

FILED

NOV 07 2018

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPT. OF REAL ESTATE
By *Lynd Danner*

In the Matter of the Accusation of:)	DRE No. H-41044 LA
DEMETRIUS SEAN MITCHELL,)	OAH No. 2018070806
Respondent.)	

DECISION

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

Legal Conclusions, page 8, paragraph No. 6, line 7 "...section 10188" is amended to read "...section 10177".

Order, page 9, paragraph No. 2, line 1 and line 2 "Respondent shall repay the sum of \$11,652.90 to the Department within 30 days of the effective date of this order" is amended to read "Respondent shall pay Department's cost of investigation and enforcement of this case in the amount of \$11,652.90 as a condition precedent to any reapplication for licensure".

The Decision suspends or revokes one or more real estate licenses.

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 **NOV 26 2018**

IT IS SO ORDERED October 31, 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:

DEMETRIUS SEAN MITCHELL,

Respondent.

Case No. H-41044 LA

OAH No. 2018070806

PROPOSED DECISION

The hearing in the above-entitled matter took place on October 5, 2018 in Los Angeles, California, before Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings.

Complainant Veronica Kilpatrick was represented by Lissette Garcia, Counsel, Department of Real Estate (Department).

Respondent Demetrius Sean Mitchell failed to appear at the hearing, despite proper notice of the hearing, which then proceeded in his absence.

Evidence was received and the matter was submitted for decision on the hearing date.

The ALJ hereby makes his factual findings, legal conclusions, and order.

FACTUAL FINDINGS

The Parties and Jurisdiction

1. Complainant filed and maintained the Accusation, First Amended Accusation, and Second Amended Accusation in this matter while acting in her official capacity as a Supervising Special Investigator for the Department.

2. (A) Respondent Demetrius Sean Mitchell is licensed by the Department as a real estate salesperson, holding license number S/02027670, which was issued to him on June 24, 2017, by the Bureau of Real Estate (Bureau), the Department's predecessor agency. It is set to expire on June 23, 2021.

(B) Respondent has also used the names, or been known as, Sean Mitchell, Demetrius Mitchell, Demetrius Bell, and Demetrius Sean Bell.

3. After being served with the Accusation, Respondent filed a Notice of Defense, contesting the allegations of the Accusation, and demanding a hearing. The First Amended Accusation was later served on him, as was the Second Amended Accusation. Because he had filed a Notice of Defense to the Accusation, he is deemed to controvert the claims of the First and Second Amended Accusations. (Gov. Code, § 11507.)

4. The Accusation was served upon Respondent at the address of record he had on file with the Department as of May 2018, which is a Florida address. His subsequently-filed Notice of Defense showed an address on South Figueroa in Los Angeles.

5. On July 20, 2018, Complainant's counsel caused a Notice of Hearing to be served upon Respondent at the address he set forth on his Notice of Defense. That Notice of Defense showed that the hearing in this matter was to take place on October 5, 2018, and it gave the address of the Office of Administrative Hearings. It should be noted that prior to that, on July 19, 2018, a clerk in the Office of Administrative Hearings sent a copy of a Notice of Assigned Hearing Dates, which showed the October 5, 2018 hearing date, to both Complainant and Respondent. The copy sent to Respondent went to his local address. Although the Notice of Assigned Hearing Dates is not the official notice of the hearing, it nonetheless provided further notice of the October 5, 2018 hearing date.

6. Respondent failed to appear and defend himself at the hearing, as noted in the preamble.

7. All jurisdictional requirements have been met.

Respondent's Application for a Salesperson's License

8. On January 26, 2017, the Bureau received Respondent's application for a salesperson's license. It was executed by Respondent on January 23, 2017. In response to questions pertaining to his background, Respondent denied that any license discipline had ever been meted out to him by any agency, and he denied the pendency of any administrative actions. He asserted as much in a written response to questions from the Bureau regarding his background, which response was made on April 12, 2017.

9. Question 18 on Respondent's license application asked if he had ever used any other names, "(I.E., MAIDEN NAMES, FORMER MARRIED NAMES, AKAS, ETC.)?" to which Respondent answered "no." (Ex. 3, capitalization in original.)

10. The answer was false, in that Respondent had used the names Demetrius Bell and Demetrius Sean Bell previously.

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Respondent's Licensure in Florida, and the Discipline of that License

11. Respondent was licensed by the Florida Real Estate Commission (FREC) as a real estate sales associate in February 2012. Pursuant to a stipulation, his license to sell real estate in Florida was permanently revoked by the FREC effective August 1, 2017.

12. The FREC filed four administrative proceedings against Respondent in 2017. The first three were filed against Respondent on April 27, 2017, and the fourth was filed on June 1, 2017. The administrative complaints alleged violations of various statutes. At bottom, the complaints alleged fraud and dishonest dealing, and the misappropriation of funds from others. Further, it was alleged that Respondent was acting as a salesperson when his license was inactive. The alleged wrongful acts were similar, and evinced a pattern of fraud and deception.

13. (A) In the proceeding carrying FREC case number 20160388891, it was alleged that in March 2016, Respondent offered to facilitate the rental of real property in Miami which was owned by Mr. Golmez; this was done on behalf of Global Luxury Realty Mgt Inc (Global).

(B) It was further alleged that Global was not licensed in Florida. It was alleged that Respondent collected \$6,400 from Mr. Schwartz for rental of the property. However, Respondent did not remit the money to Golmez, despite demand. The rental failed, and despite demands, Respondent did not remit the funds to either Golmez or Schwartz.

(C) It was alleged that Respondent violated numerous statutes, by failing to account for or deliver the funds, by engaging in fraud and deceit, working without a license, acting as a broker without a broker's license, and otherwise violating the laws governing real estate licensees in Florida.

14. (A) In FREC case number 2017-001880, also filed on April 27, 2017, it was alleged that in November 2016, Respondent offered to facilitate the rental of real property in Miami to Mr. Pigida and Ms. Bondarenko, the would-be tenants. It was alleged that they gave Respondent a cashier's check for \$2,200, payable to a Ms. Bachar.

(B) It was further alleged that the rental of the property failed, and that Respondent failed to remit the \$2,200 to the tenants upon demand.

(C) As with the action pertaining to Golmez and Schwartz, it was alleged that Respondent violated a number of Florida laws, and that he failed to account for funds, that he engaged in fraud and deceit, and acted as a broker without a license.

15. (A) In FREC case number 2017-001897, filed April 27, 2017, it was alleged that Respondent, while employed by a broker, obtained a check, made payable to him, from a prospective tenant. The check was for \$2,500. Florida law clearly prohibits an agent from

obtaining such funds unless in the name of his employer. In this case, no loss by the landlord or parties was alleged.

16 (A) In FREC case number 2017002112, it was alleged that Respondent attempted to facilitate the rental of real property to two people. It was further alleged that although the rental agreement failed, Respondent instructed the would-be tenants to occupy the rental property, without the property owners' permission.

17. On June 21, 2017, Respondent entered into an agreement whereby he voluntarily gave up his license to practice the profession of real estate in Florida, and he agreed that his license would be permanently revoked. In the agreement he did not admit to any wrongdoing. The FREC's order revoking his license became effective on August 1, 2017.

18. Respondent did not report the fact that the FREC had revoked his license to the Bureau or the Department.

Respondent's Fraud in the Purported Rental of the Biona Drive Property

19. In September 2017, Respondent posted an advertisement on the Craigslist website, soliciting tenants for real property located at 11349 Biona Drive in Los Angeles (Biona Dr. property). On or about October 3, 2017, he solicited prospective tenant B.R. to lease the Biona Dr. property. He also entered into an agreement with the property's owner, through the owner's real estate agent, and they were led to believe he was representing B.R.

20. Respondent induced B.R. to pay him \$12,638 in cash, which he represented was a deposit, rent, and a commission for himself. B.R. video-recorded the transaction where she paid Respondent the money, and at the beginning he states that the money will be paid to the owner and would-be landlord.

21. Respondent paid no money to the landlord, and the rental transaction failed. B.R. made numerous demands to Respondent for return of her money. He claimed that he would repay her, and as late as October 2017, he falsely claimed that he had wired the money to her. She has never received any of her money back.

22. It is clear that Respondent lied to B.R. to obtain money from her. To the extent he was actually acting for the property owner, A.A., he received B.R.'s money in trust, and he breached his trust by failing to complete a rental transaction with A.A. and by paying the funds to A.A., and he breached his trust to B.R. by failing to refund her money.

Respondent's Fraud in the Purported Rental of the College View Property

23. In August 2017 Respondent maintained an advertisement on Zillow.com, offering to lease the real property located at 1781 College View Place (College View property), in Los Angeles. On or about August 7, 2017, he solicited prospective tenants

A.S., P.B., and G.B to lease or rent the College View property; the three were interested in renting the property together. Respondent showed the property to the prospective tenants, having obtained the lock-box code from the owner's real estate agent.

24. Respondent induced each of the three prospective tenants to pay \$4,300 to him or to "Choice Realty." Respondent promised to deliver the funds to the owner of the property. He failed to deliver the money to the property owner, or to the real estate broker Respondent was then associated with, 4 USA Loans, Inc.

25. Respondent refused demands to refund the \$12,900 that he had obtained from the three collective tenants. At one point, he claimed to have wired the money to the prospective tenants. At another point, he sent checks to the tenants drawn on the account of Choice Realty or Choice Realty of Mia, which checks did not clear.

26. It is clear that Respondent had no intent to complete a property rental transaction with the three prospective tenants. It is clear that defrauded the prospective tenants in connection with the College View property transaction, causing each to lose \$4,300, leading to his obtaining a total of \$12,900 through fraud and deceit.

Respondent's Fraud in the Purported Rental of the Wilton Place Property

27. In September 2017, Respondent solicited A.G. to lease or rent the real property located at 1527 South Wilton Place, in Los Angeles (Wilton Place property). Respondent induced A.G. to pay \$7,600 for the lease, leading A.G. to believe that he would deliver the funds to the owner of the property, and complete a rental transaction between the owner and A.G.

28. Respondent did not deliver any of the \$7,600 to the property owner, and he did not complete a rental transaction. He did not return the money to A.G., despite claiming that he had mailed a refund to A.G.

29. It is clear that Respondent had no intent to complete a rental transaction for A.G. in connection with the Wilton Place property. He misappropriated the money given to him by A.G., defrauding A.G. out of \$7,600.

Respondent's Fraud in the Purported Rental of the Longwood Property

30. In October 2017, Respondent solicited prospective tenant N.S. to lease or rent the real property located at 1347 Longwood, in Los Angeles (Longwood property). Respondent induced N.S. to pay \$7,800 toward the lease of the Longwood property, promising to cause the money to be paid to the owner of the Longwood property, to complete a rental transaction for the property.

31. Respondent did not give any of the money to the owner of the property, and no rental transaction was completed. He misappropriated the funds, and failed to return any of

the monies to N.S. He falsely represented, on November 3, 2017, that he had wired a refund to N.S.

32. It is clear that Respondent had no intent to complete a rental transaction for N.S., and he acted only with the intent of defrauding N.S. out of \$7,800. During some or all of the time that this fraud was being perpetrated, Respondent's license was in a non-working status because he was not associated with or in the employ of any licensed real estate broker.

Respondent's Fraud in the Purported Rental of the Cross Property

33. On or about May 29, 2018, while his license was in a non-working status, Respondent solicited prospective tenants L.S. and M.S. to rent or lease the real property located at 635 North Cross Avenue, in Los Angeles (the Cross Avenue property). He induced them to pay him \$29,750 for the lease of the property. He also represented himself as a broker during this transaction, a false representation.

34. As in the other transactions, none of the money was ever delivered to the owner of the property or any agent acting for the owner, and Respondent misappropriated the funds. Likewise, none of the monies have been returned to the prospective tenants, L.S. and M.S.

35. As with the other transactions, it is clear that Respondent had no intent to complete a rental transaction for L.S. and M.S., and that his intent was to defraud them of the monies that they gave him to rent the Cross Avenue property.

Other Matters

36. The prospective tenants who appeared and testified were all credible in their testimony, both in terms of their demeanor, and in the content of the testimony.

37. The Department has incurred costs of investigation and enforcement in the amount of \$11,629.50, which sum is reasonable on its face.

38. There is no evidence in mitigation, extenuation, or of rehabilitation. The fact that Respondent was charged in Florida with committing similar fraudulent acts is an aggravating factor. Further, Respondent committed his fraud in connection with the Cross Avenue property while this action was pending, which is an aggravating factor.

LEGAL CONCLUSIONS

1. Jurisdiction to proceed in this matter pursuant to the Real Estate Law was established, based on Factual Findings 1 through 7. Pursuant to Government Code section 11520, the Department could proceed with the hearing after he failed to appear, given that he received proper notice of the hearing.

2. (A) Business and Professions Code section 10186.2, subdivision (a)(1)(C),¹ requires licensees to report, to the Department, any disciplinary action taken against them by any other licensing entity or authority in this state, any other state, or by the federal government.

(B) Such a report must be made in writing within 30 days of the disciplinary action, pursuant to section 10186.2, subdivision (a)(2).

(C) Florida, through FERC, took disciplinary action against Respondent, revoking his license effective August 1, 2017. (Factual Findings 11, 17.) He was thereby obligated to make a written report of FERC's action against his Florida license by August 31, 2017. He never made a report, as established by Factual Finding 18.

(D) Based on the foregoing, cause has been established to discipline Respondent's salesperson's license pursuant to section 10186.2, subdivision (b).

3. Respondent's Florida license was revoked for acts that, if done by an agent licensed by the Department, would create cause to discipline of the California license, in that he engaged in fraudulent and dishonest conduct by the FERC, collected funds without authority, and otherwise violated Florida statutes that regulate real estate agents. (Factual Findings 11 through 17.) Therefore, cause has been established to discipline Respondent's license pursuant to section 10177, subdivision (f).

4. As established in Factual Findings 2(B), 8 through 10, Respondent, when he applied for his salesperson's license, failed to disclose that he had used other names besides the name he used on the application. By doing so, he made a misrepresentation of material fact on his application, which was signed under penalty of perjury. His licenses is therefore subject to discipline pursuant to section 10177, subdivision (a).

5. (A) On five occasions, Respondent took money from prospective tenants which they gave him to secure a lease or rental agreement for real property. In those cases he represented that the bulk of the money, if not all of it, would be paid to the property owner. As such, he took the funds in trust, and he was obligated to place them in a trust account if he did not promptly pay them to the property owner. This Conclusion is based on Factual Findings 19 through 35.

(B) By keeping the funds for himself, Respondent breached his obligation to hold the funds in trust, a breach of fiduciary duty. Plainly a deliberate breach of trust is a dishonest act, especially when it involves the conversion of trust funds. It has long constituted fraud, either actual or constructive. (*See, e.g.*, Civil Code sections 1571 (1872), 1573 (1872), & 1710 (1872); *California Real Estate Loans, Inc. v. Wallace* (1993) 18 Cal.

¹ All further statutory citations are to the Business and Professions Code, unless otherwise noted.

App.4th 1575, 1581 [breach of fiduciary duty constructive fraud]; *Stevens v. Marco* (1956) 147 Cal.App.2d 57, 378 [failure of disclosure in fiduciary relationship as actual fraud].)

6. The evidence established, by clear and convincing evidence, that on five occasions Respondent convinced prospective tenants to give him large sums of money to rent properties, which money Respondent misappropriated, converting it of his own use. Respondent convinced the prospective tenants into giving him the money through false representations and false promises. This Conclusion is based on Factual Findings 19 through 35. As a result of his fraudulent and dishonest acts, Respondent's license is subject to discipline pursuant to section 10176, subdivisions (a), (b), and (i), and section 10188, subdivisions (d) and (j).

7. It was established that in two of the rental transactions Respondent engaged in real estate transactions when his license was not in working status, because he was not affiliated with a licensed broker. (Factual Findings 32 and 33.) Respondent thereby violated sections 10130 and 10137, further subjecting his license to discipline.

8. Pursuant to section 10106, the Department is entitled to recover its costs of investigation and enforcement against Respondent, based on Legal Conclusions 1 through 8, and their factual predicates. The reasonable amount of those costs is \$ 11,652.90, based on Factual Finding 37.

9. Respondent has used his license, and his training and knowledge of the real estate profession to prey on the public. In five transactions, he defrauded consumers for over \$70,000, making his biggest misappropriation while this action was pending. Plainly he is remorseless, and willing to tell any lie to part consumers from their money. Public protection requires revocation of his license.

ORDER

1. The real estate salesperson's license issued to Respondent Demetrius Sean Mitchell, aka Sean Mitchell, aka Demetrius Mitchell, aka Demetrius Bell, aka Demetrius Sean Bell, license number S02027670, is hereby revoked.

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2. Respondent shall pay the sum of \$11,652.90 to the Department within 30 days of the effective date of this order.

October 19, 2018

DocuSigned by:

Joseph D. Montoya

Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings