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JAN 10 2019

DEPT. OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation Against
VICTOR CHEVALIER PERRIN,
Respondent.

DRE No. H-41047 LA
OAH No. 2018060834

DECISION

The Proposed Decision dated December 5, 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:

Page 1, Introductory paragraphs, "Amelia V. Vetrone", shall read "Diane Lee".

This Decision revokes one or more real estate licenses on the ground of the violation of the Real Estate Law, Part 1 commencing with Section 10000 of the Business and Professions Code ("Code") and/or the Regulations of the Real Estate Commissioner, Title 10, Chapter 6 of the California Code of Regulations ("Regulations"), but grants the right to a restricted license.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of Respondent.

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This Decision shall become effective at 12 o'clock noon on JAN 30 2019.

IT IS SO ORDERED January 7, 2019

DANIEL J. SANDRI
Acting Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

VICTOR CHEVALIER PERRIN,

Respondent.

Case No. H-41047 LA

OAH No. 2018060834

PROPOSED DECISION

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles on November 5, 2018.

Amelia V. Vetrone, Staff Counsel, represented Complainant Maria Suarez, Supervising Special Investigator of the State of California.

Attorney David Borsari represented Respondent Victor Chevalier Perrin.

Oral and documentary evidence was received at the hearing, and the matter was submitted on November 5, 2018.

Complainant brings this Accusation to discipline Respondent's real estate broker license. Respondent has three recent convictions stemming from an incident that raises questions about his fitness to hold a license, but has an otherwise unblemished record in 15 years as a licensee. Therefore his license is revoked, but a restricted salesperson license is granted.

FACTUAL FINDINGS

Jurisdiction and Background

1. Complainant issued the Accusation solely in her official capacity.
2. On October 29, 2003, the Department of Real Estate (Department) issued a real estate salesperson license to Respondent. (The Department was called the Bureau of Real Estate between July 1, 2013, and July 1, 2018.) The license was active in the employ of a broker, except for brief periods totaling about three months, until July 11, 2014, when Respondent became licensed as a real estate broker. Its expiration date was July 10, 2018.

Respondent testified at hearing that he was unable to renew it because of the present Accusation. His current license status is not clear from the record.¹ Respondent has the right to renew the license until July 10, 2020 (Bus. & Prof. Code, § 10201), and the Department retains jurisdiction to discipline the license during that time (Bus. & Prof. Code, § 10103).

Criminal Conviction

3. On February 28, 2017, in the Superior Court of California, Orange County, case number 15NF0825, Respondent was convicted on his guilty plea of brandishing a deadly weapon (Pen. Code, § 417, subd. (a)(1)), attempting to dissuade a victim or witness from reporting a crime (Pen. Code, § 136.1, subd. (b)(1)), and receiving stolen property (Pen. Code, § 496, subd. (a)), all misdemeanors. Respondent was sentenced to 120 days in jail with credit for three days served, assessed fines and fees of \$280, ordered to pay \$50 in restitution, and placed on three years of formal probation.

Mitigation, Aggravation and Rehabilitation

4. The incident underlying the convictions occurred on the night of March 13, 2015, when Respondent removed election campaign placards from a chain-link fence surrounding a vacant lot about a mile from his house in Buena Park. The signs were zip-tied to the fence, so he used a pocket knife with a two-inch blade to cut the ties, then stacked the signs in the back of his car. When the victim—a man Respondent did not know, and who had no connection to the vacant lot—confronted him and demanded that he stop removing the signs, Respondent refused. When the victim said he might make Respondent stop, Respondent, with the knife in his hand, replied, “Try me.” When the victim attempted to use his phone to take a picture of Respondent (according to the victim’s statement in the police report) or input Respondent’s license plate number (according to Respondent), Respondent took the phone out of his hand and threw it over the chain-link fence. He then drove away while the victim climbed over the fence to retrieve the phone. The election placards were apparently the stolen property he was convicted of receiving, which were claimed as property by another realtor, Joel Kushell.²

5. Respondent testified that he served 90 or 120 days (he does not remember which) of house arrest, paid the fines and fees, paid the restitution to Kushell, and checked in weekly with a probation officer for three months, after which he was no longer required to

¹ As of December 3, 2018, the “License information taken from records of the Department of Real Estate” on the Department website says “License Extension granted through 10/08/18.”

² Respondent knew Kushell and did business with him. The placards supported Buena Park Measure A, which would have required that any new construction on property zoned for open space be approved by the voters. Kushell was a leader of the pro-Measure A faction. Respondent opposed the measure. Measure A was defeated.

report. He has not violated probation. The conviction has not been expunged. He remains on probation until February 2020.

6. Respondent has no other convictions and no history of license discipline.

7. Respondent testified that he should not have removed the signs (he testified that if he had called "Code Enforcement" someone from the city would have removed the signs the next business day), should have put the knife away, and should not have seized and thrown the phone. But his testimony was at times inconsistent with the statement in his Conviction Detail Report: he wrote that he was frightened when the victim approached him but testified that he was not; he wrote that he was not thinking about the knife in his hand when he gesticulated at the victim, but testified that he wanted to make the victim aware that he was challenging a man with a knife.

8. Respondent has been an associate broker with Reliance Real Estate Services in Orange County. His wife is also an associate broker with the same firm.

Costs

9. Complainant introduced evidence that the Department incurred \$851.85 in investigation costs, consisting of 11.35 hours of Special Investigator David Huang's time at \$62 per hour, 1.95 hours of Program Technician Lolita Reyes's time at \$37 per hour, and .95 hour of Supervising Special Investigator Guadalupe Felix's time at \$80 per hour. Complainant also introduced evidence that the Department incurred enforcement costs of \$511.75, consisting of 5.75 hours of attorney Amelia Vetrone's time at \$89 per hour. All these costs, totaling \$1,363.60, are reasonable.

LEGAL CONCLUSIONS

1. There is cause to revoke or suspend Respondent's broker license under Business and Professions Code sections 490 and 10177, subdivision (b),³ as paragraph 4 of the Accusation alleges. Section 490, subdivision (a), allows a board or department to revoke a license if the licensee "has been convicted of a crime [that] is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued." Section 10177, subdivision (b), which applies specifically to the Department, similarly allows it to discipline a license if the licensee has been convicted of "a crime substantially related to the qualifications, functions, or duties" of a real estate licensee.

2. Respondent's convictions for brandishing a deadly weapon and attempting to dissuade a victim or witness from reporting a crime (Factual Finding 3) are substantially

³ Further references to section or "§" are to the Business and Professions Code, unless preceded by "CCR," which refers to title 10 of the California Code of Regulations.

related under CCR section 2910, subdivision (a)(8), which makes an unlawful act "with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another" substantially related. His conviction for receiving stolen property, inasmuch as it seems to have been based on taking campaign signs, is not substantially related.

3. Complainant has shown by clear and convincing evidence that there is cause to discipline Respondent's license. Respondent therefore has the burden of showing rehabilitation and fitness to hold a license. (*Martin v. Alcoholic Beverage Appeals Control Bd. of Cal.* (1959) 52 Cal.2d 259.)

4. Respondent fails to meet some of the criteria for rehabilitation set out in CCR section 2912:

a. Two years have not passed since the conviction (CCR § 2912, subd. (a); Factual Finding 3), although more than three and a half years have passed since the crimes were committed (Factual Finding 4).

b. He has not completed probation and his conviction has not been expunged. (CCR § 2912, subds. (c) and (e); Factual Finding 5.)

c. There is no evidence of involvement in programs to provide social benefits or ameliorate social problems. (CCR § 2912, subd. (l).)

d. There is no evidence of education or vocational training. (CCR § 2912, subd. (k).)

e. The evidence is equivocal about how much his attitude has changed since committing the crimes. (CCR § 2912, subd. (m); Factual Finding 7.)

5. Licensing statutes exist to protect the public. (*Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1016.) Respondent's convictions are cause for concern, but he has functioned as a licensee for 15 years without presenting a danger to the public, and his convictions can be seen as the result of a single isolated incident. Thus while Complainant has shown that there is cause for license discipline, she has not shown that license revocation is necessary. The evidence does indicate that Respondent should not be in an unsupervised position. Concerns about his fitness are therefore best addressed by revoking his broker license and granting a restricted salesperson license.

6. As paragraph 5 of the Accusation alleges, Complainant is entitled, under section 10106, to have Respondent pay reasonable costs of investigation and enforcement. Complainant's investigation and enforcement costs, totaling \$1,363.60, are reasonable (Factual Finding 9) and are awarded.

ORDER

Respondent Victor Chevalier Perrin's license and licensing rights under the Real Estate Law⁴ are revoked; but a restricted real estate salesperson license shall be issued to Respondent under Business and Professions Code section 10156.5 if Respondent applies for 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 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 shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

(a) Conviction (including a plea of nolo contendere) of a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee; or

(b) Receipt of evidence 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 this restricted license.

2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or for the removal of any of the conditions, limitations or restrictions of a restricted license until three years after this Decision's effective date.

3. Respondent shall notify the Real Estate 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 137000, and Sacramento, CA 95818-7000. The letter shall state the arrest date, 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 be grounds to suspend or revoke that license.

4. Respondent shall submit with any application for license under a real estate employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing broker, on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate, certifying:

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

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

⁴ Section 10000 et. seq.

5. Respondent shall pay investigation and enforcement costs of \$1,363.60 before activating the license (even if this occurs after the term of restriction) in the employ of a broker.

DATED: December 5, 2018

DocuSigned by:
Howard Posner
HOWARD POSNER
Administrative Law Judge
Office of Administrative Hearings