

FILED

JAN 17 2018

BUREAU OF REAL ESTATE

By *Al Delois*

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	CalBRE No. H-40715 LA
)	
RENE E BAUTISTA,)	OAH No. 2017081018
)	
Respondent.)	

DECISION

The Proposed Decision dated November 29, 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.

Pursuant to Section 11517 (C) (2) of the Government Code, the following correction is made:

Proposed Decision, Page 1, Paragraph 2, Line 1: "Peele" shall read "Peel".

The Decision suspends or revokes one or more real estate licenses.

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.

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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 2/6/18.

IT IS SO ORDERED 1/4/18

WAYNE S. BELL
REAL ESTATE COMMISSIONER



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:

RENE EXEQUIEL BAUTISTA,

Respondent.

Case No. H-40715 LA

OAH No. 2017081018

PROPOSED DECISION

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles on October 31, 2017.

James R. Peely, Staff Counsel, represented Complainant Veronica Kilpatrick, Supervising Special Investigator of the State of California.

Attorney Craig B. Forry represented Respondent Rene Exequiel Bautista.

Oral and documentary evidence was received at the hearing, and the matter was submitted on October 31, 2017.

Complainant brings this Accusation to revoke Respondent's real estate broker license. Because Respondent has a recent conviction for an offense involving dishonesty and fraud, and has not demonstrated rehabilitation, the license is revoked.

Jurisdiction and Background

1. Complainant issued this Accusation in her official capacity.
2. Respondent became licensed as a real estate salesperson on December 28, 1998. He became licensed as a real estate broker on July 6, 2007. The license expires July 5, 2019. On July 18, 2017, Complainant brought this Accusation to revoke his license, and Respondent timely requested a hearing.

Criminal Conviction

3. On November 7, 2016, in the United States District Court for the Central District of California, case number CR 16 00108 BRO, Respondent was convicted on his guilty plea of conspiracy to commit mail fraud (18 U.S.C. § 371), a felony. He was placed

on three years of supervised release, including six months of home detention that allowed him to go to work, and ordered to pay \$71,360 in restitution. He was also ordered to participate in mental health treatment.

Mitigation, Aggravation and Rehabilitation

4. Respondent was involved in a fraudulent scheme with Luis Rodriguez, who was the brother of Lionel Rodriguez, a member of the church Respondent attended. Luis Rodriguez was part owner of CM Laundry, and his agreement with the other owners prohibited him from participating in businesses that performed services for CM Laundry. In a Plea Agreement, Respondent and the United States Attorney's Office stipulated to this statement of the basic facts of the conspiracy:

CM Laundry was an industrial launderer . . . that provided finishing services for . . . a manufacturer of high-end designer jeans. [Respondent] owned Sam & Ken Services, Inc.¹ . . . through which he conducted business unrelated to industrial supplies.

[From March 2012 to September 2013, Respondent] conspired with [Rodriguez] to submit to CM Laundry fraudulent invoices that Rodriguez . . . would cause CM Laundry to pay[.]

At Rodriguez's behest, [Respondent] established K&R Industrial supplies as a fictitious business name . . . for Sam & Ken Services, Inc. Rodriguez then submitted K&R Supplies invoices to CM Laundry that were fraudulent in at least two ways. First, the invoices included fictitious and inflated charges. Second, the invoices purported to be for products that were delivered by K&R Industrial Supplies. Rodriguez billed CM Laundry using invoices from K&R Industrial Supplies in order to conceal Rodriguez's role in the business transactions underlying the invoices, which role was prohibited by Rodriguez's employment agreement with CM Laundry.

After CM Laundry mailed a check to [Respondent] as payment for a K&R Industrial Supplies invoice, [Respondent] gave Rodriguez approximately 80% of the pre-tax total listed on each invoice, remitted the tax payment to the state of California, and kept the remaining approximately 10% for himself.

In furtherance of the conspiracy, between March 2012 and September 2013, Rodriguez created K&R Industrial

¹ Sam & Ken Services, Inc. held a corporate real estate broker license at the time. It is not clear what business it conducted.

Supplies invoices that billed CM Laundry for approximately \$639,939. During this same period, K&R Industrial Supplies transferred approximately \$493,617 of the \$639,939 that it received from CM Laundry [to another company Rodriguez owned], and approximately \$24,292 to Rodriguez himself and related parties. Of the \$122,030 that was not transferred, [Respondent] retained approximately \$71,360 and transferred the remaining approximately \$50,670, which had been remitted by CM Laundry to pay sales tax, to the State of California.²

[Respondent] believed that there was a high probability that the K&R Industrial Supplies invoices that Rodriguez was submitting to CM Laundry were fraudulent and deliberately avoided learning that, in truth, these invoices were in fact fraudulent. (Ex. 3, pp. 10-12)

5. In the Plea Agreement, the amount by which the victims were defrauded was fixed at \$430,112, but Respondent was apportioned liability only for the \$71,360 he actually received. (*Id.*, pp. 8-9.)

6. Although Respondent was the owner of the company generating the fraudulent invoices, he took no active part in its management. He testified at hearing that his only agreement with Rodriguez was to engage in conduct that he thought was legitimate; he developed doubts about the invoices his company was generating, and kept asking Rodriguez questions about them, which is a different story from the stipulated facts in the Plea Agreement quoted above, in which Respondent simply closed his eyes to the fraud going on around him.

7. Respondent testified that his wrongdoing consisted of trusting the wrong person, by which he seems to have meant both Luis Rodriguez and Lionel Rodriguez. He trusted Lionel because Respondent was a "religious fanatic" who would believe in anyone who was a fellow congregant. Respondent did two loan modifications for Lionel. Respondent testified that he corrected his business practices by not trusting people. He also testified that the court made him go to counseling because he was "very, very upset" about the mistake he made in trusting Rodriguez, and the purpose of the counseling was to "learn to forgive myself." Respondent's testimony on this point is consistent with an evident difficulty accepting responsibility for his actions.

² At hearing, Respondent argued that his forwarding the sales tax funds to the state showed his fundamental honesty. But Respondent was involved in a conspiracy to defraud Rodriguez's partners, not the state of California, and paying taxes was essential to making the fraudulent venture appear legitimate, which in turn was necessary to keep it operating.

8. Respondent took out a second mortgage on his home and paid the \$71,360 in restitution in August 2017, about two months before the hearing in this matter. He remains on supervised probation until November 2019.

9. Respondent is 45 years old. He was born in Guatemala, and came to the United States in 1989. He became a United States citizen in 1998. He is married with an 18-year-old son and 13-year-old daughter. He has no history of license discipline and no other convictions. He testified that he has spoken to his church's mentor class about his success in real estate.

10. Respondent introduced no evidence other than his own testimony.

Costs

11. Complainant introduced evidence that the Bureau incurred \$1,008.60 in investigation costs, all but about \$60 of which consisted of 15.3 hours of investigator's time at \$62 per hour, and also introduced evidence that it incurred enforcement costs of \$178, consisting of two hours of attorney James R. Peel's time at \$89 per hour. All these costs are reasonable.

LEGAL CONCLUSIONS

1. There is cause to revoke or suspend Respondent's broker license under Business and Professions Code sections 490 and 10177, subdivision (b),³ as paragraph 6 of the Accusation alleges. Section 490, subdivision (a), allows a board to revoke a license if 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." Section 10177, subdivision (b), which applies specifically to the Bureau, similarly allows it to revoke a license if the licensee has been convicted of "a crime substantially related to the qualifications, functions, or duties" of a real estate licensee. Mail fraud (Factual Finding 3) is substantially related because it is an unlawful act "with the intent of conferring a financial or economic benefit upon the perpetrator" (CCR § 2910, subd. (a)(8)), because it involves "fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person" (CCR § 2910, subd. (a)(1)), and because it involves "fraud, deceit, falsehood or misrepresentation to achieve an end" (CCR § 2910, subd. (a)(4)).

2. Respondent has the burden of showing rehabilitation. (*Martin v. Alcoholic Beverage Control Appeals Board* (1959) 52 Cal.2d 259.) He meets few of the applicable criteria of rehabilitation set out in CCR section 2912. While he has paid restitution (CCR § 2912, subd. (b); Factual Finding 8), he does not meet other rehabilitation criteria:

³ Further references to section or "§" are to the Business and Professions Code, unless preceded by "CCR," which refers to the title 10 of the California Code of Regulations.

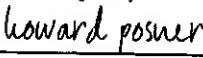
- a. Two years have not passed since his conviction. (CCR § 2912, subd. (a); Factual Finding 3.)
 - b. He is still on probation (CCR § 2912, subd. (e); Factual Finding 8.)
 - c. He has not shown significant involvement in programs designed to provide social benefits or to ameliorate social problems. (CCR § 2912, subd. (l).)
 - d. He has not shown enrollment in formal education or vocational training courses for economic self-improvement. (CCR § 2912, subd. (k).)
 - e. He has not shown a change in attitude from that which existed at the time of the crimes. (CCR § 2912, subd. (m).) His testimony was replete with references to his misplaced trust in the Rodriguez brothers, making him a victim rather than a co-conspirator. (Factual Finding 4.)
3. The greatest factor in mitigation is Respondent's 19 years as a licensee, but he introduced no evidence of the extent of his activity as a licensee, and no evidence that any person has faith in his integrity or competence. (Factual Finding 10.).
 4. Licensing statutes are meant to protect the public. (*Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1016.) The public relies on real estate brokers to behave with integrity in their dealings with other people's property. Respondent participated in a protracted fraudulent scheme. The evidence indicates that Respondent's continued licensure would be a threat to the public.
 5. As paragraph 6 of the Accusation alleges, Complainant is entitled, under section 10106, to have Respondent pay reasonable costs of investigation and enforcement. Complainant's investigation and enforcement costs, totaling \$1,186.60, are reasonable (Factual Finding 11) and are awarded.

ORDER

All licenses and licensing rights of Respondent Rene Exequiel Bautista under the Real Estate Law are revoked.

Respondent shall pay Complainant investigation and enforcement costs of \$1,186.60.

DATED: November 29, 2017

DocuSigned by:

HOWARD POSNER
Administrative Law Judge
Office of Administrative Hearings