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FILED

JAN 27 2017

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Application of)

MARIA SOLEDAD ARAYA,)

Respondent.)

Case No. H-40220 LA

OAH Case No. 2016060077

DECISION AFTER REJECTION

The California Bureau of Real Estate ("Bureau") filed a Statement of Issues against³ MARIA SOLEDAD ARAYA ("Respondent") on April 21, 2016 in Case No. H-40220 LA. A hearing was held before the Office of Administrative Hearings ("OAH"), State of California, in Los Angeles on July 20, 2016, before Administrative Law Judge ("ALJ") Ralph B. Dash.

Bureau of Real Estate ("BRE") Staff Attorney James R. Peel represented Complainant Maria Suarez ("Complainant"), a Supervising Special Investigator of the Bureau. Respondent MARIA SOLEDAD ARAYA ("Respondent") appeared personally and was represented by Frank M. Buda, Esq. Oral and documentary evidence was received; argument was heard; the record closed; and

1 the matter was submitted for decision on the same day.

2 On July 28, 2016, ALJ Dash issued a Proposed Decision which I declined to adopt as
3 my Decision herein.

4 Pursuant to Section 11517(c) of the Government Code of the State of California, on
5 September 21, 2016, Respondent was served with notice of my determination not to adopt the
6 Proposed Decision of the ALJ along with a copy of said Proposed Decision. Respondent was notified
7 that I would decide the case upon the record, the transcript of proceedings held on July 20, 2016, and
8 upon any written argument offered by Respondent and Complainant. Respondent submitted written
9 argument on November 11, 2016. Complainant submitted its written argument on December 13,
10 2016.

11 I have given careful consideration to the record in this case, including the transcript of
12 the July 20, 2016 proceedings. I have also considered the arguments submitted by both Respondent
13 and Complainant. The following shall constitute the Decision of the Real Estate Commissioner
14 (“Commissioner”) in this proceeding:

15 FINDINGS OF FACT

16 *Parties and Jurisdiction*

17 1. The Complainant brought the Accusation in Case No. H-40220 LA in her official
18 capacity on April 21, 2016, pursuant to Sections 480 and 10177(b) of the Business and Professions
19 Code.

20 2. Respondent was previously licensed under the Real Estate Law, Part 1 of
21 Division 4 of the Business and Professions Code (“Code”), as a real estate salesperson; this license
22 expired in 2004.

23 3. Respondent filed an application with the BRE for a real estate salesperson license
24 on June 5, 2015.

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1 *Criminal Conviction*

2 3. On or about March 7, 2008, in the United States District Court, Central District of
3 California, case number SA CR02-154(A)-AHS, Respondent was convicted on her guilty plea of
4 one count for violating 18 USC §1343, wire fraud, a felony. The court sentenced Respondent to
5 probation for three years on condition that, among other things, she serve four months of home
6 detention. She was also ordered to pay restitution in the total amount of \$186,408.

7 4. According to the First Superseding Information to which Respondent pled guilty,
8 the facts and circumstances underlying Respondent's conviction were that Respondent worked as a
9 mortgage broker for prospective property buyers who could not legitimately qualify for loans from
10 a mortgage lender, and, with others working on her behalf, contacted co-schemers to prepare false
11 income and credit-related documents to enable said prospective buyers to qualify for loans from a
12 mortgage lender. Respondent would then utilize the fabricated income and credit-related
13 documentation to prepare fraudulent loan packages for mortgage loans.

14 *OAH Hearing*

15 5. At hearing, Respondent testified in the affirmative when asked if she provided
16 false income documents from borrowers to lenders. (Hearing Transcript No. 11026OAH, page 27,
17 line 12.)

18 6. Additionally, Respondent testified that she completed the court-ordered
19 probationary sentence in or about March 2011. (Hearing Transcript No. 11026OAH, page 29,
20 lines 12 through 18.)

21 7. When asked about the court-ordered restitution, Respondent testified that she
22 paid a \$10,000 fine as part of the restitution and that she has made payments of \$500 per month
23 for about one year, and then a reduced payment of \$250 per month until the end of her probation.
24 Respondent testified that she currently pays \$50 per month. (Hearing Transcript No. 11026OAH,
25 page 29, line 25 through page 30, line 22.)

1 8. Also at hearing, Respondent testified that she has not suffered any subsequent
2 crimes and that her feelings regarding her conviction are "Very bad still. It's been a long time. It
3 is no excuse of what I have done. I'm sorry." (Hearing Transcript No. 11026OAH, page 35, lines
4 18 through 19.) Respondent further testified that, "...I have no excuses. I learned in ~ 200 percent
5 I learned the lesson. I should have done the things different. I should have stepped away from
6 that office where everything was happening. I should have just talked to somebody. And I regret
7 it, and I'm going to regret it the rest of my life for what I did was totally wrong. (Hearing
8 Transcript No. 11026OAH, page 36, lines 19 through 25.)

9 9. On cross-examination, Respondent testified that the outstanding balance owing
10 on her court-ordered restitution is \$161, 537.

11 *Proposed Decision of ALJ Dash*

12 ALJ Dash found that although cause exists to deny Respondent's real estate
13 salesperson license pursuant to Business & Professions Code ("Code") sections 490 and 10177(b)
14 due to the substantial relationship between Respondent's conviction and the qualifications
15 functions and duties of a real estate salesperson pursuant to California Code of Regulations
16 ("Regulations"), title 10, section 2910, subdivisions (a)(1), (a)(2), and (a)(4), that Respondent had
17 met, "and in some cases exceeded," the applicable criteria of rehabilitation set forth in Regulation
18 2911. Judge Dash noted that: Respondent's conviction occurred more than eight years ago and the
19 underlying conduct occurred more than 18 years ago; that Respondent is engaged in continuing
20 monthly payments towards making full restitution; and that Respondent completed her probation
21 without incident over five years ago. ALJ Dash found that the public would be adequately
22 protected if Respondent is issued a restricted real estate salesperson license.

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1 LEGAL CONCLUSIONS

2 *Substantial Relationship Between Respondent's Conviction and the Qualifications, Functions*
3 *or Duties of a Real Estate Salesperson Pursuant to Title 10, Chapter 6, section 2910*

4 1. Regulation 2910(a)(8) is applicable to Respondent's conviction for violation of 18
5 USC §1343 (wire fraud), as it involves the doing of an unlawful act with both the intent of conferring
6 a financial or economic benefit upon the perpetrator, as well as the intent or threat of doing substantial
7 injury to the person or property of another; in Respondent's case, she prepared false income and
8 credit-related documents to obtain loans for prospective buyers who otherwise would not qualify for
9 such loans. When many of these buyers defaulted on their loans, the insurer of these loans, FHA
10 (Federal Housing Administration), suffered the losses. Respondent's conviction is also substantially
11 related in applying Regulation 2910(a)(2), as the underlying acts which led to Respondent's
12 conviction, that is, Respondent's preparation of false income and credit-related documents for
13 prospective buyers constitute false utterances, uttered repeatedly for multiple prospective buyers,
14 and therefore, the conviction is substantially related as Regulation 2910(a)(10) applies as well.

15 2. Given Respondent's guilty plea to and conviction for violation of 18 USC §1343 and
16 the substantial relationship between Respondent's crime and the qualifications, functions or duties of a
17 real estate licensee, cause exists to deny Respondent's real estate salesperson license pursuant to
18 Business and Professions Code sections 480 and 10177(b).

19 *Respondent Has Not Sufficiently Demonstrated Rehabilitation Pursuant to California Code of*
20 *Regulations, Title 10, Chapter 6, section 2912*

21 1. Respondent has not satisfied all of the applicable criterion of the Bureau's Criteria
22 for Rehabilitation set forth in Title 10, Chapter 6 of the California Code of Regulations
23 ("Regulations"), Regulation 2911, in particular Regulation 2911(b). To date, Respondent has not yet
24 paid in full the court-ordered restitution amount of \$186,408. Nine years have elapsed since
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1 Respondent's 2008 conviction and court-ordered restitution; however, the current balance owing is
2 \$161,537.

3 2. Given Respondent's insufficient satisfaction of applicable rehabilitation, cause exists
4 to deny Respondent's real estate salesperson license application pursuant to Business and Professions
5 Code section 480 and 10177(b).

6 3. The Real Estate Law and the disciplinary procedures provided for in the Real Estate
7 Law are designed to protect the public and to achieve the maximum protection for those dealing with
8 real estate licensees. Clients and commercial institutions rely on a licensee's integrity in representing
9 them. Such licensees must be trustworthy. (*Ring v. Smith* (1970) 5 Cal.App.3d 197, 205; *Golde v.*
10 *Fox* (1976) 98 Cal.App.3d 167, 177. *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d
11 394, 402.) The Bureau's mission of public protection precludes the issuance of a real estate
12 salesperson license to an applicant Respondent who has a fraud conviction in her criminal history.
13 Although nine years have elapsed since Respondent's conviction, the fact that Respondent has not paid
14 off a more substantial amount of restitution renders her rehabilitation insufficient to merit licensure.
15 Given the nature and severity of Respondent's crime and Respondent's incomplete rehabilitation,
16 licensure as a real estate salesperson is not appropriate.

17 4. The Real Estate Law and the disciplinary procedures provided for in the Real Estate
18 Law are designed to protect the public and to achieve the maximum protection for the purchasers of
19 real property and those dealing with real estate licensees (Code Section 10050; *Harrington v. DRE,*
20 *id.*). The Bureau cannot protect the public by allowing issuing a real estate salesperson license to an
21 applicant who has in her criminal history a federal felony conviction for fraud. Respondent has not yet
22 finished paying the court-ordered restitution. Rehabilitation is not sufficient at this time, and denial of
23 Respondent's real estate salesperson license application is appropriate.

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1 (a) That the employing broker has read the Decision which is the basis for the
2 issuance of the restricted license; and

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

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

13 5. During the period of time that Respondent holds a restricted license, Respondent is
14 barred and prohibited from performing, engaging in, or assisting in any activities relating to mortgage
15 loan activities, including but not limited, to those acts described in Code Sections 10131 and
16 10166.02.

17 This Decision shall become effective at 12 o'clock noon on FEBRUARY 16, 2017.

18 IT IS SO ORDERED Jan. 23, 2017.

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20 WAYNE S. BELL
REAL ESTATE COMMISSIONER

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23 WAYNE S. BELL
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