

FILED

JUN 24 2021

DEPT. OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of:)	DRE No. H-41607 LA
PRAKASHKUMAR CHHOTUBHAI)	OAH No. 2020100206
BHAKTA, doing business as Desi Realty)	
Estates And Mortgage Services)	
<u>Respondent.</u>)	

DECISION

The Proposed Decision dated April 13, 2021, 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.

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.

This Decision shall become effective at 12 o'clock noon on July 23, 2021

IT IS SO ORDERED CO-1621

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:

**PRAKASHKUMAR CHHOTUBHAI BHAKTA, doing business as
Desi Realty Estates and Mortgage Services, Respondent**

Department Case No. H-41607 LA

OAH No. 2020100206

PROPOSED DECISION

Chris Ruiz, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on March 11, 2021, by videoconference.

Steve Chu, Real Estate Counsel, represented Veronica Kilpatrick (complainant), a Supervising Special Investigator with the Department of Real Estate (Department).

Respondent Prakashkumar Chhotubhai Bhakta represented himself doing business as Desi Realty Estates and Mortgage Services (Desi).

Documentary evidence and witness testimony was received as evidence, the record was closed, and the matter was submitted for decision on March 11, 2021.

FACTUAL FINDINGS

Jurisdictional Matters

1. On June 12, 2004, the Department issued real estate broker license number B/01318490 to respondent, which was set to expire on June 11, 2020, unless renewed. The current status of respondent's license was not established by the evidence.
2. On January 13, 2020, complainant filed the Accusation while acting in her official capacity.
3. On March 10, 2020, respondent filed a Notice of Defense, which requested a hearing.

Respondent's Criminal Convictions

4. On February 13, 2019, in the Superior Court of California, County of San Diego, in case number SCD255550, respondent was convicted, on his plea of guilty, of violating:
 - three counts of Penal Code section 182, subdivision (a)(1), in combination with section 115, subdivision (a)(Conspiracy to Offer False or Forged Instruments for Filing), felonies;
 - two counts of Penal Code section 182, subdivision (a)(1), in combination with section 487, subdivision (a)(Conspiracy to Commit Grand Theft), felonies;
 - 79 counts of Penal Code section 115, subdivision (a)(Offering False or Forged Instruments for Filing), felonies;

- four counts of Penal Code section 487, subdivision (a)(Grand Theft), felonies;
- 22 counts of Penal Code section 530.5, subdivision (a)(Identity Theft), felonies.

5. The criminal court sentenced respondent to serve seven years and eight months in prison, to pay restitution in the amount of \$108,313, and to pay various fines and fees. Respondent served 21 months in custody.

6. On September 16, 2020, respondent was released from prison and was placed on parole. Respondent testified that he was paroled because he has various health conditions which place him at risk to contract COVID-19. Respondent's parole expires in October 2021.

7. Respondent is currently unemployed and receives monthly state disability payments. Respondent would like to return to work in the real estate industry in order to repay the restitution he owes.

8. Respondent withdrew all his exhibits during the hearing.

Costs of Investigation and Prosecution

9. The Department incurred investigation costs of \$974.00. These costs are reasonable based on the declaration of complainant.

10. The Department incurred prosecution costs of \$934.50. These costs are reasonable based on the declaration of Steve Chu.

LEGAL CONCLUSIONS

1. Business and Professions Code (Code) sections 490 and 10177, subdivision (b), permits the suspension or revocation of a license if the licensee has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a licensed real estate salesperson. Therefore, it must be determined whether respondent's criminal convictions are substantially related to the qualifications, functions, or duties of a licensed real estate salesperson.
2. The Department's criteria to determine whether a criminal conviction is substantially related to the professional qualifications of a licensed real estate salesperson are defined in 11 categories which are stated in California Code of Regulations (CCR), title 10, section 2910.
3. Respondent's multiple criminal convictions are substantially related to the qualifications, functions or duties of a real estate licensee pursuant to CCR section 2910, subdivisions (a)(1), (a)(2), (a)(3), (a)(4), (a)(6), (a)(7), (a)(8), and (a)(10). Respondent has suffered multiple criminal convictions involving fraud and dishonesty and his convictions demonstrate a pattern of repeated disregard of the law.
4. Cause exists pursuant to Code sections 490 and 10177, subdivision (b)(1), to suspend or revoke respondent's license because respondent's criminal convictions are substantially related to the qualifications, functions, or duties of a licensed real estate salesperson.
5. Respondent attempted to challenge his criminal convictions at hearing. Respondent's arguments are not persuasive. The issue of respondent's guilt may not be re-litigated. Respondent's entry of the plea of guilty in his criminal case is

conclusive evidence of guilt upon which the administrative law judge must rely.
(*Ameson v. Fox* (1980) 28 Cal.3d 440.)

6. This administrative proceeding is not intended to impose punishment on respondent. Rather, its purpose is to protect the public. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.) Under the facts of this case, a revocation of respondent's license is necessary to protect the public because respondent was recently convicted of 110 felony crimes and he did not establish that he is rehabilitated pursuant to CCR, title 10, section 2912.

7. Pursuant to Code section 10106, the Department requested that respondent be ordered to pay the reasonable costs of the investigation and prosecution of this case. Code section 10106, provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Department of Real Estate, the Commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

8. The Department incurred prosecution costs of \$934.50 and investigative costs of \$974. These costs are reasonable. However, respondent is not currently employed and his license is being revoked. Therefore, it is appropriate to stay the repayment of these costs until such time as respondent reapplies for a license.

ORDER

All licenses and licensing rights of respondent Prakashkumar Chhotubhai Bhakta under the Real Estate Law are revoked. Respondent must pay \$934.50 in prosecution costs and \$974 in investigative costs to the Department of Real Estate before

reapplying for any license or before filing a petition for reinstatement of broker license B/01318490.

Date: 04/13/2021

CRUIZ
Christopher Ruiz (Apr 13, 2021 10:50 PDT)

CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings