

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 ~~July 24, 2020~~.

IT IS SO ORDERED

5-28-20

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

Douglas R. McCauley

**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

STEPHEN C. BUSH, Respondent.

Agency Case No. H-41299 LA

OAH No. 2019090162

PROPOSED DECISION

Irina Tentser, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on January 16, 2020, in Los Angeles, California.

Steven Chu, Department of Real Estate (Department) Counsel, appeared on behalf of Maria Suarez (Complainant), a Supervising Special Investigator of the State of California.

Stephen C. Bush, also known as Stephen Christopher Bush, doing business as OC Loan Broker (Respondent), appeared and represented himself.

Oral and documentary evidence was received. The record was left open for Respondent to file and serve rehabilitative documentary evidence no later than February 6, 2020, and for Complainant to file and serve any response to Respondent's documents no later than February 27, 2020. On February 7, 2020, Respondent

submitted rehabilitative documents, collectively marked as Exhibit A, consisting of: 1) bank disclosures provided to consumer R.D.¹, including the loan estimate and signed acknowledgment of receipt of loan documents (Exhibit A, pp. 1-21); 2) bank disclosures provided to consumer J.H., including loan estimate and signed acknowledgment of receipt of loan documents (*Id.* at pp. 22-42); 3) email exchange between Respondent and consumer S.C. wherein the latter acknowledges receipt of the loan estimate from the bank (*Id.* at pp. 43-46); 4) contract and invoice with California Compliance Consulting, compliance specialist Pam Strickland (*Id.* at pp. 47-49); and 5) Mark Korte's character reference letter (*Id.* at 50.)

On February 19, 2020, Complainant filed her objections, through counsel, to Respondent's rehabilitative documents as follows: 1) administrative hearsay pursuant to Government Code section 11513, subdivision (d) to Exhibit A, pages 43 through 50; and 2) incomplete document as to Exhibit A, page 49, as the bottom half of the document is covered up and redacted.

The record was closed and the matter was submitted for decision on February 27, 2020.

After considering the rehabilitative documents and Complainant's objections, the administrative law judge admits Exhibit A as follows: pages 1 through 42 are admitted; pages 43 through 50 are admitted as administrative hearsay pursuant to

¹ First and last name initials are used in lieu of names to protect consumer's privacy.

Government Code section 11513, subdivision (d); and page 49 is admitted but afforded little evidentiary weight as it is an incomplete document.

FACTUAL FINDINGS

Jurisdictional Matters

1. Complainant filed the Accusation in her official capacity.
2. Respondent filed a timely Notice of Defense requesting the hearing.
3. On June 6, 2006, the Department issued Respondent a broker license. On October 28, 2009, the Department issued Respondent a restricted broker license. Respondent presently has license rights issued by the Department as a restricted real estate broker. His broker license is scheduled to expire on October 27, 2021. Since 2011, Respondent has also held a conditional individual mortgage loan originator license endorsement and a conditional company mortgage loan originator license endorsement.

Brokerage

4. Respondent acted as a real estate broker, conducting licensed activities within the meaning of Business and Professions Code² section 10131, subdivision (d) (soliciting borrowers or lenders for on negotiating loans in connection with loans secured by real property), at all relevant times.

² All further section references are to the Business and Professions Code.

Prior License Discipline

5. In a Proposed Decision for Case No. H-35671 LA and OAH No. L-2009050107, the administrative law judge found that Respondent was convicted in the Superior Court of California, County of Orange, Case No. 07HF1667, for violation of California Vehicle Code section 23153(a) (Driving Under the Influence Causing Bodily Injury), a felony and section 23153(b) (Driving with a Blood Alcohol Level in Excess of 0.08 Causing Bodily Injury), a felony. As a result, the judge revoked Respondent's real estate broker license, but provided Respondent the right to a restricted real estate broker license. On October 5, 2009, the Real Estate Commissioner adopted the Proposed Decision of the administrative law judge. The time period Respondent was to hold a restricted license was not specified. However, Respondent was eligible to apply for the removal of any of the conditions, limitations, or restrictions of a restricted license after two years had elapsed from the effective date of the issuance of the Proposed Decision. (Exhibit 3, p. 12.)

6. Respondent has held a restricted license since 2009. The Department submitted no evidence of additional license discipline or consumer complaints in the 11 years Respondent has held a restricted license.

7. According to Respondent, in 2013, he petitioned the Department to lift the restriction. However, his petition was denied based on the Department's assertion that insufficient time had passed since he was granted a restricted license and that he was required to continue to hold a restricted license for an unspecified period. In 2016, Respondent testified that he again petitioned the Department to lift the restriction on his license. As part of the petition process, the Department required Respondent to submit and successfully pass a Department audit.

8. Respondent complied with the Department's audit requirement. On April 30, 2018, the Department completed the audit examinations of Respondent's books and records pertaining to his licensed activities. The audit examination covered the period of time from February 1, 2016, to January 31, 2018. However, during the audit, the Department auditor found deficiencies in Respondent's brokerage documents as discussed in Audit Report LA170111. (Exhibit 5.) As a result, the Department filed the Accusation in this matter, seeking the revocation of Respondent's license based on alleged violations of the Real Estate Law.

9. At hearing, Complainant established the following law and regulation violations through clear and convincing evidence, including the testimony of the Department auditor who testified in support of the audit report:

a. Respondent did not provide approved mortgage loan disclosures to all borrowers within three business days after receipt of a completed written loan application. Respondent did not retain on file a true and correct copy of the statement as signed by the borrower. He provided incomplete mortgage loan disclosure statements which were missing the anticipated liens against real property, the Department's telephone number or website address, or the statement that the loan estimate does not constitute a loan commitment in violation of sections 10236.4,³

³ See Legal Conclusion 4.

subdivision (b), and 10240,⁴ and California Code of Regulations, Title 10, Chapter 6,⁵ section 2840⁶ (approved borrower disclosure statements).

b. Respondent failed to timely submit the required annual Mortgage Loan Business Activity Report to the Department within 90 days from the end of the fiscal year ending on December 31, 2016. Respondent submitted the report late on February 18, 2018, in violation of section 10166.07.⁷

10. The Accusation alleges that Respondent's violations of Real Estate Law set forth in Factual Findings 9a and 9b constitute a violation of the terms of his restricted license. At hearing, however, Complainant provided insufficient evidence to support the foregoing allegation. None of the probationary terms of Respondent's restricted license are applicable to the violations of Real Estate Law pertinent to this matter. (Exhibit 3, p. 12.)

Respondent's Evidence in Mitigation and Rehabilitation

11. Respondent testified in a forthright and credible manner at hearing. He admitted to the violations described in Factual Finding 9. Respondent explained that, while he now understood that it was his responsibility as the broker to provide

⁴ See Legal Conclusion 3.

⁵ All further regulation references are to Title 10, Chapter 6 of the California Code of Regulations.

⁶ See Legal Conclusion 6.

⁷ See Legal Conclusion 6?

consumers with completed mortgage loan documents, he had previously mistakenly relied on the banks involved in the transactions to provide consumer's loan estimates, which he believed to be sufficient to fulfill Real Estate Law guidelines. Respondent sincerely expressed his commitment to provide the required documents to consumers in the future.

12. Respondent admitted to submitting his Mortgage Loan Business Activity Report to the Department untimely, attributing the delay to the disruption of relocating his office in 2018.

13. Prior to submitting to the Department's audit, Respondent took reasonable steps to ensure that his recordkeeping was in compliance with the Real Estate Law, including retaining a compliance specialist to review his books and records. As a result, at the time he submitted to the audit, he was under the mistaken understanding that his books and records were in compliance with Real Estate Law.

14. Respondent submitted a character reference letter from Mark Korte in support of his continued licensure. Mr. Korte, Respondent's long-time friend and client, described Respondent as "honest" and good-natured while handling his refinance. He praised Respondent's dedication as a father, describing the time and effort Respondent dedicated to his son as a Boy Scout Troop adult leader.

15. Respondent prides himself on providing ethical customer support to his clients at reasonable prices. He primarily services lower-income clients and is dedicated to helping them achieve their real estate goals. Respondent has a positive 14-year track record as a licensee, free from consumer complaints.

Costs

16. The Department incurred reasonable audit, investigation, and enforcement costs in this matter totaling \$3,864.21.

LEGAL CONCLUSIONS

Standard and Burden of Proof

1. The burden of proof is on Complainant to show that Respondent's restricted real estate broker license should be disciplined. Complainant has established 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.)

Applicable Statutes and Regulations

2. Section 10131, subdivision (d), defines a real estate broker as "a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others: [¶] . . . [¶] Solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity."

3. Section 10240 describes mortgage loan statement requirements as follows:

(a) Every real estate broker, upon acting within the meaning of subdivision (d) of Section 10131, who negotiates a loan to be secured directly or collaterally by a lien on real property shall, within three business days after receipt of a completed written loan application or before the borrower becomes obligated on the note, whichever is earlier, cause to be delivered to the borrower a statement in writing, containing all the information required by Section 10241. It shall be personally signed by the borrower and by the real estate broker negotiating the loan or by a real estate licensee acting for the broker in negotiating the loan. When so executed, an exact copy thereof shall be delivered to the borrower at the time of its execution. The real estate broker negotiating the loan shall retain on file for a period of three years a true and correct copy of the statement as signed by the borrower.

No real estate licensee shall permit the statement to be signed by a borrower if any information required by Section 10241 is omitted.

(b) For the purposes of applying the provisions of this article, a real estate broker is acting within the meaning of subdivision (d) of Section 10131 if he or she solicits borrowers, or causes borrowers to be solicited, through express or implied representations that the broker will act

as an agent in arranging a loan, but in fact makes the loan to the borrower from funds belonging to the broker.

(c) In a federally regulated residential mortgage loan transaction in which the principal loan amount exceeds the principal loan levels set forth in Section 10245, a real estate broker satisfies the requirements of this section if the borrower receives (1) a "good faith estimate" that satisfies the requirements of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C.A. 2601 et seq.), and that sets forth the broker's real estate license number and a clear and conspicuous statement on the face of the document stating that the "good faith estimate" does not constitute a loan commitment, (2) all applicable disclosures required by the Truth in Lending Act (15 U.S.C.A. 1601 et seq.), and (3) if the loan contains a balloon payment provision, the disclosure described in subdivision (h) of Section 10241, the balloon disclosure required for that loan by Fannie Mae or Freddie Mac, or an alternative disclosure determined by the commissioner to satisfy the requirements of the Truth in Lending Act.

Prior to becoming obligated on the loan the borrower shall acknowledge, in writing, receipt of the "good faith estimate" and all applicable disclosures required by the Truth in Lending Act. The real estate broker shall retain on file for a period of three years a true and correct copy of the signed

acknowledgment and a true and correct copy of the "good faith estimate" and all applicable disclosures required by the Truth in Lending Act as acknowledged by the borrower.

4. Section 10236.4, subdivision (b), requires the mortgage loan disclosure provided to consumers pursuant to section 10240 "include the licensee's license number, the mortgage loan originator's unique identifier, if applicable, and the department's license information telephone number."

5. Regulations section 2840, related to approved borrower mortgage disclosure statements, provides:

(a) The Commissioner shall publish and make available to interested persons as official forms of the Bureau of Real Estate Forms RE 882 (Rev. 8/08) and RE 883 (Rev. 8/08) which are incorporated by reference. Forms RE 882 and RE 883 contain approved format and content for the disclosure statement required by subdivision (a) of Section 10240 of the Code and Section 10241 of the Code.

(b) The publication of the forms pursuant to subdivision (a) hereof is for the purpose of aiding real estate licensees in providing the disclosure of material information to prospective borrowers in a uniform and effective manner.

(c) A real estate broker must obtain the prior written approval of the Commissioner if he/she wishes to use forms different than those referred to in (a). Forms that do not adequately provide the information required by the forms

in subsection (a) above, as appropriate, and in a format that is easily used by the Bureau will not be approved.

6. Section 10166.07 requires brokers to file a mortgage loan business activities report with the Department within 90 days after the end of the broker's fiscal year.

7. Section 10177 provides, in relevant part, "[T]he commissioner may suspend or revoke the license of a real estate licensee, . . . [¶] . . . [¶] (d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2. . . . [¶] . . . [¶] . . . (g) Demonstrated negligence or incompetence in performing an act for which the officer, director, or person is required to hold a license. . . . [¶] . . . [¶] . . . (k) Violated any of the terms, conditions, restrictions, and limitations contained in an order granting a restricted license."

Causes for Discipline

8. Cause exists under section 10177, subdivisions (d) and (g), to discipline all licenses, license endorsements, and license rights of Respondent based on his violation of sections 10236.4, subdivision (b) and 10240, and Regulations section 2840, based on Factual Finding 9a.

9. Cause exists under section 10177, subdivisions (d) and (g), to discipline all licenses, license endorsements, and license rights of Respondent based on his violation of section 10166.07, based on Factual Finding 9b.

10. Complainant provided insufficient evidence to support the allegation that Respondent's violations of Real Estate Law, as set forth in Factual Findings 9a and 9b, constitute a violation of the terms of his restricted license. Accordingly, cause does not exist under section 10177, subdivision (k), to discipline any licenses, license endorsements, and license rights of Respondent based on Factual Finding 10.

Measure of Discipline

11. All matters in mitigation and rehabilitation have been considered. The purpose of an administrative adjudication proceeding, which contemplates the revocation or suspension of a professional or occupational license, is not to punish the individual licensee. The purpose of the agency action that results from the administrative adjudication proceeding is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger v. Board of Medical Quality Assurance*, supra, 135 Cal.App.3d 583.)

12. The Real Estate Law, and in particular Business and Professions Code section 10177, subdivision (d), has a purpose of providing concrete protection for the public not only from conniving real estate licensees but also from uniformed, neglectful, or unknowledgeable real estate licensees. (*Manning v. Fox* (1984) 151 Cal.App.3d 531.)

13. Respondent does his best to provide quality customer service to consumers on the loans he services. However, despite his diligent efforts in hiring a consultant to ensure compliance as part of his efforts to lift the long-standing restriction to his real estate broker's license, his recordkeeping skills failed to conform to the Real Estate Law. Fully acknowledging the wrongfulness of past action is an essential step towards rehabilitation. (See *Seide v. Committee of Bar Examiners* (1989)

49 Cal.3d 933.) Remorse for one's conduct is a cornerstone of rehabilitation. (See *In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309.) Here, Respondent is honest about why he made negligent recordkeeping errors, readily acknowledges his past errors, and credibly asserts that he has corrected his recordkeeping practices to ensure compliance with Real Estate Law at his brokerage. Respondent provides a positive character reference letter, endorsing him both personally and professionally, which also describes his significant community services as a Boy Scout adult leader to his son's troop. He has no record of consumer complaints in his 14-year license history.

14. Under the circumstances, outright revocation of Respondent's restricted broker license, conditional individual mortgage license endorsement, and conditional company mortgage loan originator license endorsement is unduly punitive. A period of probation under appropriate terms and conditions is sufficient to ensure public protection.

Costs

15. The Commissioner may request the administrative law judge to direct a licensee found to have committed a violation of the Real Estate Law to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. (Bus. & Prof. Code, § 10106, subd. (a).)

16. *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, sets forth factors to be considered in determining a reasonable cost assessment for disciplined licensees. Factors to be considered include whether the licensee had a "subjective good faith belief" in the merits of his or her position, whether the licensee raised a "colorable challenge" to the proposed discipline, and the extent of the licensee's financial ability to make later payments. Further, full costs may not be

assessed when a "disproportionately large investigation" was conducted given the circumstances of the case. Finally, the Administrative Law Judge should consider the public interest in regulating the targeted conduct.

17. Based on Legal Conclusion 10 and Factual Finding 16, the reasonable costs to be paid by Respondent to the Department are reduced by one-third to \$2,576.14.

ORDER

All licenses and licensing rights of respondent Stephen C. Bush under the Real Estate Law are revoked; provided, however, a restricted real estate broker license, conditional individual mortgage loan originator license endorsement, and a conditional company mortgage loan originator license endorsement shall be issued to respondent pursuant to Business and Professions Code section 10156.5 if he 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 and conditional endorsements issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under the authority of Business and Professions Code section 10156.6:

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, including by a 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 or license endorsement or for the removal of any of the conditions, limitations or restrictions of a restricted license or license endorsement until two years have elapsed from the effective date of this decision.

4. Respondent shall, within six months from the effective date of this decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of respondent's license until respondent passes the examination.

5. Respondents shall, within six months of the effective date of this decision, pay the Commissioner's reasonable cost for prosecution, investigation, and enforcement of this disciplinary action in the amount of \$2,576.14.

6. 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 and endorsements, 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.

DATE: March 26, 2020

DocuSigned by:
Irina Tentser
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IRINA TENTSER

Administrative Law Judge
Office of Administrative Hearings