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APR 27 2017

BUREAU OF REAL ESTATE

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BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	CalBRE No. H-40437 LA
)	
ROBERT DALE MACHEN,)	OAH No. 2016110563
)	
Respondent.)	

DECISION

The Proposed Decision dated March 21, 2017 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.

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 MAY 19 2017.

IT IS SO ORDERED 4/19/17

WAYNE S. BELL
REAL ESTATE COMMISSIONER

Daniel Sandri

By: DANIEL J. SANDRI
Chief Deputy Commissioner

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

In the Matter of the Accusation of

ROBERT DALE MACHEN,

Respondent.

Case No. H40437 LA

OAH No. 2016110563

PROPOSED DECISION

This matter came on regularly for hearing on March 7, 2017, at Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Veronica Kilpatrick (Complainant) was represented by Diane Lee, Counsel for the Bureau of Real Estate.

Robert Dale Machen (Respondent) was present and represented himself.

Oral and documentary evidence was received. The record was closed on the hearing date, and the matter was submitted for decision.

FACTUAL FINDINGS

1. Complainant brought the Accusation in her official capacity as a Supervising Special Investigator of the State of California.
2. Respondent was issued a license as a real estate salesperson by the then Department of Real Estate¹ on April 27, 1999. He was granted a real estate broker license on May 3, 2002. Respondent's broker license will expire on May 2, 2018, unless renewed.

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¹ The Department of Real Estate has since become the Bureau of Real Estate (Bureau) under the umbrella of the Department of Consumer Affairs.

3. Complainant established the truth of the allegations in paragraphs 3 and 5 of the Accusation. Those paragraphs are repeated verbatim below, and are incorporated as factual findings herein:

On or about July 15, 2015, the Colorado Real Estate Commission, in complaint no. 2014050462, revoked Respondent's real estate broker license and ordered Respondent to pay a \$16,500 fine, with \$1,100 due within three (3) months and \$15,400 stayed, in a Stipulation and Final Agency Order. As more fully set forth in this Stipulation and Final Agency Order, this discipline was based upon the following:

- a. Respondent demonstrated unworthiness or incompetency to act as a real estate broker by conducting business in such a manner as to endanger the interest of the public, in violation of Colorado Revised Statutes title 12, article 61, section 113(a)(n);
- b. Respondent failed to maintain possession, for future use or inspection by an authorized representative of the Director, for a period of four years, documents prescribed by the rules and regulations of the commission or to produce such documents or records upon reasonable request by the Commission or authorized representative of the Commission, in violation of Colorado Revised Statutes title 12, article 61, section 113(1)(i);
- c. Respondent disregarded or violated any provision of the Real Estate Broker License Law or Commissioner rule or regulations; violated a Stipulation and Final Agency Order, Cease and Desist Order, or other lawful Commission order; or aided and abetted a violation of any rule, Commission order, rule or regulation, or provision of this part 1 or part 8 of this article, in violation of Colorado Revised Statutes title 12, article 61, section 113(1)(k);
- d. Respondent failed to perform the terms of the written agreement made with a seller or landlord, in violation of Colorado Revised Statutes title 12, article 61, section 804(1)(a);

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- e. Respondent failed to disclose in writing to the party to be assisted that the broker is intending to establish a single agency relationship, in violation of Colorado Revised Statutes title 12, article 61, section 808(2)(b);
- f. Respondent did not have in effect a policy of errors and omissions insurance to cover all acts requiring a license, in violation of Commission Rule D-14; and estate while his license was inactive, suspended, revoked, or expired, in violation of Commissioner Rule E-44.
- g. Respondent performed acts that would constitute the brokering of real estate while his license was inactive, suspended, revoked, or expired, in violation of Commissioner Rule E-44. [¶] . . . [¶]

5.

As of April 19, 2016, Respondent has failed to report his Colorado real estate license discipline, as described in Paragraph 3, above, to the California Bureau of Real Estate.

4. On July 14, 2015, Respondent admitted the truth of each of the allegations set forth in paragraph 3 of the Accusation, by signing the Stipulation and Final Agency Order before the Colorado Real Estate Commission. (Exhibit 3, page 4.) Respondent negotiated the language of the allegations to which he admitted and succeeded in having certain allegations omitted before entering into the stipulation.

5. However, at the California administrative hearing, Respondent disavowed all of the allegations in the Colorado Commission's settlement agreement except for the fine, claiming there was no factual basis for the other allegations, and he claimed he was not guilty of any of the allegations except for inadvertently allowing his errors and omissions insurance policy to lapse for approximately four months. Respondent attributed the disciplinary action in Colorado to the investigators being ignorant of the HUD rules. He claimed he signed the stipulation in Colorado unaware of the possible ramifications, thinking it would "close the books" (Respondent's term) in Colorado since he did not intend to return there to practice real estate.

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6. At the California administrative hearing, Respondent testified to the following: The facts and circumstances underlying Respondent's license discipline in Colorado arose from a partnership he formed with a Colorado-licensed real estate broker to sell United States Department of Housing and Urban Development (HUD) homes in Colorado as he had been doing in California. Respondent worked with that broker several times selling between 40 and 50 HUD homes in Colorado without a problem and, at a time not disclosed by the evidence, he moved back to California. Sometime thereafter, the broker with whom Respondent had worked in Colorado attempted to sell a HUD home in Colorado, but the buyer was an investor and, therefore, the sale was not approved. The investor then filed a complaint against Respondent and the other broker with the Colorado Department of Regulatory Agencies (DORA). DORA found no wrongdoing in connection with that attempted transaction, but investigated further and found cause for discipline of Respondent's Colorado broker license. Rather than return to Colorado to contest the disciplinary action against him, Respondent entered into the agreement with the Colorado Real Estate Commission (Colorado Commission) according to which his Colorado real estate broker's license would be revoked, Respondent would pay a \$1,000 fine, and he would admit to the allegations contained in paragraph 3 of the Accusation as set forth in Factual Finding 3, above.

7. Respondent's testimony at the California administrative hearing that he was not guilty of any of the allegations made by the Colorado Commission was completely contrary to the admissions he made in Colorado to those same allegations. Accordingly, Respondent was not truthful either to the Colorado Commission or to the Bureau at the California administrative hearing.

8. Respondent operates a boutique real estate office in Temecula. In a career of approximately 18 years as a real estate salesperson or broker in California, he has handled approximately 700 real estate transactions without a complaint. He has never been disciplined by the Bureau.

9. Respondent has learned from his experience in Colorado. If faced with a similar situation today, he would not engage in multiple licensing, and he would not partner with another broker.

10. As of April 19, 2016, Respondent had failed to report his discipline in Colorado to the Bureau. He was unaware of the requirement that he report sister state discipline. Respondent does not contest that portion of the Accusation.

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11. Respondent has been married for 35 years. He is heavily involved in community activities. For example, he is the past-president of the Temecula Rotary Club and has served as its International Committee Chair. He has been named Rotarian of the Year and Rookie Rotarian of the Year, and he has been the recipient of Rotary's Humanitarian Award. As a Rotarian, Respondent has worked on international mission trips to Haiti and Mexico. In addition, he has been a volunteer with the Balloon and Wine festival for 30 years. Respondent is a Board Member of the Boojum Institute, a nonprofit experiential outdoor education for middle school and high school students. He is a mentor with Kids Hope, an organization serving at risk elementary school children, and he is a Board Member for the Old Town Temecula Christmas dinner, which provides free dinners on Christmas Day for over 1,700 families each year.

12. Complainant incurred investigation and enforcement costs totaling \$1,276.05 in connection with this action. Those costs are found to be reasonable.

LEGAL CONCLUSIONS

1. Cause exists to discipline the real estate broker's licenses and license rights of Respondent, Robert Dale Machen, pursuant to Business and Professions Code section 10177, subdivision (f), for license discipline imposed in a different state, as set forth in Findings 3, 4, 5, and 6.

2. Cause exists to discipline the real estate broker's licenses and license rights of Respondent, Robert Dale Machen, pursuant to Business and Professions Code section 10186.2, for failure to report real estate license discipline, as set forth in Findings 3, 4, 5, 6, and 10.

3. Cause exists to grant Complainant's request for reimbursement of the costs of investigation and enforcement pursuant to Business and Professions Code section 10106, as set forth in Factual Finding 12.

4. The Colorado Commission revoked Respondent's Colorado real estate broker license upon Respondent's admission of all of the alleged facts. Respondent then denied the allegations in the California disciplinary action against his real estate broker license. Respondent did not express remorse for wrongdoing in Colorado. The law does not require artificial acts of contrition when a respondent believes he or she has done nothing wrong. (*Calaway v. State Bar* (1986) 41 Cal.3d 743, 747-748; *Hall v. Committee of Bar Examiners* (1979) 25 Cal.3d 730, 744-745.) However, the problem here is not a lack of contrition, it is a lack of honesty. By his testimony, Respondent was necessarily untruthful either with the Colorado Commission or with the Bureau since he cannot have admitted the truth of the allegations in Colorado and denied them in California without having been dishonest to one of the two agencies.

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5. In *Golde v. Fox* (1979) 98 Cal.App.3d 167-169, the court stated:

The crime here, of course, does not relate to the technical or mechanical qualifications of a real estate licensee, but there is more to being a licensed professional than mere knowledge and ability. Honesty and integrity are deeply and daily involved in various aspects of the practice. [¶] . . . [¶]

A real estate broker often acts in a confidential and fiduciary capacity for his clientele. The term "honesty" as used in [Business and Professions Code] section 10152 is to be given the broadest possible meaning. (Citation.) The real estate profession has, over a period of years, excluded unfit persons and as a result thereof an appreciable amount of public trust and confidence has been built up. The public exposing themselves to a real estate licensee has reason to believe that the licensee must have demonstrated a degree of honesty and integrity in order to have obtained such a license.

6. Regardless of the basis for the license revocation in Colorado, cause exists to discipline Respondent's California license by virtue of the Colorado discipline provided Respondent was afforded due process in Colorado, and the acts resulting in the discipline "if done by a [California] real estate licensee, would be grounds for the suspension or revocation of a California real estate license." (Bus. & Prof. Code, §10177, subd. (f).) Those criteria have been satisfied.

7. Respondent admits he did not timely report the Colorado discipline to the Bureau. As a defense to the allegation, he asserts only that he was unaware of the requirement to do so.

8. Respondent has had a distinguished career as a real estate salesperson and broker in California since 1999, handling approximately 700 transactions and comporting himself within the real estate law, thereby not subjecting himself to discipline by the Bureau. Married for 35 years, he has a stable family life, and his community service over numerous years has been outstanding.

9. On balance, this case does not require outright license revocation. However, Respondent's dishonesty is troubling, especially in light of the fact that he holds a real estate broker license and is therefore not subject to supervision in his business activities. Such supervision is necessary in light of his untruthfulness to one of his licensing agencies. Accordingly, Respondent will be granted a properly-conditioned restricted real estate salesperson's license.

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ORDER

All licenses and licensing rights of Respondent, Robert Dale Machen, 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 therefor 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. 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.

2. 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.

3. 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 four years have elapsed from the effective date of this Decision.

4. 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 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.

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5. 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.

6. Respondent shall reimburse the Bureau its costs of investigation and enforcement in the sum of \$1,276.05 within 90 days of the effective date of this Decision. Respondent shall be permitted to pay the costs in a payment plan approved by the Bureau, with payments to be completed no later than three months prior to the end of the probation term.

Dated: March 21, 2017

DocuSigned by:
H. Stuart Waxman
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H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings