

**FILED**  
**AUG 16 2018**

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE  
By *[Signature]*

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In the Matter of the Accusation of	)	DRE No. H-40970 LA
	)	
JOEL ARELLANO-AGUILAR,	)	OAH No. 2018041118
	)	
Respondent.	)	

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DECISION

The Proposed Decision dated July 10, 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.

The Decision suspends or revokes one or more real estate licenses, but the right to a restricted salesperson license is granted to Respondent.

Pursuant to Government Code Section 11521, the Department 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 Department'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.

**SEP -5 2018**

This Decision shall become effective at 12 o'clock noon on \_\_\_\_\_

IT IS SO ORDERED August 14, 2018

DANIEL J. SANDRI  
ACTING REAL ESTATE COMMISSIONER

*Daniel J. Sandri*

BEFORE THE  
DEPARTMENT OF REAL ESTATE<sup>1</sup>  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

JOEL ARELLANO-AGUILAR,

Respondent.

Case No. H-40970 LA

OAH No. 2018041118

**PROPOSED DECISION**

This matter came on regularly for hearing on June 27, 2018, at Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Maria Suarez (Complainant) was represented by Amelia Vetrone, Real Estate Counsel.

Joel Arellano-Aguilar (Respondent) appeared and was represented by Rizza Gonzalez, Attorney at Law.

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

**FACTUAL FINDINGS**

1. Complainant brought the Accusation in her official capacity as a supervising special investigator of the State of California.

2. Respondent was licensed by the Bureau of Real Estate as a real estate salesperson effective October 5, 1999. He was licensed as a real estate broker effective February 23, 2007, and was granted a mortgage loan originator license endorsement on November 10, 2015. Respondent has no record of license discipline.

3. On June 12, 2017, in the Superior Court of California, County of Orange, in case number 16CM10549MA, Respondent was found guilty by a jury and was convicted of

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<sup>1</sup> The Bureau of Real Estate became the Department of Real Estate on July 1, 2018.

violating Penal Code section 487, subdivision (a) (theft), and Penal Code section 594, subdivisions (a) and (b)(2)(A) (vandalism),<sup>2</sup> misdemeanors.

4. Respondent was placed on informal probation for a period of three years under various terms and conditions including but not limited to incarceration in the Orange County Jail for 15 days, to be served as supervised electronic confinement, with credit for one day served, and payment of fines and fees totaling \$400.

5. The facts and circumstances underlying the conviction arose out of a sting operation related to an increased number of bicycle thefts in the Tustin area. On October 22, 2016, officers of the Tustin Police Department locked a high end Trek bicycle to a pole. They applied "CSI Smartwater," a solution that glows florescent green when exposed to a black light, to the handgrips of the bicycle. The bicycle was equipped with a GPS device that notified officers of the bicycle's location when the bicycle was moving. The following day, Respondent, who is an avid cyclist, used bolt cutters to cut the lock, and then placed the bicycle in his car. He left grey tape around the pole with the words "Call Tustin PD" written on it. Police officers used the GPS device to track the bike to Respondent's car. When questioned, Respondent explained to them that he had taken the bicycle because it had been chained to the pole for four days, and that he intended to call the police the following day to let them know he had it in his possession. Respondent's hands glowed florescent green when a black light was shined on them.

6. Respondent denied any intention of keeping the bicycle. He claimed he already owned four other bicycles, and that he did not call the police immediately because it was a weekend. However, he intended to take the bicycle to the police the following day so that the local Trek shop would be able to track the serial number on the bicycle to its owner. Because the verdict is now a final judgment (Bus. & Prof. Code, §§490, subd. (c), and 10177, subd. (b)(1)), Respondent's testimony may not be used to re-determine guilt or innocence, but it may be used to determine the degree of discipline to be imposed. With that in mind, Respondent's testimony regarding the facts and circumstances underlying the conviction was not persuasive for a number of reasons. (1) Respondent could have notified the police without cutting the lock and putting the bicycle in his car. (2) There was no reason to notify the owner since the owner presumably knew his or her bicycle was chained to the pole unless the bicycle had been stolen and then chained to the pole. Respondent had no evidence of such a theft or reason to believe such a theft had occurred. (3) By his actions, Respondent did exactly what he claimed he was trying to avoid, i.e., deprive the owner of the bicycle. (4) There was no reason to keep the bicycle until the weekend was over. Presumably, the Tustin Police Department was open during the weekend. (5) Respondent told the police he had not called them because he did not want to bother them with something

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<sup>2</sup> The vandalism conviction is not alleged in the Accusation. Therefore, it will not be considered as a cause for discipline. Nor will it be considered as a factor in aggravation because it is based on the same conduct as the theft conviction.

small. (Exhibit 4.) However, Respondent admitted that the bicycle was one of value.<sup>3</sup> Conversely, by placing tape around the pole with instructions to call the Tustin Police Department, it appears Respondent was attempting to notify the owner that the police department had possession of the bicycle. This would be consistent with Respondent's statement to the police that he had intended to notify them that he had the bicycle, that he intended to ask them how he could keep it, and that he did not intend to keep the bicycle without a call to the police. (Exhibit 4.)

7. Pursuant to Business and Professions Code section 10186.2, subdivisions (a)(1)(B) and (a)(2), Respondent was required to notify the then Bureau of Real Estate of his conviction within 30 days of the conviction date. He failed to do so because, although he was aware of the reporting requirement, he did not know the time limitation.

8. Respondent is 58 years old. After graduating high school in his native Mexico, he studied engineering and accounting in Mexico City, falling one semester short of obtaining his degrees. He immigrated to the United States in 1990, got married, and earned a managerial accounting certificate from Irvine Valley College. He has two children, one of whom died in 2012. His other child is a graduate of Loyola Marymount University. Respondent is presently divorced but has a close relationship with his adult daughter.

9. Respondent has been a certified income tax preparer since 1991. He has not suffered any discipline against his tax certification. Respondent works as a loan originator at MPR Funding in Santa Ana and also represents buyers and sellers of real property.

10. Although he disagrees with the jury's verdict, Respondent accepts responsibility for his actions, and he is remorseful for his wrongdoing. Respondent has learned that he should report unusual activity rather than take action unilaterally. He is certain his wrongful actions will never recur.

11. Respondent belongs to a group of real estate professionals and to his local realty board. He attends church approximately every two weeks. Between 2009 and 2011, Respondent was a Special Olympics trainer for his son, and he coached basketball for his daughter.

12. Respondent offered the testimony of three character witnesses<sup>4</sup> and seven written character references. Each of those 10 witnesses was aware of Respondent's conviction yet highly praised Respondent for his honesty, integrity, and his strong and continuous desire to help others.

13. Complainant seeks recovery of investigation and prosecution costs. The prosecution costs total \$378.25. They are found to be reasonable. According to a box

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<sup>3</sup> According to the police report (Exhibit 4), the bicycle was valued at \$1,947.18.

<sup>4</sup> Respondent asked to offer the testimony of five character witnesses. The Administrative Law Judge limited him to three.

entitled "Investigation Cost Total" on the Certified Statement of Investigation Costs (Exhibit 5), Complainant is seeking investigation costs of \$357. However, there appears to be an error in the Certified Statement of Investigation Costs. Complainant claims investigation costs by her special investigator of 12.43 hours at an hourly rate of \$62 for a total of \$770.66. However, the total on the Certified Statement of Investigation Costs was only \$341 plus an additional \$16 for time spent on the file by a supervising special investigator. Although that is a correctable error, the time spent by the special investigator is found to be excessive and unreasonable. In the approximately three weeks between January 12, 2018, and February 5, 2018, the special investigator billed 5.33 hours of "Deputy Review" time at an hourly rate of \$62, for a case involving two simultaneous misdemeanor convictions and a failure to report the conviction to the Department of Real Estate (Department). The investigator's "Deputy Review" hours constitute over 42 percent of the entire time billed for the investigation. A more reasonable amount of time for "Deputy Review" would be half of that amount, specifically 2.67 hours. Accordingly, the costs of investigation will be reduced by 2.66 hours, or \$164.92. Adjusting for the error in the "Investigation Cost Total," Complainant will be awarded investigation costs of \$621.74 plus the \$378.25 in prosecution costs, for a total cost recovery of \$999.99.

### LEGAL CONCLUSIONS

1. Cause exists to discipline Respondent's real estate broker's license pursuant to Business and Professions Code sections 490, and 10177, subdivision (b), for conviction of a crime substantially related to the qualifications, functions and duties of the licensed activity, as set forth in Findings 3, 4, 5, and 6.
2. Cause exists to discipline Respondent's real estate broker's license pursuant to Business and Professions Code sections 10177, subdivision (d), and 10186.2, for failure to report his convictions to the Department within 30 days of the convictions' date, as set forth in Findings 3 and 7.
3. Cause exists to grant Complainant's request for reimbursement of the costs of investigation and prosecution pursuant to Business and Professions Code section 10106, as set forth in Finding 13.
4. Respondent's crimes are substantially related to the qualifications, functions, and duties of a real estate broker pursuant to California Code of Regulations, title 10, section 2910, subdivision (8).
5. California Code of Regulations, title 10, section 2912, sets forth the Department's criteria of rehabilitation for consideration when determining whether discipline should be imposed and, if so, the nature and extent of the discipline to be imposed against a licensee who has committed a crime. The regulation reads:

The following criteria have been developed by the Bureau pursuant to Section 482(b) of the Business and Professions Code for the purpose of evaluating 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.

(a) The passage of not less than two years from the most recent criminal conviction that is "substantially related" to the qualifications, functions or duties of a licensee of the Bureau. (A longer period will be required if there is a history of criminal convictions or acts substantially related to the qualifications, functions or duties of a licensee of the Bureau.)

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee.

(c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action.

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

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

(f) Abstinence from the use of controlled substances or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance or alcohol.

(g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.

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

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

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

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

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

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

(1) Testimony of applicant (*sic*).

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

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

(4) Evidence from psychiatrists, clinical psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

6. Respondent has not satisfied the majority of the Department's applicable criteria of rehabilitation. He suffered his conviction approximately one year and one month ago. The conviction has not been dismissed pursuant to Penal Code section 1203.4, and Respondent is scheduled to remain on probation until June 2020. No evidence was offered to prove he has paid all of his court-ordered fines and fees. Respondent's attending church approximately every two weeks does not qualify as significant and conscientious involvement in church activities. His involvement in Special Olympics and his daughter's basketball team preceded his conviction and therefore does not speak to his rehabilitation. On the other hand, Respondent has changed his attitude about taking matters into his own hands when he sees something unusual that should be reported to the police, and he enjoys a close relationship with his daughter. He also enjoys an excellent reputation in the community for honesty, integrity, and commitment to his clients.



7. This case presents an unusual scenario of an individual with clean criminal and administrative records and a fine reputation for honesty and commitment to others, who not only stole an item of value, but used bolt cutters to break a lock in order to do so. At best, Respondent's criminal act was a substantial lapse in judgment. At worst, it was a crime involving dishonesty. Either way, it bodes poorly for the safety, welfare, and interest of the public because, as a real estate broker, Respondent works without supervision, and he has access to people's homes and commercial property, as well as to their private financial information. Although Respondent has never acted dishonestly with respect to a real estate transaction, until October of 2016, he had never stolen anything. His commission of the crime emphasizes the potential for further dishonesty.

8. With a conviction only 11 months old, Respondent has had insufficient time to establish his complete rehabilitation. He accepts responsibility for his actions, and he is remorseful for his conduct, but he is still on probation and is scheduled to remain so until June of 2020. Since people have a strong incentive to obey the law while under the supervision of the criminal justice system, little weight is generally placed on the fact that a licensee has engaged in good behavior while on probation or parole. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) The better indication of rehabilitation is proper conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.)

9. That notwithstanding, Respondent's criminal act appears to have been an isolated anomaly in an otherwise law-abiding life. Such being the case, outright revocation could be unduly harsh and punitive.

10. Compounding the issue of the nature and extent of the discipline to be imposed is Respondent's failure to timely notify the then Bureau of his convictions. Although his testimony that he was unaware of the time requirement for reporting the convictions was credible, a real estate licensee, especially a real estate broker, is expected to know and understand the laws governing his/her profession. His ignorance of the time requirement is troubling, and it threatens public protection.

11. The purpose of an administrative action such as this one is protection of the public, and not to punish the licensee. (*Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513, 518; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) Given the very short time since Respondent's convictions and his failure to comply with the Real Estate Law in connection with reporting his conviction, it is apparent that Respondent should not be permitted to work unsupervised. Respondent shall be permitted to continue to transact real estate, but not as a broker. He will be permitted to do so only under a real estate salesperson license. The real estate salesperson license shall be issued on a restricted basis subject to various terms and conditions.

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## ORDER

All licenses and licensing rights of Respondent, Joel Arellano-Aguilar, under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.

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

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

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

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

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

5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until Respondent

presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

6. Respondent shall reimburse the Department its costs of investigation and prosecution in the sum of \$999.99 within 90 days of the effective date of this Decision. Respondent shall be permitted to pay the costs in a payment plan approved by the Bureau, with payments to be completed no later than three months prior to the end of the restricted term.

DATED: July 10, 2018

DocuSigned by:

*H. Stuart Waxman*

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H. STUART WAXMAN

Administrative Law Judge

Office of Administrative Hearings