

FILED

NOV 21 2018

DEPT. OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE By 

STATE OF CALIFORNIA

In the Matter of the Accusation of:	)	DRE No. H-40994 LA
JOSEPH ALBERT BLANCO,	)	OAH No. 2018070871
Respondent.	)	

DECISION

The Proposed Decision dated November 1, 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 Section 11517(c)(2) of the Government Code, the following corrections are made to the Proposed Decision.

Page 1, "Case No. H-40944 LA" is amended to read "Case No. H-40994 LA".

Proposed Decision, Page 1, Paragraph No. 2, Line 1, "Judith B. Vassan," is amended to read "Judith B. Vasan,".

Proposed Decision, Page 1, Paragraph No. 2, Line 2-3, "appeared personally and represented himself." is amended to read "appeared personally and was represented by attorney Seth Weinstein, Esq.".

Proposed Decision, Page 2, Paragraph No. 4. (a), Line 2, "works" is amended to read "work".

Order, Page 7, Paragraph No. 1, Line 2, "Sais" is amended to read "said".

The Decision suspends or revokes one or more real estate licenses, but the right to a restricted broker 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.

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 DEC 11 2018.

IT IS SO ORDERED November 16, 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 of:

JOSEPH ALBERT BLANCO,

Respondent.

Case No. H-40944 LA

OAH No. 2018070871

PROPOSED DECISION

This matter was heard by Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings, on October 4, 2018, in Los Angeles, California.

Complainant was represented by Judith B. Vassan, Counsel for the Department of Real Estate (Department). Joseph Albert Blanco (respondent) appeared personally and represented himself.

Evidence was received, and the matter was submitted for decision. The Administrative Law Judge finds as follows:

FACTUAL FINDINGS

1. Complainant, Veronica Kilpatrick, made the Accusation in her official capacity as Supervising Special Investigator of the State of California.
2. Respondent is presently licensed and/or has licensing rights as a real estate broker under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code.
3. On September 22, 2016, in the Superior Court of California, County of San Bernardino, in Case No. 16CR-052395, a misdemeanor complaint was filed against respondent charging him with violating Labor Code section 3700.5, doing business as an uninsured employer; and Penal Code section 148, subdivision (a)(1), resisting, obstructing or delaying a peace officer or EMT. In a notarized written plea and waiver of rights dated April 17, 2017, respondent entered a plea of no contest to one count charging a violation of Labor Code section 3700.5. The court entered judgment of conviction and sentenced respondent on April 18, 2017, placing respondent on probation for 24 months under certain conditions.

including that he spend 10 days in the county jail work release program. Respondent has complied with the conditions of his probation. He has no other convictions.

4. The facts and circumstances underlying the conviction are as follows:

(a) On December 14, 2015, investigators from various state and local agencies (task force) were investigating construction works sites to determine if workers on these construction sites were working without being covered by workers compensation insurance. On that day, the task force saw four workers repairing a roof at a house located at 6559 Pinion Court, Chino, California. These workers were not covered by workers compensation insurance.

(b) One of the workers (Tino) handed his cell phone to one of the investigators and told the investigator, "This is the person you need to talk to." The cell phone displayed a phone number and a caller ID. The investigator called the number and spoke with respondent who identified himself as "Joseph." Respondent stated that he did not hire the roofers to repair the roof. When Tino was told that respondent denied hiring or even knowing the roofers, he spontaneously stated in Spanish, "Well if I'm not getting paid for this job then I'm not going to finish the job." Tino then told the other workers to stop work and to pack up and leave.

(c) The investigators determined that the contractor for the project was respondent in his capacity as owner/principle of a contracting company called Rescue Green. Respondent entered into a home improvement contract with the owner of the house referenced above. The contract called for respondent to "retro fit the air sealing and attic insulation, install an air conditioning unit and a tankless water heater," and perform demolition and clean up for a contract price of \$29,325.

(d) One of the investigators interviewed respondent who confirmed that he ordered the roofing material, but stated that he did not hire the roofers. He stated that he called a friend who is a type of a handy man named S. Rivera, and asked him to send roofers to the work site to repair the roof as a favor. Respondent stated that "they were friends of a friend that just came to help out."

5. At the hearing, respondent testified that he did not hire the roofers. He merely recommended workers who were handy and could repair the roof. Respondent's assertion is not persuasive. The investigative report, which was admitted into evidence pursuant to *Lake v. Reed* (1997) 16 Cal.4th 448, contains sufficient evidence to support the conclusion that respondent hired the roofers. Respondent purchased all of the materials for the roofing job. The lead worker had respondent's cell phone number. Further, when the lead roofer was informed that respondent said that he did not hire or even know the roofers; the lead roofer ordered the other roofers to stop work on the project and to pack up and leave the work site.

6. The Supreme Court in *Lake v. Reed, supra*, sets forth how an administrative law judge should weigh the contents and statements contained in an investigative report. Generally, the personal observations of the investigating law enforcement officer and any statements attributed to respondent are admissible for all purposes. Statements made to the investigating officer by percipient witnesses are considered hearsay unless these statements would be admissible under a recognized exception to the hearsay rule. A hearsay statement by a non-party witness is admissible as administrative hearsay under Government Code section 11513, subdivisions (c) and (d), and may be used to supplement or explain other admissible evidence, but it cannot, by itself support a factual finding.¹ In applying these standards, the statements made by lead roofer Tino to investigators were admitted because they supplement and explain the observations of investigators who personally observed the work site. Further, Tino's statement to investigators "Well if I'm not getting paid for this job then I'm not going to finish the job," is admissible as a contemporaneous statement under Evidence Code section 1241, in that his statement explained why he and his co-workers stopped working and decided to leave the work site.²

7. Respondent is a friend of the homeowner. Respondent has not contracted to perform roofing work in the past, but found the roofers to do the job as a favor for the homeowner, who realized that the house he purchased needed extensive and expensive repairs. Respondent testified that he has no employees in his construction business because he performs all of the work himself. Respondent's construction projects are limited to repairing and installing energy efficient air conditioning units and other energy efficiency products. This was a one-time occurrence from which respondent has learned a valuable lesson. There was no evidence indicating that respondent has engaged in any misconduct before or after the incident.

8. On January 20, 2017, respondent submitted an application to renew his broker's license. Question 17 of the application asked "ARE THERE ANY CRIMINAL CHARGES PENDING AGAINST YOU AT THIS TIME, OR ARE YOU CURRENTLY

¹ Government Code section 11513, subdivision (c), addresses the admissibility of evidence generally in administrative hearings. It states: "The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions." Subdivision (d) states that "Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions."

² Evidence Code section 1241 states: "Evidence of a statement is not made inadmissible by the hearsay rule if the statement: (a) Is offered to explain, qualify, or make understandable the conduct of the declarant; and (b) Was made while the declarant was engaged in such conduct."

AWAITING JUDGMENT AND SENTENCING FOLLOWING ENTRY OF A PLEA OR JURY VERDICT? Respondent answered "No" to said question and did not disclose his pending criminal charges. Respondent testified that it was an oversight because he didn't pay close enough attention when filling out the application. Respondent is extremely busy operating his real estate business and his construction business. It is not inconceivable that respondent might not have given the proper attention when completing his renewal application. However, this inattention does not excuse the misstatement and his failure to disclose his pending charge.

9. Respondent did not report his conviction to the Department within thirty days as required by Business and Professions Code section 10186.2. Respondent testified credibly that he was not aware of this requirement.

10. Numerous witnesses testified on behalf of respondent, all of whom attested to respondent's good character, integrity, and his competence as a real estate broker and as a general contractor. These witnesses included individuals who have worked with respondent in construction and other projects over the years. In addition to running two successful businesses, respondent volunteers his time, makes donations and provides building materials to organizations such as Habitat for Humanity, and the Wounded Warriors Project. Respondent also provides charitable contributions through his church (St. Paul's).

11. In the First Amended Accusation, complainant requested costs of enforcement pursuant to Business and Professions Code section 10106. The amount requested (\$462.80) is reasonable.

LEGAL CONCLUSIONS

1. Cause exists to suspend or revoke respondent's real estate broker's license under Business and Professions Code sections 490 and 10177, subdivision (b), and California Code of Regulations, title 10, section 2910, subdivision (a)(8), based on respondent's conviction of a crime substantially related to the duties, functions and qualifications of a real estate broker, and his conduct underlying the conviction, as set forth in Factual Findings 3 and 4.

2. Cause exists to suspend or revoke respondent's real estate broker's license under Business and Professions Code section 10177, subdivision (a), based on respondent's failure to disclose a pending criminal charge in his renewal application, as set forth in Factual Finding 8.

3. Cause exists to suspend or revoke respondent's real estate broker's license under Business and Professions Code sections 10186.2 and 10177, subdivision (d), based on respondent's failure to inform the Department of his conviction within 30 days of said conviction, as set forth in Factual Finding 9.

4. Cause exists under Business and profession Code section 10106 to order respondent to pay the Department's costs of enforcement in the amount set forth in Factual Finding 11.

5. California Code of Regulations, title 10, section 2912, sets forth criteria for establishing rehabilitation. The rehabilitation criteria set forth in section 2912, are to be considered by the Department pursuant to Section 482 of the Business and Professions Code for the purpose of evaluating rehabilitation of a licensee who has committed a crime, and are set forth as follows:

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

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

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

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

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

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

(c) Expungement of the conviction(s) 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 and/or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance and/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 and/or other evidence of rehabilitation submitted by the licensee.

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

(3) Evidence from probation or parole officers and/or law enforcement officials competent to testify as to licensee's 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 convictions, misdemeanor convictions, or other conduct that provides grounds to discipline a real estate licensee, which reflect an inability to conform to societal rules when considered in light of the conduct in question.

6. (a) Respondent has thus far complied with the probationary conditions imposed by the Superior Court. Although respondent's conviction is less than two years old, he engaged in the underlying misconduct three years ago. He has no other convictions and there was no evidence that he has engaged in misconduct either before or after the incident in

this case. Respondent violated an important statute that protects employees by requiring employers to maintain workers compensation insurance for employees. However, this was a one-time occurrence because respondent has no employees in the type of construction work he performs, which is limited to repairing and installing air conditioning units and other energy efficiency products. He performs this work himself. Respondent hired the roofers to repair the roof as a favor to the homeowner who realized that the house he purchased needed extensive and expensive repairs. He did it to save the homeowner money. Respondent now realizes that his decision was a mistake.

(b) Respondent failed to disclose that there were criminal charges pending against him at the time he filed a renewal application for his real estate broker's license. Respondent testified credibly that his failure to disclose the pending charges was an oversight because he didn't pay close enough attention when filling out the application. Respondent also failed to inform the Department of his conviction within 30 days as required by Business and Professions Code section 10186.2. Respondent testified credibly that he was not aware of this requirement.

(c) Respondent presented evidence of significant involvement in organizations such as Habitat for Humanity and the Wounded Warriors Project. He donates money, time and building materials to these organizations. Respondent is also active in his church (St. Paul's) and donates to various programs established by his church.

(d) Recidivism is not likely in this case. Based on the facts of this case, including the evidence of mitigation and rehabilitation, and the application of the criteria of rehabilitation set forth in California Code of Regulations, title 10, section 2912, the public will be adequately protected by revoking respondent's license and issuing a restricted license under appropriate terms and conditions, including a period of suspension.

ORDER

All licenses and licensing rights of respondent Joseph Albert Blanco under the Real Estate Law are revoked. However, a restricted real estate broker's license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application thereof 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. Any restricted real estate broker's license issued to respondent pursuant to this Decision shall be suspended for 10 days from the issuance of Sais restricted license.

2. 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.

3. Respondent is hereby ordered to pay \$462.80 to the Department of Real Estate as costs investigation and of enforcement.

4. Respondent shall continue to comply with all of his probationary conditions imposed by the court in his criminal case.

5. 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.

6. 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.

7. 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.

8. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, California 95818-7000. The letter shall set forth the date of respondent's arrest, the crime for which respondent was arrested, and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for suspension or revocation of that license.

DATED: November 1, 2018

DocuSigned by:
Humberto Flores
HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings