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MAY 14 2018

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

BUREAU OF REAL ESTATE
By *at Delous*

In the Matter of the Accusation of)	CalBRE No. H-40891 LA
)	
RAMON NEFTALI ESTRADA,)	OAH No. 2018010638
)	
Respondent.)	

DECISION

The Proposed Decision dated April 19, 2018, 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 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 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 5/1/18.

IT IS SO ORDERED May 8, 2018.

WAYNE S. BELL
REAL ESTATE COMMISSIONER

Daniel J. Sandri

By: DANIEL J. SANDRI
Chief Deputy Commissioner

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

In the Matter of the Accusation Against:

Ramon Neftali Estrada,

Respondent.

BRE No. H-40891 LA

OAH No. 2018010638

PROPOSED DECISION

Administrative Law Judge Deena Ghaly, Office of Administrative Hearings, heard this matter on March 20, 2018 in Los Angeles, California. Bureau of Real Estate (Bureau) Counsel James R. Peel represented Maria Suarez (complainant), a Bureau Supervising Special Investigator. Ramon Neftali Estrada, (respondent) represented himself and was present throughout the hearing.

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

FACTUAL FINDINGS

Background

1. Complainant brought the Accusation in her official capacity.
2. The Bureau issued real estate salesperson license number 00991848 to respondent on May 25, 1988. Unless renewed, his license will expire on January 4, 2019. Respondent timely filed a notice of defense requesting a hearing regarding the allegations raised in the Accusation and this matter ensued.
3. On February 17, 2017, in the Superior Court of California, County of Los Angeles, case no. VA143079, respondent was convicted on his nolo contendere plea of violating Penal Code sections 29800, subdivision (a) (1) (possession of a firearm by a felon), and 30305, subdivision (a)(1) (possession of ammunition by a felon), both felonies. The court suspended imposition of sentence and placed respondent on formal probation for three

years on terms and conditions including paying assessments and restitution¹ totaling \$370; obeying all laws, regulations, and orders of the court and the probation department; submitting to search and seizure; and refraining from owning or possessing any dangerous weapon. The court also ordered respondent's firearm to be confiscated and destroyed. Respondent's probation is scheduled to terminate in February 2020.

4. The facts and circumstances giving rise to the February 2017 conviction occurred on September 21, 2016. Respondent is a previously convicted felon and, as such, is prohibited from possessing firearms or ammunition. According to their report (Exh. 4), special agents from the California Department of Justice (DOJ) cross-checked his name on its "Armed and Prohibited Persons System," a database which lists individuals prohibited from lawfully possessing firearms, against its Automated Firearms Systems database, a database which lists registered gun owners. Noting that respondent was listed as the last legal owner of a Walther semi-automatic pistol, the agents contacted respondent at his office and asked whether he possessed a firearm. The agents' report and respondent's testimony at the hearing provide the same information regarding what transpired next: Respondent answered in the affirmative and volunteered that he kept the firearm as well as ammunition in a safe in his home. The agent explained to respondent that, as a felon, he was not permitted to own a firearm. Respondent responded that his attorney had "taken care of" the earlier charge. The agents showed respondent his court records reflecting that respondent's case was not reduced and dismissed. Respondent called his attorney "and his attorney did not have any information that respondent's felony was changed." (*Id.* at p. 2.) The agents accompanied respondent to his home where he produced the firearm and a box of ammunition. Respondent was then arrested and charged.

5. Respondent admitted that he did not inform the Bureau of his February 2017 conviction noting, however, that within a month of the conviction, he had received a letter from the Bureau indicating it was aware of the conviction and requesting information about it. Under those circumstances, respondent did not understand he had a separate affirmative duty to inform the Bureau of what he believed it already knew. Nonetheless, respondent failed to meet his responsibility to disclose his conviction.

6. Respondent has been a real estate salesperson for almost 30 years. It has been his primary profession since he began work at the age of 19 and it is currently the sole means with which he provides for his wife and four children. He has worked for the same real estate broker for the past 12 years. He purchased a firearm and a box of ammunition to protect himself and his family in 2003, put it in a safe in his bedroom and kept it there until 2016, when he produced it for the DOJ special agents.

7. During a period between 2003 and 2006, respondent expanded his real estate business to include buying homes himself, renovating them and re-selling them for a profit. An acquaintance who invested in respondent's house-flipping enterprise died before the

¹ The record is indeterminate regarding whether the restitution payments were made to a victims' fund or to an identified individual.

investor could recoup his investment and his wife, distraught and disappointed, complained to law enforcement, resulting in criminal charges against respondent and a felony conviction. Respondent was never clear about the details of the charges but accepted that, in the course of his house-flipping enterprise, he broke the law. Respondent credibly testified that, from the time of his first conviction in 2006 until he was confronted by the DOJ agents in September 2016, he did not know that the 2006 conviction prevented him from owning a firearm. Respondent did believe that his attorney had taken steps to reduce the 2006 charge to a misdemeanor but was not aware that, either as a felony or a misdemeanor, the 2006 conviction prevented him from owning a firearm.

8. Respondent testified to working very long hours and, with his family duties, having little time for community service or other charitable work. He has taken vocational classes as required by the Bureau but has not otherwise engaged in educational activity related to his real estate license. Respondent meets monthly with his probation officer and is current on \$150 monthly payments he makes toward a \$3500 fee he believes is for probation department services.² He has not incurred additional criminal charges or convictions and, prior to the instant matter, had not had his license disciplined.

9. Respondent testified in a straightforward, candid manner, readily admitting to matters against his interest, including culpability for his past acts leading to his earlier conviction and his failure to disclose the February 2017 conviction to the Bureau. His statements at the hearing were consistent with prior statements to the DOJ. Applying the applicable criteria for determining the credibility of a witness set out in Evidence Code 780, demeanor and manner in the course of testimony, extent of capacity to perceive and recollect, the existence of bias and interest, consistency with prior statements, and admissions against interest, he is found credible.

10. Complainant incurred investigation costs of \$1,099.85 and enforcement costs of \$218. In total, the Bureau seeks cost recovery of \$1,317.85. The investigation costs, primarily consisting of obtaining and reviewing criminal records and corresponding with respondent and the Bureau's counsel, are reasonable for the size and scope of the matter as are the enforcement costs, which are for drafting pleadings and preparing for the hearing. At the hearing, respondent volunteered his willingness to pay for investigation and enforcement costs if allowed to pay over time.

LEGAL CONCLUSIONS

1. Protection of the public is the Bureau's highest priority in exercising its licensing, regulatory and disciplinary functions. (Bus. & Prof. Code (Code) § 1005.1.)

² The court records of respondent's February 2017 conviction do not reflect a penalty or payment for probationary services. Its exact origin and purpose is not relevant to this matter.

2. The burden of proof is on the Bureau to show cause that license revocation or suspension is warranted. (*Ettinger v. Medical Board of Quality Assurance* (1982) 135 Cal. App. 3d 853, 855.) The standard of proof is clear and convincing evidence, which is “so clear as to leave no substantial doubt.” (*Mathieu v. Norrell Corporation* (2004) 115 Cal. App. 4th 1174, 1190 (citations omitted).)

3. The Bureau may suspend or revoke the license of a licensee who has entered a plea of guilty or nolo contendere to, or been found guilty or convicted of, a crime substantially related to the qualifications, functions or duties of a real estate licensee. (Code, §§ 10177, subd.(b)(1), 490, subds. (a), (b).)

4. Under Business and Professions Code provisions generally applicable to all agencies within the California Department of Consumer Affairs, including the Bureau, only crimes meeting the agencies’ “substantially related” criteria can be grounds for license discipline. (Code, § 490, subd. (b)) [“Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime . . . only if the crime is substantially related to the qualifications, functions or duties of the business or profession for which the licensee’s license was issued”].) Under Business and Professions Code provisions applicable solely to real estate licensees, any felony conviction can be grounds for license discipline (Code, § 10177) [“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 . . . a felony”].)

5. Code section 490 has been found to “temper” an earlier iteration of Code section 10177 and to limit the authority of licensing agencies to establish their own criteria for disciplining licenses. (*Donaldson v. Dept. of Real Estate* (2005) 134 Cal. App. 4th 948, 955.) Moreover, the substantial relationship requirement has been found to be applicable to all license discipline cases, even when the disciplinary statute does not directly refer to it. (See *Clare v. State Bd. of Accountancy* (1992) 10 Cal. App. 4th 294.) [A substantial relationship requirement is found in case law and in apparent legislative intent even when it is not expressly set out in the statute].)

6. The record of the conviction serves as conclusive evidence of its occurrence (*Arneson v. Fox* (1980) 28 Cal. 3d 440, 445-447); however, the facts and circumstances underlying the conviction may be established to determine whether the conviction meets the “substantially related” criteria and to fix the degree of penalty, if any. (Code, § 493.) Whether a criminal conviction justifies discipline “requires a reasoned determination that the conduct was in fact substantially related to the licensee’s fitness to engage in the profession.” (*Donaldson, supra*, 134 Cal. App. 4th at p. 955.)

7. Under California Code of Regulations (Regulations), title 12,³ section 2910, a crime or act shall be deemed to meet the “substantially related” criteria for real estate licensees if it involves any of the following:

³All further references to Regulations are to title 12.

- (1) Fraudulent acquisition of money or property.
- (2) Counterfeiting, forging, or altering an instrument or the uttering of a false statement.
- (3) Willful attempt to derive a persona financial benefit of nonpayment of taxes, assessments, or levies.
- (4) Commission of bribery, fraud, deceit, falsehood, or misrepresentation.
- (5) Sexually related conduct affecting an observer or a nonconsenting participant in the conduct or convictions which require registration as a sexual offender.
- (6) Willful violation or noncompliance with any provision of the Real Estate Law.
- (7) Willful participation in any act that requires any license, without the required license.
- (8) Performance of any unlawful act for financial benefit or with the intent or threat of causing injury to the person or property of another.
- (9) Contempt of court or willful failure to comply with a court order.
- (10) Conduct which demonstrates a pattern of repeated and willful disregard of the law.
- (11) ~~Two or more convictions involving consumption or use of alcohol or drugs when at least one of the convictions involve driving and the use or consumption of alcohol or drugs.~~

(Regs., § 2910, subd (a).)

8. As noted by complainant's counsel, just two of the Bureau's substantially related criteria apply here, performance of an unlawful act with the intent of causing injury to another (Regs., § 2910, subd. (a)(8)) and conduct demonstrating a pattern of willful disregard of the law (Regs., § 2910, subd. (a)(10)).

9. In this case, the unlawful "performance," was possession of a firearm and ammunition. Respondent credibly testified that he purchased and kept the firearm to protect himself and his family and, because he never found himself in need of it, had not used it in the 14 years it was in his possession. Respondent's testimony that the firearm, purchased for home protection and kept in his home safe is corroborated by the special agents' observations of the firearm unloaded and the full ammunition box respondent produced on the day of his arrest. (Factual Findings 4, 6 & 7.) Regarding whether respondent's conduct demonstrated a pattern of repeated and willful disregard of the law, a conviction for owning a gun and a simultaneous conviction for owning ammunition for the gun cannot reasonably be understood to establish a "pattern" of anything. As a matter of common sense, possession of the gun and ammunition for it should be understood as a single act, though supporting two criminal counts. Moreover, respondent credibly testified that he was not aware that he was prohibited from owning them both at the time of his initial conviction in 2006 and when the

matter was brought to his attention by the DOJ agents. Respondent's ready admission to owning the gun and his cooperation with the agents corroborate his testimony. While ignorance of the law is no defense against the criminal liability arising from his possession of the firearm and ammunition, it is relevant to analyzing the criterion requiring a specific mindset, willful disregard, which necessarily involves knowledge and deliberate action. (Factual Findings 3, 4, & 7 and Legal Conclusion 9.)

10. Within 30 days of its occurrence, a licensee has a duty to report any information or indictment charging him or her with a felony or any felony conviction, including convictions on nolo contendere pleas. Failure to report the violation is itself cause to discipline a real estate license. (Code, § 10186.2.)

11. Respondent's February 2017 convictions do not constitute cause to suspend or revoke respondent's license under Code, section 490, subdivision (b). (Factual Findings 3 & 4 and Legal Conclusions 3-8.)

12. Respondent's February 2017 convictions do not constitute cause to suspend or revoke respondent's license under Code, section 10177, subdivision (b). (Factual Findings 3 & 4 and Legal Conclusions 3-6.)

13. Respondent's failure to notify the Bureau of his February 2017 criminal convictions constitutes cause to suspend or revoke respondent's license under Code, section 10186.2. (Factual Finding 5 and Legal Conclusion 10.)

14. Regulation section 2912 establishes the Bureau's criteria for determining evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding has been initiated on the grounds that the licensee has been convicted of a substantially related crime. The evidence in the context of the relevant criteria is summarized below:

Subdivision (a)(1) and (2) - The passage of at least two years since the criminal act or conviction, subject to an increased period depending on the nature and severity of the crime and whether there has been a prior history of substantially related criminal convictions. Respondent's last criminal act occurred in September 2016, less than the two-year minimum time requirement under this criterion. (Factual Finding 4.)

Subdivisions (b), (c), (e), and (g) - Evidence of payment of restitution, expungement of criminal convictions, successfully completion or early discharge from probation, payment of fines associated with the convictions. Respondent has ongoing restitution and fine payment obligations, has not had his convictions expunged, and remains on probation. (Factual Finding 8.)

Subdivisions (j), (l), and (m)(1)-(5) - Stability of family life and fulfillment of parental and familial responsibilities, significant involvement in community, church or other organizations for the public good, and a change in attitude from that which existed at the

time of the commission of the crimes. Respondent is dedicated to his family and has worked as a licensed salesperson to support them for 30 years. He has not participated in community or charity organizations due to time constraints and family obligations. (Factual Findings 6, 8, & 9.)

15. Considering the relevant criteria in total, there are indicia of rehabilitation at this time sufficient to allow respondent to maintain his license and still adequately protect the public. Respondent is a long-time licensee who has developed a successful career, which has allowed him to support his family. He has been with the same broker for over 12 years and is currently in compliance with court orders. Finally, respondent has evinced a level of candor and accountability that indicates recidivism is unlikely. (Factual Findings, 8, & 9.)

16. Under Business and Professions Code section 10106, a licensee may be ordered to pay the reasonable costs of the investigation and enforcement of the case. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal. 4th 32, the California Supreme Court considered whether a similar cost recovery provision impermissibly discouraged licensees from exercising their due process rights to a hearing before their licenses could be revoked or suspended. The Court determined that cost recovery for investigation and prosecution is permissible as long as certain conditions are met: assessment of the costs will not unfairly penalize a licensee who is found to have committed some wrongdoing but has used the hearing process to reduce the charges or the severity of the discipline; the licensee has a subjective belief in the merits of his position; the licensee has the means to pay the costs; and the costs are not disproportionately large when considered in the context of the innocuousness of the charge at issue. (*Zuckerman, supra*, 29 Cal. 4th at p. 45.)

17. Here, respondent's presentation and subsequent analysis raised challenges sufficient to warrant dismissal of two of the three charges and sufficient mitigation to reduce the appropriate penalty from suspension or revocation to a public rebuke. (Factual Findings 3-9 and Legal Conclusions 3-6.) It is reasonable to require respondent to pay one-third of the costs of the investigation and prosecution of this case, pursuant to Business and Professions Code section 125.3.

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ORDER

Respondent Ramon Neftali Estrada, Real Estate Salesperson License Number 00991848, is hereby reprovved for failure to disclose his February 2017 criminal conviction to the California Bureau of Real Estate. Inclusion of this decision in the Bureau's public files shall constitute publication of this reproval.

Respondent shall pay the Bureau \$439.28 within 30 days of the effective date of this Decision.

DATED: April 19, 2018

DocuSigned by:

Deena Ghaly

DEENA GHALY

Administrative Law Judge
Office of Administrative Hearings