. App. 3d 161, 164.) Under the facts of this case, a revocation of respondent's real estate broker license number 01709918 protects the public.

8. Business and Professions Code section 10106 authorizes the recovery of the Bureau's prehearing investigation and enforcement costs. The California Supreme Court in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, instructs that the following factors should be considered when determining the reasonableness of recovery of prehearing investigation and enforcement costs.

The [Bureau] must exercise its discretion to reduce or eliminate cost awards in a manner that will ensure that regulation . . . does not deter . . . [licensees] with potentially meritorious claims or defenses from exercising their right to a hearing. Thus, the [Bureau] must not assess the full costs of investigation and prosecution when to do so will unfairly penalize a . . . [licensee] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed. The [Bureau] must consider the . . . [licensee's] "subjective good faith belief in the merits of his or her position" [Citation.] and whether the . . . [licensee] has raised a "colorable challenge" to the proposed discipline. [Citation.] Furthermore, as in the cost recoupment schemes in which the government seeks to recover from criminal defendants the cost of their state-provided legal representation [Citation], the [Bureau] must determine that the . . . [licensee] will be financially able to make later payments. Finally, the [Bureau] may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation to prove that a . . . [licensee] engaged in relatively innocuous misconduct.

9. Considering all of the *Zuckerman* factors, including respondent's current employment status and the absence of evidence regarding respondent's finances or ability to pay a cost award, the Bureau shall recover its costs of investigation and prosecution in the amount of \$714.65.

ORDER

1. Real estate broker license number 01709918 and accompanying licensing rights issued to Carthel James Towns, Sr. under the Real Estate Law is revoked.

2. Carthel James Towns, Sr. shall reimburse the Bureau the amount of \$714.65 at such time and in such manner as the Bureau in its discretion may direct.

DATED: June 24, 2016

DocuSigned by:

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JENNIFER M. RUSSELL
Administrative Law Judge
Office of Administrative Hearings