

1 Memorandum of Points and Authorities on Issue of Statute of Limitations was timely received
2 and marked as Exhibit D. Respondent also submitted a signed copy of Exhibit C, which was
3 admitted into evidence as administrative hearsay.

4 The record was closed and the matter was submitted for decision on March 9,
5 2018.

6 On March 20, 2018, the ALJ submitted a Proposed Decision which I declined to
7 adopt as my Decision herein.

8 Pursuant to Section 11517(c) of the Government Code of the State of California,
9 Respondent and Respondent's attorney were served with notice of my determination to not adopt
10 the Proposed Decision of the ALJ along with a copy of said Proposed Decision. On April 30,
11 2018, Respondent was notified that I would decide the case upon the record, the transcript of the
12 proceedings held on February 22, 2018, and upon any written argument offered by Respondent
13 and Complainant.

14 On May 17, 2018, Respondent submitted a letter in connection with the non-
15 adoption of the ALJ's proposed decision.

16 On June 27, 2018, Respondent and Respondent's attorney were notified that the
17 Department had received the transcript of the proceedings and that any written argument should
18 be submitted within fifteen days from the date of said letter.

19 On July 16, 2018, Respondent submitted an additional and supplemental letter to
20 Respondent's letter of May 17, 2018. Respondent's letters of May 17, 2018, and July 16, 2018,
21 were both treated as Respondent's argument for my consideration.

22 On July 25, 2018, argument was submitted on behalf of Complainant.

23 I have given careful consideration to the record in this case including the transcript
24 of the proceedings of February 22, 2018. I have also considered the arguments submitted on behalf
25 of Respondent on May 17, 2018, and July 16, 2018, and the argument submitted by Complainant
26 on July 25, 2018.

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1 that case has placed a significant number of statutes and regulations in question,
2 resulting in potential harm to the consumers of California from licensees who
3 have been convicted of crimes. Therefore, the Legislature finds and declares
4 that this section establishes an independent basis for a board to impose
5 discipline upon a licensee, and that the amendments to this section made by
6 Chapter 33 of the Statutes of 2008 do not constitute a change to, but rather are
7 declaratory of, existing law.”

8 3. Code section 10177 sets forth the grounds upon which the Department may
9 suspend or revoke the license of a real estate licensee. Section 10177, subdivision (b), is the
10 applicable ground herein. Code section 10177, in pertinent part, provides as follows:
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12 “The commissioner may suspend or revoke the license of a real
13 estate licensee, delay the renewal of a license of a real estate licensee, or deny the
14 issuance of a license to an applicant, who has done any of the following, or may
15 suspend or revoke the license of a corporation, delay the renewal of a license of a
16 corporation, or deny the issuance of a license to a corporation, if an officer,
17 director, or person owning or controlling 10 percent or more of the corporation’s
18 stock has done any of the following:

19 (b) (1) Entered a plea of guilty or nolo contendere to, or been
20 found guilty of, or been convicted of, a felony, or a crime substantially related to
21 the qualifications, functions, or duties of a real estate licensee, and the time for
22 appeal has elapsed or the judgment of conviction has been affirmed on appeal,
23 irrespective of an order granting probation following that conviction, suspending
24 the imposition of sentence, or of a subsequent order under Section 1203.4 of the
25 Penal Code allowing that licensee to withdraw his or her plea of guilty and to
26 enter a plea of not guilty, or dismissing the accusation or information.

27 (2) Notwithstanding paragraph (1), and with the recognition
that sentencing may not occur for months or years following the entry of a guilty
plea, the commissioner may suspend the license of a real estate licensee upon the
entry by the licensee of a guilty plea to any of the crimes described in paragraph
(1). If the guilty plea is withdrawn, the suspension shall be rescinded and the
license reinstated to its status prior to the suspension. The bureau shall notify a
person whose license is subject to suspension pursuant to this paragraph of his or
her right to have the issue of the suspension heard in accordance with Section
10100.”

4. Respondent asserted that the Complainant should have brought the
accusation within three years of Respondent’s entering his plea of guilty on August 21, 2014.

5. Complainant contends that the time for appeal does not elapse until the
sentence is imposed.

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6. Respondent was sentenced on December 2, 2014.

7. The Department's Accusation was filed on November 29, 2017.

8. Although Respondent entered a plea of guilty on August 21, 2014, Respondent was not convicted and sentenced until December 2, 2014. At that time the court docketed a Judgment & Probation/Commitment Order in the criminal case. [Exhibit 3, pages 30-31]. As such, there was no conviction until December 2, 2014. Thus, under the statutes cited above the statute of limitations began to run on December 2, 2014, and the Department had three years thereafter to file an accusation.

9. Respondent's conviction is substantially related to the qualifications, functions, or duties of a real estate licensee pursuant to Title 10, Chapter 6 of the California Code of Regulations ("Regulations"), section 2910, subdivision (a)(2) ([c]ounterfeiting, forging or altering an instrument or the uttering of a false statment), and subdivision (a)(7) ([w]illfully violating or filing to comply with a statutory requirement that a license, permit or other entitlement be obtained from a duly constituted public authority before engaging in a business or course of conduct).

10. Cause exists to suspend or revoke Respondent's real estate salesperson license under Code sections 490, subdivision (a) and 10177, subdivision (b), for conviction of a crime that is substantially related to the qualifications, functions or duties of a real estate licensee.

11. The Department has established criteria for rehabilitation to evaluate the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee.

1 12. Section 2912 of the Regulations sets forth said criteria as follows:

2 (a) The time that has elapsed since commission of the act(s) or offense(s):

3 (1) The passage of less than two years after the most recent criminal
4 conviction or act of the licensee that is a cause of action in the
5 Department's Accusation against the licensee is inadequate to
6 demonstrate rehabilitation.

7 (2) Notwithstanding subdivision (a)(1), above, the two year period may be
8 increased based upon consideration of the following:

9 (A) The nature and severity of the crime(s) and/or act(s) committed
10 by the licensee.

11 (B) The licensee's history of criminal convictions and/or license
12 discipline that are "substantially related" to the qualifications,
13 functions, or duties of a real estate licensee.

14 (b) Restitution to any person who has suffered monetary losses through
15 "substantially related" acts or omissions of the licensee, or escheat to the State of these monies or
16 other properties if the victim(s) cannot be located.

17 (c) Expungement of the conviction(s) which culminated in the administrative
18 proceeding to take disciplinary action.

19 (d) Expungement or discontinuance of a requirement of registration pursuant to
20 the provisions of Section 290 of the Penal Code.

21 (e) Successful completion or early discharge from probation or parole.

22 (f) Abstinence from the use of controlled substances and/or alcohol for not less
23 than two years if the criminal conviction was attributable in part to the use of a controlled
24 substance and/or alcohol.
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1 (g) Payment of any fine imposed in connection with the criminal conviction that
2 is the basis for revocation or suspension of the license.

3 (h) Correction of business practices responsible in some degree for the crime or
4 crimes of which the licensee was convicted.

5 (i) New and different social and business relationships from those which existed
6 at the time of the commission of the acts that led to the criminal conviction or convictions in
7 question.

8 (j) Stability of family life and fulfillment of parental and familial responsibilities
9 subsequent to the criminal conviction.

10 (k) Completion of, or sustained enrollment in, formal educational or vocational
11 training courses for economic self-improvement.

12 (l) Significant and conscientious involvement in community, church or privately-
13 sponsored programs designed to provide social benefits or to ameliorate social problems.

14 (m) Change in attitude from that which existed at the time of the commission of
15 the criminal acts in question as evidenced by any or all of the following:

16 (1) Testimony and/or other evidence of rehabilitation submitted by the
17 licensee.

18 (2) Evidence from family members, friends or other persons familiar with
19 the licensee's previous conduct and with subsequent attitudes and behavioral patterns.

20 (3) Evidence from probation or parole officers or law enforcement
21 officials competent to testify as to applicant's social adjustments.

22 (4) Evidence from psychiatrists, clinical psychologists, sociologists or
23 other persons competent to testify with regard to neuropsychiatric or emotional disturbances.
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1 (5) Absence of subsequent felony or misdemeanor convictions that are
2 reflective of an inability to conform to societal rules when considered in light of the conduct in
3 question.

4 13. The *Factors in Rehabilitation*, Factual Findings 6 through 9 in the ALJ's
5 Proposed Decision, pages 3 and 4, dated March 20, 2018, are hereby adopted as part of this
6 Decision.

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8 14. The disciplinary procedures of the Real Estate Law are intended to protect
9 the public in its dealings with real estate licensees. (Code section 10050; *Handeland v. Dept. of*
10 *Real Estate* (1976) 58 Cal.App.3d 513). Pursuant to Code section 10177, the degree of
11 discipline is a matter that is within the discretion of the Real Estate Commissioner. Given
12 Respondent's substantially related conviction, restriction of Respondent's real estate salesperson
13 license is appropriate.

14 ORDER

15 WHEREFORE, THE FOLLOWING ORDER is hereby made:

16 All licenses and licensing rights of Respondent KWONG WA CHEUNG under
17 the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license
18 shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code
19 ("Code") if Respondent makes application therefor and pays to the Department of Real Estate the
20 appropriate fee for the restricted license within 90 days from the effective date of this Decision.

21 The restricted license issued to Respondent shall be subject to all of the provisions of Section
22 10156.7 of the Code and the following limitations, conditions and restrictions imposed under
23 authority of Section 10156.6 of that Code:

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26 1. The restricted license issued to Respondent may be suspended prior to hearing
27 by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of

1 nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a
2 real estate licensee.

3 2. The restricted license issued to Respondent may be suspended prior to hearing
4 by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that
5 Respondent has violated provisions of the California Real Estate Law, the subdivided Lands
6 Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted
7 license.

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9 3. Respondent shall not be eligible to apply for the issuance of an unrestricted
10 real estate license nor for the removal of any of the conditions, limitations or restrictions of a
11 restricted license until two (2) years have elapsed from the effective date of this Decision.

12 4. Respondent shall, within nine months from the effective date of this Decision,
13 present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the
14 most recent issuance of an original or renewal real estate license, taken and successfully
15 completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate
16 Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the
17 Commissioner may order the suspension of the restricted license until the Respondent presents
18 such evidence. The Commissioner shall afford Respondent the opportunity for a hearing
19 pursuant to the Administrative Procedure Act to present such evidence.

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21 5. Respondent shall submit with any application for license under an employing
22 broker, or any application for transfer to a new employing broker, a statement signed by the
23 prospective employing real estate broker on a form approved by the Department of Real Estate
24 which shall certify:

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26 (a) That the employing broker has read the Decision of the Commissioner which
27 granted the right to a restricted license; and

1 (b) That the employing broker will exercise close supervision over the
2 performance by the restricted licensee relating to activities for which a real estate license is
3 required.

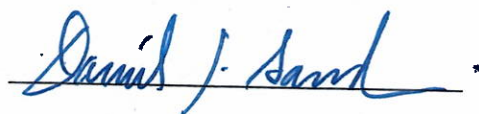
4 6. Respondent shall notify the Commissioner in writing within 72 hours of any
5 arrest by sending a certified letter to the Commissioner at Department of Real Estate, Post Office
6 Box 137013, Sacramento, CA 95813-7013. The letter shall set forth the date of Respondent's
7 arrest, the crime for which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

11 Pursuant to Government Code section 11521, the Department of Real Estate may
12 order reconsideration of this Decision on petition of any party. The Department's power to order
13 reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the
14 effective date of this Decision, whichever occurs first. The right to reinstatement of a revoked
15 real estate license or to the reduction of a penalty is controlled by section 11522 of the
16 Government Code. A copy of sections 11521 and 11522 and a copy of the Commissioner's
17 Criteria of Rehabilitation are attached hereto for the information of Respondent.

18 This Decision shall become effective at 12 o'clock noon on Sept. 19, 2018

19 IT IS SO ORDERED August 27, 2018.

20 DANIEL J. SANDRI
21 ACTING REAL ESTATE COMMISSIONER

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PCAG

FILED

APR 30 2018

BUREAU OF REAL ESTATE

By CD Silvio

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BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	CalBRE No. H-40873 LA
)	
KWONG WA CHEUNG,)	OAH No. 2017121045
)	
Respondent.)	

NOTICE

TO: KWONG WA CHEUNG, Respondent, and JOHN DARRYL ROBERTSON , his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated March 20, 2018, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated March 20, 2018, is attached hereto for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on Thursday, February 22, 2018, and any written argument hereafter submitted on behalf of respondent and complainant.

Written argument of respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of Thursday, February 22, 2018, at the Los Angeles office of the Bureau of Real Estate unless an extension of the time is granted for good

1 cause shown.

2 Written argument of complainant to be considered by me must be submitted within
3 15 days after receipt of the argument of respondent at the Los Angeles Office of the Bureau of Real
4 Estate unless an extension of the time is granted for good cause shown.

5 DATED: April 26, 2018.

6 WAYNE S. BELL
7 REAL ESTATE COMMISSIONER

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9 By 
10 DANIEL J. SANDRI
11 Chief Deputy Commissioner

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BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

KWONG WA CHEUNG,

Respondent.

Case No. H-40873 LA

OAH No. 2017121045

PROPOSED DECISION

This matter came before Nana Chin, Administrative Law Judge (ALJ), Office of Administrative Hearings, in Los Angeles, California on February 22, 2018.

Maria Suarez (Complainant), Supervising Special Investigator, was represented by Diane Lee, Counsel for the Bureau of Real Estate (Bureau). Kwong Wa Cheung (Respondent) was present and represented by John D. Robertson, Attorney at Law.

The record was left open until March 9, 2018, to allow the parties to submit briefing and for Respondent to submit a signed copy of the letter marked as Exhibit C. Complainant's Brief re: Beginning of Statute of Limitations Period was timely received and marked as Exhibit 6. Respondent's Memorandum of Points and Authorities on Issue of Statute of Limitations was timely received and marked as Exhibit D. Respondent also submitted a signed copy of Exhibit C, which was admitted into evidence as administrative hearsay.¹

The record was closed and the matter was submitted for decision on March 9, 2018.

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¹ The term "administrative hearsay" is a shorthand reference to the provisions of Government Code section 11513, subdivision (d), to the effect that hearsay evidence that is objected to, and is not otherwise admissible, may be used to supplement or explain other evidence but may not, by itself, support a finding. It may be combined with other evidence to provide substantial evidence sufficient to support a finding. (*Komizu v. Gourley* (2002) 103 Cal.App.4th 1001.)

FACTUAL FINDINGS

Parties and Jurisdiction

1. Respondent is presently licensed as a real estate salesperson under the Real Estate Law (Part 1 of Division of the Business and Professions Code²). His license is scheduled to expire on October 25, 2021, unless renewed.

2. Complainant filed the Accusation in her official capacity as a Supervising Special Investigator for the Bureau on November 22, 2017. Respondent filed a timely Notice of Defense and this hearing ensued.

Respondent's Conviction

3a. On August 21, 2014, in the United States District Court for the Central District of California, Respondent entered a plea of guilty to violating Title 16, United State Code, Section 3372, subdivision (d)(2) and 3373, subdivision (d)(3) (false labeling of wildlife in foreign commerce), a felony. On December 2, 2014, Respondent was sentenced to two months in the custody of the Bureau of Prisons, followed by supervised release for two years, with certain conditions, including two months in a residential re-entry center, 500 hours of community service and the payment of assessments, fines and fees.

3b. Respondent was released from the custody of the Bureau of Prisons on April 29, 2015, and completed his supervision term on April 28, 2017.

4a. The facts underlying the conviction arise from Respondent's August 13, 2013, attempt to mail three packages containing approximately 30 turtles to Hong Kong.

4b. At hearing, Respondent testified that he had mailed the packages as a favor for a friend, a real estate agent in Hong Kong. Respondent met "Angus" through a mutual friend and maintained the connection with Angus hoping that Angus would refer Hong Kong clients looking to buy property in the United States. One day, during a telephone conversation, Angus told Respondent that he had purchased turtles from Florida for an individual in Asia and asked Respondent to repackaged the turtles and ship them to him in Hong Kong. Respondent admitted that, at the time he made the request, Angus did make him aware that it was illegal to ship the turtles out of the country without a license. Despite this, Respondent agreed to ship the turtles.

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² All further statutory references are to the Business and Professions Code (Code) unless otherwise noted.

4c. On August 13, 2013, Respondent received the turtles and packed them into three boxes, which he took to the United States Post Office. Respondent then filled out the shipping labels and customs forms for the packages using a false name and address and indicated that the packages contained toys.

Substantial Relationship

5a. A real estate licensee's criminal conviction can serve as a basis for discipline of his license only if the underlying criminal conduct is substantially related to the qualifications, functions, or duties of a real estate licensee. (§§ 490, subd. (a), 10177, subd. (b).) California Code of Regulations, title 10 (Regulation), section 2910, subdivision (a), identifies those crimes which are substantially related to the duties of a licensee. Included among these crimes are crimes involving "[c]ounterfeiting, forging or altering of an instrument or the uttering of a false statement." (§ 2910, subd. (a)(2)) and "[w]illfully violating or failing to comply with a statutory requirement that a license, permit or other entitlement be obtained from a duly constituted public authority before engaging in a business or course of conduct." (§ 2910, subd. (a)(2))

5b. Respondent's 2014 conviction is a substantially related conviction in that Respondent knew at the time he was shipping the turtles out of the country that he was not permitted to do so without a license and, further, Respondent filled out shipping and customs labels with false information in order to accomplish that goal.

Factors in Rehabilitation

6. Respondent accepted responsibility for his crime and expressed remorse for his actions and the effect it has had on his family. Respondent is currently married. Both his mother who is disabled and his father-in-law live with him and his wife.

7a. Respondent began working to support his family after graduating from high school. When his parents retired, he became the main financial support and worked in the cell phone business while attending classes to become a real estate agent. Respondent was issued his real estate salesperson license on October 26, 2009. After receiving his license, Respondent continued to work in the cell phone business while working part-time as a real estate salesperson.

7b. After Respondent was released from custody, he maintained his employment at both the cell phone store and as a real estate salesperson. Respondent completed his community service hours at a local animal shelter by going by to the shelter before and after his work hours. Respondent's probation officer, Lisa Sandoval, wrote a letter on Respondent's behalf, noting that Respondent had completed all the conditions of supervision as required by the court while remaining gainfully employed throughout his supervision term. (Exhibit B.)

8. Respondent's real estate broker, Kris Tseng, testified on Respondent's behalf. Mr. Tseng knew Respondent as a child and became reacquainted with him when he happened to go to Respondent's cell phone store to purchase some accessories. Shortly after Respondent became licensed, Mr. Tseng hired Respondent to work for him on a part-time basis. Mr. Tseng believes Respondent to be an honest, sincere and hardworking individual. Even though he is aware of Respondent's conviction, Mr. Tseng has no reservations about Respondent continuing to work for him as a real estate salesperson.

9. Respondent also submitted a character reference letter from Florence Lew, a co-worker and personal friend. Ms. Lew describes Respondent as someone who puts other's interests before his own and states that she has "never met someone with so much integrity. . ." (Exhibit C.)

Cost Recovery

10. Complainant requested recovery of the costs of investigation and enforcement totaling \$716.10. In support of the request for costs, Complainant submitted a certified statement of investigation costs showing investigative costs of \$271.10 and a declaration regarding enforcement costs in the amount of \$445.

LEGAL CONCLUSIONS

Standard of Proof

1. The standard of proof in an administrative hearing to revoke a professional license is "clear and convincing proof to a reasonable certainty." (*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." (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487; citations omitted.)

Statutory Authority

2. Code section 490, provides that

(a) . . . a board 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."

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

3. Similarly, Code section 10177, states, in pertinent part:

The commissioner may suspend or revoke the license of a real estate licensee . . . who has done any of the following . . .

[¶] . . . [¶]

(b)(1) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

(2) Notwithstanding paragraph (1), and with the recognition that sentencing may not occur for months or years following the entry of a guilty plea, the commissioner may suspend the license of a real estate licensee upon the entry by the licensee of a guilty plea to any of the crimes described in paragraph (1). If the guilty plea is withdrawn, the suspension shall be rescinded and the license reinstated to its status prior to the suspension. The bureau shall notify a person whose license is subject to suspension pursuant to this paragraph of his or her right to have the issue of the suspension heard in accordance with Section 10100.

4. The Real Estate Commissioner's authority, however, is limited by Code section 10101, which provides that "[t]he accusation provided for by Section 11503 of the Government Code shall be filed not later than three years from the occurrence of the alleged grounds for disciplinary action . . ."

Statute of Limitations

5. In this case, Complainant filed an accusation to discipline Respondent's license on the grounds that Respondent was convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee. Complainant asserts that Respondent's conviction occurred on December 2, 2014, the date he was sentenced. Complainant, in its brief, cites to a number of California appellate court cases, asserting that they stand for the proposition that convictions, for purposes of imposing a civil penalty, do not occur until an individual is sentenced. (Exhibit 6.) Complainant concludes that the accusation "requires that the conviction include a sentence" and that the accusation was therefore filed within the applicable statute of limitations period. (Exhibit 6.)

6. Respondent, through counsel, asserts that the cases cited by Complainant are inapplicable to the instant matter and that the explicit language of Code section 490, subdivision (c), which states that a conviction for purposes of any disciplinary action occurs when an individual enters a plea of guilty, governs. Respondent's counsel argues that as Respondent entered his plea of guilty on August 21, 2014, his conviction is deemed to have occurred on that date and that the November 22, 2017, accusation was untimely.

7. It is a fundamental rule of statutory construction that the intent of the enacting authority should be determined so as to give effect to the purpose of the law. (*Chavez v. Civil Service Commission* (1978) 86 Cal.App.3d 324, 330; citation omitted.) If possible, effect should be given to the enacted provision as a whole so that no part of it will be useless or meaningless. (*Ibid.*; citations omitted.)

8. Where a statute contains both general and special provisions, effect should be given to both if possible but, in the event of irreconcilable conflict, a general provision is ordinarily controlled by a special provision. (Code Civ. Proc. § 1859; *In re Ricardo A.* (1995) 32 Cal.App.4th 1190.)

9. The Legislature is deemed to be aware of statutes already in existence and to have those laws in mind at the time it enacts a new statute. (*Schmidt v. Southern California Rapid Transit District* (1993) 14 Cal.App.4th 23; citations omitted.)

10. "The quest for legislative intent [in statutory construction] is not unbounded. . . [t]here can be no intent in a statute not expressed in its words, and there could be no intent on the part of the framers of such a statute which does not find expression in their words." (*City of Sacramento v. Public Employee's Retirement System* (1994) 22 Cal.App.4th 786, 793-794; citations omitted.) "The meaning of a statute is to be sought in the language used by the Legislature. Words may not be inserted in a statute under the guise of interpretation." (*Ibid.*, citations omitted.)

11. Wherever possible, potentially conflicting provisions should be reconciled in order to carry out the overriding legislative purpose as gleaned from a reading of the entire act. A construction that makes sense of an apparent inconsistency is to be preferred. (*Viking Insurance Co. v. State Farm Mut. Auto. Ins. Co.* (1993) 17 Cal.App.4th 540, 546; citations omitted).

12. Statutes *in pari materia* are those which relate to the same person or thing, or to the same class of persons or things. "In the construction of a particular statute, or in the interpretation of any of its provisions, all acts relating to the same subject, or having the same general purpose, should be read in connection with it, as together constituting one law." (*Old Homestead Bakery, Inc. v. W.H. Marsh* (1925) 75 Cal.App.247, 258-259.)

13. Applying the foregoing rules of statutory construction to the case at hand, there is no ambiguity as to Code section 490, subdivision (c). The language of the statute clearly states that, for purposes of Code section 490, "A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere." There is no reference within Code section 490 to sentencing and no justification to insert such a requirement into the statute.

14a. Similarly, Code section 10177, subdivision (b)(1) authorizes the real estate commissioner to revoke a license of a licensee who has "[e]ntered a plea of guilty. . ." This provision is consistent with the licensing agency's authority under Code section 490.

14b. Unlike Code section 490, Code section 10177 does address sentencing. Code section 10177, subdivision (b)(2), explicitly authorizes the Commissioner to suspend a license upon a licensee's plea of guilty and prior to the licensee being sentenced. This provision makes explicit the Commissioner's authority to suspend a license upon a licensee's plea of guilty prior to sentencing and the consequences of such a suspension in the event the guilty plea is withdrawn. To interpret this provision as preventing the Commissioner from revoking a license on the basis that a licensee has not yet been sentenced would be inconsistent with Code section 490, subdivision (c). Further, if the Legislature intended on limiting the Commissioner's authority in such a manner, it could have done so expressly and did not.

15. In the present matter, Respondent's conviction, which is the basis for discipline in this action, occurred on August 21, 2014, when Respondent entered his guilty plea. As Code section 10101 requires an accusation to be filed within three years of the occurrence of the alleged grounds for disciplinary action, Complainant's accusation which was filed on November 22, 2017, was untimely. Accordingly, the accusation must be dismissed for lack of jurisdiction.

Costs

16. Because Complainant has not prevailed in this matter, Complainant is not entitled to reimbursement of its costs of investigation and enforcement.

ORDER

The Accusation is dismissed.

Dated: March 20, 2018

DocuSigned by:

Nana Chin

Nana Chin

Administrative Law Judge
Office of Administrative Hearings