

FILED

OCT 09 2017

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of

REMAX PACIFICA CORPORATION;
and MICHAEL JOSEPH MALONE,

Respondents.

) CalBRE No. H-40654 LA
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) OAH No. 2017070177
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DECISION

The Proposed Decision dated September 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 applications for mortgage loan originator license endorsements are denied. The earliest date on which the applicants may reapply for licenses is one year from the effective date of this Decision. If and when application is again made for these licenses, all competent evidence of rehabilitation presented by the Respondents will be considered by the Real Estate Commissioner.

Pursuant to Government Code section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. 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

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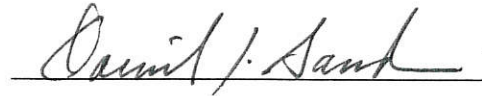
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Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on OCT 30 2017.

IT IS SO ORDERED 10/2/17.

WAYNE S BELL
REAL ESTATE COMMISSIONER

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

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 Application of:

REMAX PACIFICA CORPORATION;
AND MICHAEL JOSEPH MALONE,

Respondents.

Case No. H-40654 LA

OAH No. 2017070177

PROPOSED DECISION

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles on August 22, 2017.

Cheryl D. Keily, Staff Counsel, represented Complainant Chika Sunquist, Supervising Special Investigator of the State of California.

Respondent Michael Joseph Malone represented himself and Respondent Remax Pacifica Corporation.

Oral and documentary evidence was received at the hearing, and the matter was submitted on August 22, 2017.

Complainant brings this Statement of Issues to deny Respondents' applications for mortgage loan originator endorsements to their real estate broker licenses. Because Malone's license is still restricted, and has been disciplined because of violations of the Real Estate Law, the applications are denied.

FACTUAL FINDINGS

Jurisdiction and Background

1. Complainant issued this Statement of Issues solely in her official capacity.
2. Respondent Malone has held a restricted real estate broker license since March 1, 2006. It was suspended from March 18, 2010, and May 13, 2014. It was last renewed in October 2014 and expires October 27, 2018. Respondent Remax Pacifica has held a real

estate broker license since March 7, 2017, with Malone as restricted designated officer. The license expires March 6, 2021.

3. On September 7, 2016, Malone applied for an individual mortgage loan originator endorsement. On September 8, 2016, Malone applied for a company mortgage loan originator endorsement and control person loan originator endorsement for Remax Pacifica. The Bureau of Real Estate (Bureau) refused to grant any of the applications, and Respondents timely requested a hearing.

Criminal Convictions

4. On October 1, 1991, in the District Court of Oakland County, Michigan, case number 91SL006173, Malone was convicted of maliciously damaging another person's building in an amount less than \$100 (MCL § 750.380(b)), a misdemeanor. He broke a basement window during a domestic dispute with his girlfriend. He was fined \$100, assessed \$110 in costs, ordered to pay \$169 in restitution, and placed on 12 months of summary probation, conditions of which included staying away from the complaining witness.

5. On September 23, 1993,¹ in the Circuit Court for Oakland County, Michigan, case number 93-127462-FH, Malone was convicted on his no contest plea of resisting or obstructing an officer enforcing the law (MCL § 750.479), a misdemeanor. According to the police report, Malone was harassing his ex-girlfriend, attempted to break into her house, and fled from police when they arrived; they chased him down and arrested him. According to the January 30, 2017 Conviction Detail Report that Malone submitted to the Bureau (ex. 13), he "refuse[d] to be arrested for visiting a friend." He was ordered to pay \$580 in costs and \$75 in restitution, and placed on 12 months of supervised probation, conditions of which included attending a domestic violence program, maintaining mental health treatment as directed by the probation officer, and not contacting his ex-girlfriend.

Prior License Discipline

6. On January 5, 2006, in case number H-32395 LA, the Bureau (then called the Department of Real Estate) and Malone entered into a Stipulation and Waiver in which the Bureau denied Malone's application for a real estate broker license, but granted a restricted real estate broker license. Malone agreed that the Statement of Issues stated grounds for denying his license application: the two convictions described in Factual Findings 4 and 5 above, and Malone's failure to disclose either conviction in his application. The denial of the unrestricted license was effective February 7, 2006. The restricted license was issued March 1, 2006.

7. On May 12, 2008, Malone petitioned for removal of restrictions on his license. The real estate commissioner denied the petition on March 18, 2010, finding, "Respondent

¹ The Statement of Issues alleges a conviction date of September 29, 1994, which was actually the date set for delayed sentencing.

has failed to demonstrate to my satisfaction that Respondent has undergone sufficient rehabilitation to warrant removal of restrictions [.]” (Ex. 11.) His license remains restricted.

8. On September 10, 2010, in case number H-36329 LA, the Department of Real Estate suspended Malone’s restricted broker license indefinitely, until he completed a continuing education course on trust fund accounting and passed the Professional Responsibility Examination. The suspension resulted from a 2008 audit of Pacifica Luxury Properties, a mortgage loan brokerage for which Malone was the designated officer. The auditor concluded, among other things, that the brokerage trust account balance was \$17,259.60 less than the total trust fund liability during the audit period, trust funds were disbursed without written consent of the funds’ owners, trust funds were commingled with operating funds, trust fund records were inadequate, and an unlicensed person was a signatory on the trust account. The Accusation alleging cause for license discipline was filed October 28, 2009. The Stipulation and Agreement on which the suspension was based (ex. 12) recites, “In the interest of expedience and economy, Respondents choose not to contest these allegations, but to remain silent and understand that . . . these factual allegations, without being admitted or denied, will serve as a prima facie basis for the disciplinary action[.]”

9. The 2010 suspension ended May 13, 2014.

Mitigation, Aggravation and Rehabilitation

10. In his hearing testimony, Malone denied nearly all the violations on which the 2010 suspension was based, calling the trust fund deficiency “an accusation that was not proved,” and the finding of lack of accounting records “not true.”

11. Malone holds a license from the California Department of Insurance to act as an accident and health agent, casualty broker-agent, life-only agent and property broker-agent.

12. Malone worked for General Electric as a financial manager in 2011, and for Bank of America as a mortgage banker in 2013 and early 2014.

13. Malone has not used his broker license since 2014 because of “health issues.” On about two occasions since 2014 he has been consulted by Prudential about corporate relocations and has referred the work to other brokers.

14. The Internal Revenue Service has liens against Malone for more than \$20,000 in taxes owed for 2011 and 2012. Malone testified that the liens were “set up as uncollectable” because the IRS knows he is not working now.

15. Malone contributes clothing and other articles to People Assisting the Homeless in Los Angeles. In a letter Malone submitted as part exhibit D, the organization’s case retention manager said Malone was “great motivational speaker for our population.”

16. Malone introduced four other reference letters describing him as a good broker or friend. None of them addressed the violations found in the 2008 audit; this was particularly notable in the letter from Malone's son, who was the Pacifica Luxury Properties office manager during the audit period.

LEGAL CONCLUSIONS

1. Business and Professions Code section 10166.5, subdivision (c)² prohibits the Real Estate Commissioner from issuing a mortgage loan originator endorsement unless the applicant "has demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently[.]" This provision imposes on the applicant the burden of showing fitness for a mortgage loan originator endorsement, just as the law generally imposes the burden of showing fitness on a license applicant. (*Martin v. Alcoholic Beverage Control Appeals Bd. of Cal.* (1959) 52 Cal.2d 259.)

2. Real estate license discipline, such as Malone's 2010 license suspension (Factual Finding 8), may be considered in considering whether an applicant has demonstrated financial responsibility, character, and general fitness for a mortgage loan originator endorsement, although under CCR section 2945.2, subdivision (a), discipline based on "a real estate license discipline action filed by the Department prior to January 1, 2010 . . . shall not be the sole basis to deny the issuance of a mortgage loan originator license endorsement." Malone's 2010 suspension was based on an accusation brought in 2009.³ (Factual Finding 8.)

3. In considering whether an applicant has demonstrated financial responsibility, character, and general fitness, "any matter, personal or professional, that may impact upon an applicant's propensity to operate honestly, fairly, and efficiently when engaging in the fiduciary role of a mortgage loan originator" is relevant. (CCR § 2758.3.)

4. There are ample reasons to doubt that Malone would be a fit mortgage loan originator. He has never had an unrestricted license. When he petitioned for removal of the restriction on his license in 2010, the Commissioner found insufficient rehabilitation to warrant removing the restriction (Factual Finding 7), and Malone has not acted as a licensee in the seven years since, including a four-year suspension. He denies culpability for most of the violations that led to the suspension, and denies culpability for his 1993 conviction (Factual Finding 5), which he failed to disclose on his original broker license application. He has substantial outstanding tax liens. (Factual Finding 14.)

² "Section" or "§" will refer to the Business and Professions Code, unless preceded by "CCR," which denotes references to title 10 of the California Code of Regulations.

³ CCR 2945.2, subdivision (b), cited in Paragraph 11 of the Statement of Issues, applies only to license discipline based on actions brought *after* January 1, 2010, and is therefore inapplicable here.

5. Mortgage loan origination requires rigorous adherence to required procedure and scrupulous accuracy in documentation. Malone's previous license discipline indicated a lax attitude about both of those things, and his testimony at hearing about that discipline indicates that his attitude has not changed.

ORDER

The applications of Michael Joseph Malone and Remax Pacifica Corporation for mortgage loan originator endorsements are denied.

DATED: September 21, 2017

DocuSigned by:
Howard Posner
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HOWARD POSNER
Administrative Law Judge
Office of Administrative Hearings