

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 10/16/18.

IT IS SO ORDERED September 19, 2018

DANIEL SANDRI
ACTING REAL ESTATE COMMISSIONER

Daniel J. Sandri

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ENRIQUE NUNO ROSAS,

Respondent.

Case No. H-40965 LA

OAH No. 2018040729

PROPOSED DECISION

This matter came before Irina Tentser, Administrative Law Judge (ALJ), Office of Administrative Hearings, in Los Angeles, California, on July 26, 2018.

Michelle Nijm, Real Estate Counsel, represented Complainant Maria Suarez (Complainant), a Supervising Special Investigator of the Department¹ of Real Estate (Department).

Victor M. Cueto, Attorney at Law, represented Enrique Nuno Rosas (Respondent), who was present throughout the hearing.

At hearing, Complainant's unopposed motion to strike Paragraphs 6 and 7 of the Accusation, relating to Complainant's allegations that Respondent failed to report his conviction, was granted by the ALJ.

Complainant brings this Accusation to impose disciplinary action on Respondent's real estate broker license based on Respondent's conviction for violation of Penal Code section 153 (knowingly take money/property, etc. upon agreement or understanding to compound/conceal crime, etc.). Respondent argues against license discipline based on his lack of prior criminal history and license discipline. He also asserts innocence of the charges that led to his conviction. As set forth in this Proposed Decision, Complainant established, by clear and convincing evidence, that it may revoke Respondent's real estate broker license.

Oral and documentary evidence was received, and the matter was submitted on July 26, 2018.

¹ Effective July 1, 2018, the Bureau of Real Estate became the Department of Real Estate. (SB 173; Bus. & Prof. Code, § 10050.)

FACTUAL FINDINGS

Jurisdiction and Background

1. Complainant issued the Accusation in her official capacity.
2. Respondent was issued a real estate broker license, license number 01256840 on February 2, 2006. The license expired on February 1, 2018.
3. Complainant brought this Accusation to revoke Respondent's license on March 13, 2018. Respondent timely requested a hearing.

Criminal Conviction

4. On January 11, 2018, in the Superior Court of California, County of Los Angeles, case number BA454657, Respondent was convicted on his guilty plea of violating California Penal Code section 153 (knowingly take money/property, etc. upon agreement or understanding to compound/conceal crime, etc.), a misdemeanor. Respondent was sentenced to twelve months of summary probation with terms and conditions including payment of fines, fees, and restitution.

5. A. Respondent has paid the restitution fine which was a part of the terms of his sentence. He remains on probation, which is scheduled to conclude in January 2019.

B. Respondent's conviction is substantially related to his duties, functions, and obligations as a real estate licensee because he had actual knowledge he was committing a crime and took money and property as part of that crime. Specifically, Respondent's crime was based on his fraudulent and dishonest actions involving the sale of the home he owned with his ex-wife, as more fully described in Factual Finding 6.²

6. A. The circumstances around the conviction are based on Respondent's real estate transactions related to a property located at 10017 Walnut Street, Bellflower (home), which was jointly owned by Respondent and his ex-wife (victim). Specifically, in 2015, the victim filed a police report alleging that while she was researching real estate properties online, she noticed that a house she co-owned with her ex-husband was recently sold. As a result, the victim obtained a stamped legal grand deed which showed the victim signed over the residence to the buyer of the home (buyer). In her police report, the victim stated she never signed the document and believed Respondent was responsible for the forged signature. The grant deed indicated that Respondent was present at the time of the victim's alleged forged signature.

B. It is undisputed that the home had a complicated chain of title history subsequent to Respondent and the victim's acrimonious 2008 divorce, as follows. In 2006, Respondent and victim borrowed \$508,000 using the home as collateral. In 2010, Respondent unsuccessfully attempted to buy out victim's interest in the home, in which he

² See Legal Conclusion 3.

continued to reside. In 2011, based on default on the 2006 \$508,000 loan, a Notice of Default and two Notices of Sale were recorded. In 2012, Respondent added Maria Guadalupe Chavez to the title. In 2013, Respondent, victim, and Chavez transferred the home to Respondent and Chavez, removing victim from the title. The victim also alleged that her signature was forged on the 2013 grant deed. Later that same year, Respondent and Chavez transferred the property to Respondent, removing Chavez from the title. In 2013, Respondent listed the home for sale. The victim's signature and initials were not on the listing document. Respondent hired a broker and salesperson who he had known for many years to handle the home's sale, both of whom shared the same business address as Respondent. Respondent found the buyer for the home. In 2014, Respondent transferred the home back to himself and victim as husband and wife joint tenants, which was necessary to facilitate the short sale because the title had to be vested as it was on the date of the original loan. Subsequently, in November 2014, Respondent and victim purportedly transferred the home by grant deed to the buyer for \$285,000. The sale contract for the home appeared to have only Respondent's and the buyer's signatures and initials. The victim's signature and initials were not on the document. At time of the sale, Respondent and the buyer had also known each other for 30 years. The beneficiary of the \$508,000 loan made in 2006, Wells Fargo Bank, approved the short sale at this amount and released Respondent and victim from the mortgage debt. As described above, among other allegations, the victim asserted she did not sign the 2013 and 2014 grant deeds, and claimed she did not discover the sale until she was researching real estate properties online. The victim also alleged that she was threatened with physical harm by Respondent when she questioned his actions regarding the home and that the home was worth much more than the \$285,000 when it was sold to the buyer because it was sold for nearly \$500,000 a year later.

C. The police conducted an extensive investigation of the victim's allegations against Respondent. During the investigation, the notary on the 2013 grant deed informed the police that her signature was also forged on the document and that she did not notarize it. Similarly, Chavez stated that she did not sign the grant deed related to the home and that her signature was forged. Chavez also stated that she did not know Respondent, the victim, and did not appear before the notary whose name was on the grant deed.

D. The victim further informed police that she did not receive the \$3,000 check that was issued by Mariposa Escrow and made payable to Respondent and victim as a result of the home's short sale. She also asserted that she did not endorse and cash the check. The \$3,000 check was cashed by Respondent at a Money Mart. Further, the victim reviewed additional documents from the Mariposa Escrow file related to the sale of the home and indicated to police that she did not fill out, initial, or sign any of the documents.

E. With regards to the close of escrow funds for the sale of the home, Go Home Realty, the broker who handled the sale, was paid \$17,100 in commission. According to a police statement made by Reyes, the real estate agent who handled the sale and worked under the brokerage license of his wife at Go Home Realty, at least \$10,000 of the commission proceeds was paid to Respondent as a result of the home sale. At hearing,

Respondent disputed that he received a kick back from the commission, as asserted by Reyes.

F. Subsequent to the conclusion of their investigation, the police referred the matter to the district attorney's office. On February 22, 2017, a case was filed against Respondent charging him with allegedly violating 12 felonies in connection with his actions toward victim related to the sale of the home. The charges were dismissed pursuant to a plea negotiation in which Respondent pleaded guilty to violating Penal Code section 153, as described in Factual Finding 4.

7. At hearing, Respondent took no responsibility for any of the actions that led to his conviction and maintained his innocence of any wrongdoing related to the victim and sale of the home. He testified that he pleaded guilty to violating Penal Code section 153 because the criminal action against him was costly and stressful. Respondent's uncorroborated testimony is legally unsustainable.³ His claims of innocence are also factually unconvincing based on the totality of the evidence.

8. No character reference evidence was presented in support of Respondent at hearing. Respondent submitted no evidence at hearing that he was engaged in community service or was involved in new and different social relationships.

9. Respondent argued that his license revocation is not warranted because of his lack of prior criminal history and complaints against his real estate license. He and the victim are the parents of two daughters.

10. The Bureau submitted evidence that it incurred investigation costs of \$1,355.55 and enforcement costs of \$1,246. These costs, totaling \$2,601.55, are reasonable.

LEGAL CONCLUSIONS

1. The burden of proof is on Complainant to show that Respondent's real estate broker license should be disciplined. To prevail in this matter, Complainant must establish the allegations against Respondent through clear and convincing evidence, to a reasonable certainty. (*Ettinger v. Bd. of Med. Quality Assurance* (1982) 135 Cal.App.3d 853.)

2. Business and Professions Code⁴ section 10103 provides that the lapsing of a license by operation of law shall not deprive the department of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against such licensee, or to render a decision suspending or revoking such license.

³ See Legal Conclusion 4.

⁴ All further references are to the Business and Professions Code unless otherwise noted.

3. Penal Code section 153 is categorized as crime against public justice, which makes it a punishable offense for every person “who, having knowledge of the actual commission of a crime, takes money or property of another, or any gratuity or reward, or any engagement, or promise thereof, upon any agreement or understanding to compound or conceal that crime, or to abstain from any prosecution thereof, or to withhold any evidence thereof, . . .”

4. A real estate license may be disciplined when the licensee has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee. (Bus. & Prof. Code, §§ 490; 10177, subd. (b)(1); and 10177, subd. (j).) Respondent was convicted of having knowledge of the commission of a crime, taking the money and property of the victim, in a dishonest and fraudulent real estate transaction involving the home they jointly owned, upon agreement and understanding to compound or conceal that crime, as described in Factual Findings 4 through 6. Such a crime, under the factual circumstances presented, is deemed to be substantially related to the qualifications, functions, or duties of real estate broker and/or salesperson, as described in Factual Findings 4 through 6. Specifically, Respondent’s crime was based on his involvement in dishonest acts with the intent of obtaining the property of another person, the victim. (See, Cal. Code Regs., tit. 10, § 2910, subds. (a)(1), (a)(4), and (a)(8).)

5. Clear and convincing evidence established cause for discipline of Respondent’s license pursuant to sections 490, 10177, subdivision (b)(1), and 10177, subd. (j), in that Respondent was convicted of crimes substantially related to the qualifications, functions, and duties of a real estate broker, as described in Factual Findings 4 through 6 and Legal Conclusions 1 through 3. Respondent’s denial of the criminal actions that led to his conviction is not legally sustainable. The conviction is cause for discipline. Further, a conviction is conclusive evidence of a person’s guilt of the offense charged. (*Arneson v. Fox* (1980) 28 Cal. App.3d 440, 449.) Therefore, Respondent is “not permitted to impeach [his] conviction by explaining the ‘true’ reasons” in this administrative proceeding. (*Id.*)

6. In determining the appropriate discipline, the central question is what level of discipline is necessary to protect the public. Disciplinary proceedings to suspend or revoke a real estate license are not conducted for the primary purpose of punishing an individual. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) Based upon all of the matters set forth in Factual Findings 4 through 7 above and Legal Conclusion 7 below, including the lack of rehabilitation evidence, public protection requires that Respondent’s real estate licenses be revoked.

7. Respondent has the burden of showing rehabilitation. He fails to meet important rehabilitation criteria set out in California Code of Regulations, title 10, section 2912:

a. It has been less than two years since his last conviction. (Factual Finding 4; Cal. Code Regs., tit. 10, §2912, subd. (a).)

b. He has not completed probation. (Cal. Code Regs., tit. 10, §2912, subd. (e); Factual Finding 5a.)

c. There was no evidence of new and different social relationships. (Cal. Code Regs., tit. 10, §2912, subd. (i); Factual Finding 8.)

d. He has submitted no evidence of involvement in programs designed to provide social benefits or to ameliorate social problems. (Cal. Code Regs., tit. 10, §2912, subd. (l); Factual Finding 8.)

8. Rehabilitation is a state of mind and the law looks with favor upon rewarding one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that an individual did not commit additional crimes while on probation. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

9. Insufficient time has passed since Respondent's conviction to fully evaluate his rehabilitation. More troubling, there is no evidence of the requisite change in attitude as Respondent fails to take any responsibility for his crime. Accordingly, Respondent's real estate related conviction requires the revoking of his license to ensure the protection of the public.

10. Section 10106 permits the Real Estate Commissioner to request an administrative law judge hearing a disciplinary matter to direct a licensee to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case, except as otherwise provided by law. Evidence is required to support an award. Complainant provided sufficient evidence to support an award of the costs of investigation and enforcement in the amount of \$2,601.55, as described in Factual Finding 10.

11. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court set forth four factors required to be considered in deciding whether to reduce or eliminate costs: (1) Whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the licensee had a "subjective" good faith belief in the merits of his position; (3) whether the licensee raised a "colorable challenge" to the proposed discipline; and (4) whether the licensee had the financial ability to make payments. Applying the *Zuckerman* factors, it is reasonable to reduce costs in half based on the amending of the Accusation at hearing to remove allegations related to Respondent's failure to report his conviction. Respondent is therefore responsible to pay half of the Board's \$2,601.55 in costs, for a total of \$1,300.77.

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ORDER

1. All licenses and licensing rights of Respondent Enrique Nuno Rosas under the Real Estate Law are revoked.
2. Respondent Enrique Nuno Rosas shall pay \$1,300.77 to the Department of Real Estate as its costs of investigation and enforcement of this case.

DATED: August 24, 2018

DocuSigned by:
Irina Tentser
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IRINA TENTSER
Administrative Law Judge
Office of Administrative Hearings