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BUREAU OF REAL ESTATE

By

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BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

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NOTICE

TO: MARIA SOLEDAD ARAYA, Respondent, and FRANK M. BUDA, her Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated

July 28, 2016, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated July 28, 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 Wednesday, July 20, 2016, 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 Wednesday, July 20, 2016, at the Los Angeles office of the Bureau of Real Estate unless an extension of the time is granted for good cause shown.

1 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:

9/14/2016

6 REAL ESTATE COMMISSIONER

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BEFFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

MARIA SOLEDAD ARAYA,

Case No. H-40220 LA

OAH No. 2016060077

Respondent.

PROPOSED DECISION

Administrative Law Judge Ralph B. Dash heard this matter in Los Angeles, California on July 20, 2016.

James R. Peel, Staff Counsel, represented Complainant.

Frank M. Buda, Attorney at Law, represented Maria Soledad Araya (Respondent).

Oral and documentary evidence¹ having been received and the matter having been submitted, the Administrative Law Judge makes the following Proposed Decision.

FINDINGS OF FACT

1. Complainant Maria Suarez, a Supervising Special Investigator of the State of California, filed the Statement of Issues in her official capacity.

2. Respondent filed her application, dated June 5, 2015 (part of Exhibit 2), with the Bureau of Real Estate (Bureau) for licensure as a real estate salesperson. Respondent previously held a salesperson license which expired in 2004. The application was denied and this hearing ensued.

¹ The Administrative Law Judge redacted all personal identifying information not proper to be disclosed in the documentary evidence such as Respondent's social security number contained in her license application.

3. On March 7, 2008, in the United States District Court, Central District of California, case number SA CR02-154(A)-AHS, Respondent was convicted on her guilty plea to one count of violating 18 USC § 1343, wire fraud, a felony.² The court sentenced Respondent to probation for a term of three years on condition that, among other things, she serve four months of home detention. She was also ordered to pay restitution in the total amount of \$186,408.³ Respondent successfully completed her probation and is currently paying restitution in monthly installments pursuant to an agreement with the United States Attorney's Office. Respondent made a down payment on the restitution in the sum of \$10,000. This payment was treated as a "fine" but was applied towards restitution. The current balance owing is \$161,537.

4. According to the First Superseding Information to which Respondent pled guilty (part of Exhibit 2, submitted with her application):

- a. [From a date unknown until on or about January 2, 1998, Respondent] worked as a mortgage broker for prospective property buyers who could not legitimately qualify for loans from a mortgage lender.
- b. [Respondent] and others working on [her] behalf would contact co-schemers to prepare false and fabricated income and credit-related documentation for . . . buyers to enable them to qualify for loans from a mortgage lender. . . .
- c. [Respondent] would then use the income and credit-related documentation to prepare fraudulent loan packages for mortgage loans.

² The elements of wire fraud under Section 1343 directly parallel those of the mail fraud statute, but require the use of an interstate telephone call or electronic communication made in-furtherance of the scheme. *United States v. Briscoe*, 65 F.3d 576, 583 (7th Cir. 1995) (*citing United States v. Ames Sintering Co.*, 927 F.2d 232, 234 (6th Cir. 1990) (per curiam)); *United States v. Frey*, 42 F.3d 795, 797 (3d Cir. 1994) (wire fraud is identical to mail fraud statute except that it speaks of communications transmitted by wire); *see also, e.g.*, *United States v. Profit*, 49 F.3d 404, 406 n. 1 (8th Cir.) (the four essential elements of the crime of wire fraud are: (1) that the defendant voluntarily and intentionally devised or participated in a scheme to defraud another out of money; (2) that the defendant did so with the intent to defraud; (3) that it was reasonably foreseeable that interstate wire communications would be used; and (4) that interstate wire communications were in fact used) (*citing Manual of Model Criminal Jury Instructions for the District Courts of the Eighth Circuit* 6.18.1341 (West 1994)), *cert. denied*, 115 S.Ct. 2289 (1995).

³ This sum was not lost solely due to Respondent's conduct. However, as part of her plea agreement, she accepted responsibility for repayment of the entire loss.

d. [Respondent] and others would then submit fraudulent loan packages to commercial lenders in Los Angeles and Orange Counties.

The superseding information goes on to document how, in June 1997, Respondent caused wire communications with these false documents to be transmitted in interstate commerce to a mortgage lender in Minnesota for the purchase of property in West Covina, California.

5. From the first moment Respondent was contacted by law enforcement, she fully cooperated. This led to her light sentence for a crime which carried a penalty of five years in federal prison. In light of her extensive cooperation (corroborated by a 2004 letter from the Federal Bureau of Investigation) the United States Attorney moved the court for a downward departure from the sentencing guidelines. That motion (part of Exhibit 2), reads, in part:

[Respondent] cooperated from her first encounter with law enforcement, providing a full confession in an interview conducted prior to her first court appearance. She also identified other participants in the fraudulent loan scheme. Shortly after the commencement of this case, [Respondent's] counsel informed the government that [Respondent] wanted to cooperate with the government. At meetings with the government, [Respondent] provided further details regarding how fraudulent documentation was prepared, names of additional participants in the scheme, and the roles of the participants. She agreed to testify, if needed, against other co-schemers. She later contacted the government through her counsel to volunteer information about additional suspicious loan activity. [¶ . . . ¶]

The FBI and Department of Housing and Urban Development believed that [Respondent] was truthful in her interview statements and proffer. She admitted her conduct at all times and provided additional inculpatory details at the proffer. She did not seek to avoid responsibility for her conduct and provided information about other individuals with whom she was involved in regard to fraudulent loans. [¶ . . . ¶]

The United States believes that [Respondent] has provided substantial assistance in the prosecution of other individuals.

6. Despite her cooperation with the government, Respondent nevertheless faced deportation to her native Chile. In fact, at a hearing before an Immigration Judge, Respondent was ordered to be deported. Respondent appealed that determination, and her appeal was granted. In a decision by the Board of Immigration

Appeals dated January 28, 2013 (also part of Exhibit 2), the appellate body wrote, in part:

Upon de novo review, we find that the respondent is deserving of a favorable exercise of discretion for purposes of a waiver of inadmissibility under section 212(h) of the Act. Although we agree with the Immigration Judge that the respondent's conviction for the offense of . . . wire fraud . . . is a significant adverse factor, we find that this single serious transgression is outweighed by the respondent's outstanding equities, including respondent's residence in the United States, her strong family ties, her work history, her contributions to the community, and the hardship that her family, particularly her teenage son, will face if the respondent is removed.

7. Respondent testified, and in compelling fashion, detailed her anguish and shame of her illicit conduct. She offered no excuses and accepted full and complete responsibility for her actions. She has worked diligently to put her old life behind her. She no longer associates with anyone connected with her criminal past. She is the sole support of her now 21-year old son, a third-year student at CalPoly-Pomona, and her eight-year old son. She supports them through her employment by Christopher Vazquez, a Bureau licensee involved in the sale of homes. He has known and employed Respondent since 2005 and testified on her behalf. He stated that Respondent appeared to be open and honest when relating the conduct that led to her conviction. She did not try to diminish her role in the lending scheme. He further stated that Respondent, on several occasions, had expressed remorse for her criminal conduct noting that "she wished she had acted differently." He believes Respondent is honest and he would be happy to supervise her if she is granted a license, even if on a restricted basis.

8. Marcela Saunier is a real estate agent in Rancho Cucamonga and has known Respondent for at least 17 years. She testified that she knows about Respondent's criminal conduct and further testified that Respondent told her, on more than one occasion, that she is ashamed of what she had done and took full responsibility for her past actions. She believes Respondent is a very good, honest person.

9. Gabriela Brana is a legal secretary who was working for Respondent's former husband at the time of Respondent's conviction. She testified that Respondent has often expressed remorse for her past misconduct, that she is "a good Mom," and that she has a "good heart."

10. Respondent is very actively involved in community and church activities.

a. She has attended church services twice weekly since 2008. She also spends two hours per week at the church as a volunteer doing cooking and cleaning.

b. Respondent has volunteered her time at the now closed Lanterman Developmental Center. She offered a letter from Kevin Peck, Coordinator of Volunteer Services (part of Exhibit A). Mr. Peck wrote, in part, “[Respondent assisted] in our Senior Citizens Activities Center with the developmentally disabled individuals that live here . . . and has been an asset to this facility and the individuals living here. [Respondent] has been a reliable, personable and conscientious volunteer that our staff and clients respect and enjoy having assist with our programs.”

c. Respondent has volunteered her time at her son’s school. Kathy Riddle, a teacher at Evergreen Elementary School in the Walnut Valley Unified School District, wrote a letter on Respondent’s behalf (part of Exhibit A). She wrote, in part, “[Respondent] has regularly helped in our classroom for several hours every Thursday morning. . . . [She] is an intelligent, capable, dedicated, and personable woman [and] is always quick to offer her help in all circumstances . . . I feel confident in saying that she is capable of handling any situation that may arise on our classroom with thoughtfulness and sensitivity.”

d. For the past three years, Respondent has been a coach at the American Youth Soccer Organization, Region 31, in Diamond Bar, California. Hugo Gonzalez, the Division Commissioner, wrote a letter on Respondent’s behalf (part of Exhibit A). He wrote, in part:

I am writing to recommend that you consider Maria Araya for her real estate license. In all my years of experience, some individuals stand out for their great qualities and Maria Araya is one of those people. She is well known for her personal qualities: intelligence, work ethic, positive attitude, teamwork mentality, leadership, and diligence. She is well respected throughout the organization for her ability to handle difficult situations with grace. Throughout the time I’ve known her, she has shown me time and again that she is a positive, punctual and motivated leader with amazing potential.

11. Respondent’s testimony was credible in terms of her demeanor. She testified in a straightforward way, answering questions directly, without apparent prevarication. Respondent took responsibility for her wrongdoing and notified the Bureau of it as required by law. There was no evidence that Respondent has been convicted of any other crimes. Since her conviction Respondent has completed courses in Real Estate Principles, Real Estate Practice, and Legal Aspects of Real Estate. It was plain that Respondent has paid a heavy price for her criminal conduct, not just in terms of the punishment meted out to her, but in terms of the mental anguish it caused her. It does not appear that she would act in such a dishonest manner in the future; she is quite conscious of what she has to lose.

LEGAL CONCLUSIONS

1. Jurisdiction was established to proceed in this matter pursuant to section 10100 of the Business and Professions Code,⁴ based on Factual Findings 1 and 2.

2. Respondent's conviction for wire fraud is substantially related to the duties, qualifications, and functions of a real estate salesperson under California Code of Regulations, title 10 (CCR), section 2910, subd. (a)(1), (a)(2), and (a)(4).⁵

3. Based on Factual Findings 3 and 4, and Legal Conclusion 2, cause exists to deny Respondent's application pursuant to Code sections 475, subdivision(a)(2), 480, subdivision (a), and 10177, subdivision (b), for conviction of a crime substantially related to the duties, qualifications, and functions of a real estate licensee.

4. The Bureau has regulations to be used in evaluating whether an applicant with a criminal record has been rehabilitated; they are found at CCR section 2911, and are summarized hereafter, and applied to this case.

(A) The Bureau looks for the passage of at least two years since the last conviction, with a longer period where there is more than one conviction. (CCR § 2911, subd. (a).) Here Respondent's only conviction occurred more than eight years ago, and the conduct underlying it occurred more than 18 years ago. (Factual Finding 3.)

(B) Restitution to any person who has suffered monetary losses. (Subd. (b).) Respondent is engaged in continuing efforts to make full restitution and has regularly made monthly payments on the amount owing. (Factual Finding 3.)

(C) Expungement of a conviction, and discontinuance of registration requirements. (Subd. (c), (d).) There was no evidence the conviction has been expunged. Respondent is not required to register her conviction.

(D) Successful completion of probation. (Subd. (e).) Respondent completed her probation without incident. Her probation ended more than five years ago. (Factual Findings 3.)

⁴ All subsequent statutory references are to the Business and Professions Code unless otherwise noted.

⁵ All further citations to the CCR shall be to title 10 thereof.

(E) Abstinence from the use of alcohol or controlled substances.
(Subd. (f).) This subdivision is not relevant to this case.

(F) Payment of fines and penalties. (Subd. (g).) Respondent meets this criterion as she paid her \$10,000 fine. (Factual Finding 3.)

(G) Stability of family life and fulfillment of parental responsibilities.
(Subd. (h).) Respondent cares for her and supports both her adult son and her minor son. (Factual Finding 7.)

(H) Completion of, or enrollment in education or training programs.
(Subd. (i).) Since her conviction, Respondent has completed three courses in real estate. (Factual Finding 11.)

(I) Discharge of, or bona fide efforts to discharge, debts and obligations to others. (Subd. (j).) This does not appear relevant to this case except as to the restitution which, as noted in Finding 3 and Legal Conclusion 4 (F), is being paid on a monthly basis.

(J) Correction of business practices resulting in injury to others.
(Subd. (k).) Respondent is conscious of the repercussions further criminal conduct could have on her and her family and the possibility of such repercussions has an *in terrorem* effect against her engaging in such conduct. (Factual Finding 11.)

(K) Significant involvement in community and church programs designed to provide social benefits. Respondent has substantial involvement in these types of church and community activities. (Factual Finding 10.)

(L) New and different social relationships. (Subd. (m).) Respondent no longer associates with anyone involved in the wire fraud and has new friends and social contacts. (Factual Findings 7 through 10.)

(M) Change in attitude from that held at the time of the criminal act.
(Subd. (n).) Respondent has had a 180 degree change in her attitude. (Factual Findings 7 through 11.)

5. In *Singh v. Davi* (2012) 211 Cal.App.4th 141, the court noted that the Bureau's rehabilitation criteria "attempt to gauge whether the applicant has changed so that a repeat of his criminal behavior is unlikely. Of the many criteria, arguably the most important in predicting future conduct is subdivision (n): 'Change in attitude from that which existed at the time of the conduct in question.'" (Id. at pp. 148-149.) As noted in Factual Findings 7 through 11, Respondent has had a complete change in her attitude since she committed her criminal acts. In addition, as Finding 6 makes clear, if Respondent reverts to her past illegal conduct, she faces the distinct likelihood she could be deported. In addition to her sincere remorse for her crime, the

possibility of deportation will clearly have an *in terrorem* effect for her future conduct.

6. Proceedings of this type exist to protect the public, and not to punish an errant licensee, or potential licensee. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164; *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 784-786.) While Respondent was convicted of a serious crime, she has met, and in some cases even exceeded, the Bureau's rehabilitation criteria. The entire record indicates that the public can be protected through the issuance of a restricted license to Respondent.

ORDER

The application of Respondent Maria Soledad Araya for a real estate salesperson's license is denied; provided, however, a restricted real estate salesperson's license shall be issued to her pursuant to section 10156.5 of the Business and Professions Code. 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 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

(B) The receipt of evidence that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulation of the Real Estate Commissioner or conditions attaching to the restricted license.

2. 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 issuance of the restricted license to the Respondent.

3. During the period that the restricted license is in effect, Respondent shall obey all laws, rules, and regulations governing the rights, duties, and responsibilities of a real estate licensee in the State of California.

4. 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

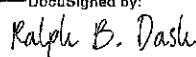
Estate, Post Office Box 137000, Sacramento, CA 95813-7000. The letter shall set forth the date of Respondent's arrest, the crimes for which Respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

5. 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 RE 552 (Rev. 4/88) approved by the Bureau of Real Estate which shall certify:

(A) That the employing broker has read the Decision which is the basis for issuing the restricted license; and,

(B) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

Date: July 23, 2016

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RALPH B. DASH
Administrative Law Judge
Office of Administrative Hearings