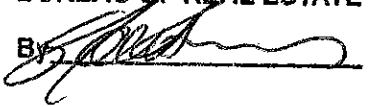


FILED

OCT 27 2016

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

BUREAU OF REAL ESTATE

By 

* * *

In the Matter of the Accusation of

RAY DOMINGUEZ,

Respondent.

CalBRE No. H-40287 LA

OAH No. 2016070180

DECISION

The Proposed Decision dated October 2, 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.

Page 1, paragraph 2 reads "Cheryl D. Keily, Staff Counsel for the Bureau..." should be corrected to read "Judith Vasan, Staff Counsel for the Bureau..."

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 NOV 17 2016.

IT IS SO ORDERED 10/21/16

REAL ESTATE COMMISSIONER
WAYNE S. BELL

A handwritten signature in cursive script, appearing to read "Daniel Sandri", is written over a horizontal line.

By: DANIEL SANDRI
Assistant Commissioner

BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

RAY DOMINGUEZ,

Respondent.

Case No. H-40287 LA

OAH No. 2016070180

PROPOSED DECISION

Administrative Law Judge Gloria A. Barrios heard this matter on September 6, 2016, in Los Angeles, California.

Judith Vasan
~~Cheryl D. Keily~~, Staff Counsel for the Bureau of Real Estate (Bureau), represented Maria Suarez (Complainant), Supervising Special Investigator.

Michael Harris, Attorney at Law of Rogers and Harris, represented Ray Dominguez (Respondent) who was present at the hearing.

The record matter was submitted for decision on September 6, 2016.

FACTUAL FINDINGS

1. Complainant brought the Accusation in her official capacity.
2. Respondent has been licensed as a real estate broker, license number 01150413, since December 8, 1992. The license has been renewed through October 9, 2017. The license has not been disciplined previously.
3. On December 14, 2015, Respondent was convicted, after his plea of nolo contendere, of violating Penal Code section 422, subdivision (a), (threat to commit a crime with intent to terrorize), a misdemeanor, (*People v. Ray Dominguez*, Superior Court of the State of California, County of Los Angeles, case number LA081772.) Imposition of sentence was suspended, and Respondent was placed on 36 months summary probation, and ordered to pay fines, restitution and fees totaling \$370. Respondent was ordered to stay away from the victim. The court also ordered Respondent to serve two days in jail less credit.

for two days served and to attend and successfully complete 26 anger management classes. Respondent is currently on probation.

4. The facts and circumstances underlying Respondent's conviction are that on August 26, 2015, a road rage incident occurred. Respondent believed his neighbor's acquaintance had cut him off as he was exiting his driveway. Respondent followed the driver to his neighbor's driveway and threatened to "blow his fucking head off." No one was injured in the incident. No firearm was found.

5. Respondent argues that the other driver had almost hit his car as he was exiting his driveway. The driver then "gave him the finger." According to Respondent, the driver rolled down his window and threatened to have his friend send Respondent back to "his country." He denies making a threat against the other driver. Respondent is from Peru.

6. Respondent argues that he broke no law. He offers the result from a polygraph examination that shows he made no criminal threat against anyone and he is telling the truth. (Respondent's Exhibit D.) The examination results were not a part of the criminal record. The examiner who conducted the polygraph examination did not testify at the hearing.

7. Respondent did not report that he was charged with a felony complaint to the Bureau within 30 days as required by Business and Professions Code¹ section 10186.2. (Complainant's Exhibit 5.)

8. On September 16, 2015, Respondent was charged with violating Penal Code section 422, subdivision (a), (threat to commit a crime with intent to terrorize), a felony.² (*People v. Ray Dominguez*, Superior Court of the State of California, County of Los Angeles, case number LA081772.)

9. Respondent argues that he was not aware he was required to report a felony criminal complaint to the Bureau. On September 24, 2013, Respondent renewed his license with the Bureau. He certified the following language when he signed his renewal application;

"I understand that it is my obligation to notify the Bureau within 30 days in writing or by filing form RE238 of any conviction, indictment or information charging a felony, or disciplinary action taken by another licensing entity or authority of this state or an agency of the federal government pursuant to Business and Professions Code section 10186.2."

¹ All further statutory references are to the Business and Professions Code except when noted.

² The criminal charge was later reduced to a misdemeanor.

(Complainant's Exhibit 6.) Respondent knew or should have known that he was obligated to report any felony complaint to the Bureau.

10. Respondent argues the Bureau knew about his conviction. There was no need for him to inform the Bureau. On January 25, 2016, the Bureau wrote Respondent requesting information regarding his 2015 conviction. (Respondent's Exhibit A.)

11. Respondent notified the Bureau of his conviction on February 2, 2016. (Respondent's Exhibit B.) His attorney also wrote the Bureau regarding Respondent's conviction on February 4, 2016. (Respondent's Exhibit C.)

12. Joseph Allen Giampaolo (Giampaolo) is a licensed broker who testified in support of Respondent. Giampaolo is employed by MHL Financial, Inc., in Pasadena. He and Respondent have conducted 30 to 40 real estate transactions together. Giampaolo and Respondent have known each other for six years. Giampaolo stated that Respondent is a man of integrity. He has never had any complaints about Respondent. Giampaolo knows about Respondent's conviction.

13. Darius Gandhi (Gandhi) is a developer who testified on behalf of Respondent. Gandhi works with him on property transactions. Respondent recommends properties for Gandhi to invest. Gandhi stated that Respondent is ethical, honest, loyal and has a trusted reputation. Respondent is an experienced broker. Gandhi does business with Respondent relying on his experience and honesty. Gandhi knows about Respondent's conviction.

14. Respondent is currently up to date regarding his anger management classes. (Respondent's Exhibit F.) He meets with Linda Miles Litwin (Litwin), Ph.D., a clinical psychologist. She wrote a letter on behalf of Respondent. Litwin wrote, "Mr. Dominguez is a man of good character who has resided in the same house for over 25 years and has no history of violent behavior directed toward another person. He makes friends easily. He learned early on to be protective of family and friends, being a male in a family of four sisters and his mother in Peru. This duty to protect people has become second nature. However, he is capable of controlling his emotions and understands where to draw the line when he is confronted with a threat. There have been several occasions in the past during which he was exposed to extraordinary stress and yet was able to maintain a calm demeanor." Litwin knows about Respondent's conviction. (Respondent's Exhibit E.)

15. Respondent is a broker in Tarzana. He is a Eucharistic Minister at Lady of Grace Catholic Church in Encino. He has been a member of his church for 30 years. Respondent has been a minister for 10 years.

16. Respondent is 65 years old. He is married. Respondent and his wife have two grown children.

17. Complainant introduced evidence as to the Bureau's cost of its investigation and enforcement of this matter pursuant to Code section 10106. The requested total amount is \$1,060.68, which is reasonable under the facts of this case. (Complainant's Exhibit 7.)

LEGAL CONCLUSIONS

1. The standard of proof for the Bureau to prevail on the Accusation is clear and convincing evidence to a reasonable certainty. (See *Borror v. Dept. of Real Estate* (1971) 15 Cal.App.3d 531; *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) This means the burden rests with Complainant to offer proof that is clear, explicit and unequivocal—so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

2. Code section 490 provides that the Bureau may suspend or revoke 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.

3. Code section 10177, subdivision (b) provides that a real estate licensee may have his license disciplined for conviction of a crime if it is substantially related to the qualifications, functions, or duties of a real estate licensee.

4. The Bureau has issued regulations that specify the types of crimes that are "substantially related" to the qualifications, functions, or duties of a real estate licensee. Respondent's conviction for threat to commit a crime with intent to terrorize is "substantially related" under California Code of Regulations, title 10 (CCR), section 2910, subdivision (a) (8) which provides that, "doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another," bears a substantial relationship to the functions, duties and qualifications of a Bureau licensee.

5. Respondent argues that the Bureau should take into consideration for any discipline on his real estate license that he did not commit the crime for which he was convicted. He points to the fact that he underwent a polygraph examination and was deemed truthful when he stated that did not make a criminal threat.

6. Respondent cannot impeach his criminal conviction. The entry of a nolo contendere plea in his 2015 criminal conviction is conclusive evidence of his guilt. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.) "Regardless of the various motives which may have impelled the pleas, the convictions which were based thereon stand as conclusive evidence of appellant's guilt of the offense charged. To hold otherwise would impose upon administrative boards extensive, time consuming hearings aimed at relitigating criminal charges which

had culminated in final judgments of conviction." (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.)

7. Cause exists to impose discipline on Respondent's real estate broker's license pursuant to Code sections 490 and 10177, subdivision (b), because Respondent has been convicted of a crime that is substantially related to the qualifications, functions, and duties of a real estate broker, as set forth in Factual Findings 3 through 4, and Legal Conclusions 2 through 3.

8. Under Code section 10186.2, a real estate licensee shall report the filing of a felony complaint against him to the Bureau in writing within 30 days of the filing.

9. Respondent argues that the Bureau already knew about his conviction therefore that fact obviates his need to inform the Bureau of the filing of the felony complaint against him. Respondent misses the point. He has an affirmative duty to inform the Bureau of the filing of any felony complaint against him.

10. Cause exists to impose discipline on Respondent's real estate broker's license pursuant to Code section 10186.2, because Respondent failed to inform the Bureau that a felony complaint had been filed against him, as set forth in Factual Findings 7 through 11, and Legal Conclusion 8.

11. Although cause for discipline exists, it is necessary to determine whether Respondent has been sufficiently rehabilitated to warrant his continued licensure. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.)

12. The Bureau has established criteria for rehabilitation from a conviction of a crime to warrant continued licensure. The criteria, found at CCR, title 10, section 2912, are summarized as follows:

- Subdivision (a), passage of at least 2 years since the conviction or the underlying acts;
- Subdivision (b), restitution;
- Subdivision (c), expungement of the conviction;
- Subdivision (d), expungement of the requirement to register as a sex offender;
- Subdivision (e), completion of, or early discharge from, the criminal probation;
- Subdivision (f), abstinence from drugs or alcohol that contributed to the crime;
- Subdivision (g), payment of any criminal fines or penalties;
- Subdivision (h), correction of business practices causing injury;
- Subdivision (i), new and different social and business relationships;
- Subdivision (j), stability of family life;
- Subdivision (k), enrollment in or completion of educational or training courses;
- Subdivision (l), significant involvement in community, church or private programs for social betterment; and

Subdivision (m), change in attitude from the time of conviction to the present, evidenced by: testimony of the licensee and others, including family members, friends or others familiar with his previous conduct and subsequent attitudes and behavior patterns, or probation or parole officers or law enforcement officials; psychiatric or therapeutic evidence; and absence of subsequent convictions.

13. It has been less than one year since Respondent was convicted. It has been two years since Respondent committed the underlying act for which he was convicted. Respondent is up to date on the terms and conditions of his sentence. He is still on probation. Respondent is currently undergoing anger management counseling. He is involved in his church and a respected member of the real estate community.

14. The Real Estate Law and the disciplinary procedures are designed to protect the public. Clients rely upon real estate licensees' integrity to represent their interests. (*Ring v. Smith* (1970) 5 Cal.App.3d 197, 205; *Golde v. Fox* (1976) 98 Cal.App.3d 167, 177; *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.) Real estate brokers in particular, are charged with a fiduciary duty to their clients that require the utmost care, integrity, honesty and loyalty. Brokers often work unsupervised. In fact, brokers are charged with supervising other real estate professionals to ensure their compliance with the laws and regulations governing their real estate activities. There is a valid governmental purpose in limiting licensees of the Bureau to persons with the qualifications of honesty, truthfulness and good reputation. (*Riley v. Chambers*, (1919) 181 Cal. 589, 593-594.) Here, Respondent's misconduct was serious. Any threats of violence should not be tolerated. Respondent failed to acknowledge the wrongfulness of his actions, which is an essential step toward rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933.) He is still on probation. In this matter, an insufficient amount of time has passed for Respondent to demonstrate a record of the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) In weighing Respondent's wrongdoing, which appears to be an aberration, and considering Respondent's mitigation and rehabilitation, the public will be not be protected if he were allowed to retain his broker's license. Reducing his licensed status to that of a salesperson, who will have to be supervised by a broker is appropriate.

15. The Bureau is entitled to recover from Respondent its costs of investigation and prosecution of this matter in the sum of \$1,060.68 under the provisions of Code section 10106 by reason of Finding 17.

ORDER

1. The real estate broker's license number 01150413, and all licensing rights of Respondent Ray Dominguez are revoked provided, however, a restricted real estate salesperson's license shall be issued to Respondent pursuant to Business and Professions Code section 10156.5, if Respondent makes application therefor and pays to the Bureau 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 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 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, Regulations 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 date of issuance of the restricted license to Respondent.

3. With the application for license, or with the application for transfer to a new employing broker, Respondent shall submit a statement signed by the prospective employing real estate broker on a RE 552 (Rev. 4/88) approved by the Bureau of Real Estate which shall certify as follows:

(a) That the employing broker has read the Decision which is the basis for the issuance of 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.

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 187000, Sacramento, CA 95818-7000. 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 the suspension or revocation of that license.

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5. Respondent shall pay the Bureau its costs of investigation and prosecution of this action in the amount of \$1,060.68. Repayment of the costs shall be on such terms and conditions as Respondent and the Bureau or the Bureau's designee shall arrange, but 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 all such costs have been paid.

DATED: October 2, 2016

DocuSigned by:

gloria a. barrios

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GLORIA A. BARRIOS
Administrative Law Judge
Office of Administrative Hearings

RECEIVED
BUREAU OF REAL ESTATE

OCT 11 2016

ADJ. LEG.