

FILED

MAY 19 2021

DEPT. OF REAL ESTATE

by @Eblaw

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:)	DRE No. H-41787 LA
)	OAH No. 2020120380
BRIAN SCOTT KRASNOFF,)	
Respondent.)	

DECISION

The Proposed Decision dated April 6, 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.

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

Page 1 header reads as, "...Agency Case No. H-41029 LA..." corrected as, "...Agency Case No. H-41787 LA..."

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

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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 JUN 8 2021.

IT IS SO ORDERED 5.13.21

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:

BRIAN SCOTT KRASNOFF, Respondent

Agency Case No. H-41029 LA

OAH No. 2020120380

PROPOSED DECISION

Marlo Nisperos, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on March 17, 2021. Maria Suarez (Complainant) was represented by Andrea Bentler, Staff Counsel for the Department of Real Estate. Brian Scott Krasnoff (Respondent) was represented by attorney, John Bishop.

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on March 17, 2021.

SUMMARY

Complainant brings this Accusation to revoke Respondent's real estate broker license. Because Respondent has a recent criminal conviction that is substantially related to the qualifications, functions, or duties of a real estate licensee, failed to

report it as the law requires, and failed to show substantial rehabilitation, the license is revoked, and a restricted salesperson license is issued.

FACTUAL FINDINGS

Jurisdictional Matters

1. Complainant filed the Accusation solely in her official capacity as Supervising Special Investigator of the State of California.
2. On March 5, 1979, the Department of Real Estate (Department) issued Respondent a real estate broker license. Respondent's license was last renewed February 8, 2017, and it expired February 7, 2021. However, the Department retains jurisdiction over this matter pursuant to Business and Professions Code section 10103. On September 24, 2020, Complainant brought this Accusation to revoke Respondent's licensing rights, and he timely requested a hearing.

Criminal Convictions

3. On August 14, 2019, in the Superior Court of California, Los Angeles County, case number BA470583, Respondent was convicted on his nolo contendere plea of failure to secure payment of compensation (Labor Code, § 3700.5), a misdemeanor. Respondent was placed on three years of summary probation, with conditions including maintaining liability and workers' compensation insurance, performing 200 hours of community service, and paying fines and fees totaling \$220. Respondent was ordered to pay an additional \$10,000 fine to the California Department of Insurance, \$6,000 of which was suspended.

4. Respondent incurred two additional criminal convictions that are considered as factors in aggravation in determining the level of discipline to impose:

a. On January 20, 1995, in the Municipal Court of San Fernando Courthouse Judicial District, County of Los Angeles, State of California, in case number 94F04725, Respondent was convicted on his plea of nolo contendere of trespass (Penal Code, § 602, subd. (j)), a misdemeanor. He was placed on three years of summary probation and ordered to pay \$300 restitution to the State of California and to complete 100 hours of community service.

b. On September 7, 1990, in the Municipal Court of Van Nuys Courthouse Judicial District, County of Los Angeles, State of California, case number 90P07080, Respondent was convicted on his plea of nolo contendere to disturbing the peace (Penal Code, § 415), a misdemeanor. Respondent was placed on summary probation for one year and ordered to pay \$10 in restitution. He was fined \$150 and given the choice of paying an assessment of \$202.50 or serving five days in the county jail.

Failure to Report Criminal Conviction

5. Respondent did not report his 2019 criminal conviction to the Department. He stated that he was advised by counsel not to report his criminal conviction to the Department.

Mitigation, Aggravation and Rehabilitation

6. On March 11, 2021, Respondent's summary probation from his 2019 criminal conviction was terminated early, his guilty plea was set aside, a plea of not guilty was entered, and the case was dismissed pursuant to Penal Code section 1203.4.

Respondent fulfilled all terms of probation including payment of \$4,000 to the Department of Insurance and completing 200 hours of community service at his church.

7. The facts and circumstances underlying Respondent's 2019 criminal conviction are as follows: Respondent inherited his father's maintenance business, called Commercial Window, approximately 30 years ago. The business provided cleaning services to 35 or more clients. Respondent operated the business and performed all labor by himself, he did not employ anyone to assist him. According to Respondent, his typist named Lori R., the co-defendant in the 2019 criminal matter, worked for free and assisted him with running the business. One of Lori R.'s duties was to provide a cost estimate to potential clients. Respondent claimed that without his knowledge, Lori R. gave false insurance certificates to clients when they asked for proof of the company's liability insurance. Respondent acknowledged he was responsible for the acts underlying the criminal charges despite his denied awareness of Lori R.'s fraudulent activity. Respondent insisted he carried liability insurance that covered himself, and he never made a claim against the policy. Respondent was unaware of monetary loss to any victim even though the criminal complaint alleged hundreds of thousands of dollars of loss. Respondent closed the business but continues to maintain liability insurance coverage.

8. Respondent offered two letters of support from his friends Danny Mascari and Patrick Oudinarath. Mascari has known Respondent for 30 years, and Oudinarath has known him for five years. Both attested to Respondent's good moral character.

9. Respondent continued to volunteer at his church after completing the 200 hours of community service required by the terms of his probation. He served his

church community by setting up tables, helping clean up, and talking to members about college. Respondent also donated money to the church.

10. Respondent is married and has a 13-year-old son. He is the sole provider for his family, and he also helps his 98-year-old mother.

11. Respondent worked full time as a real estate agent for Keller Williams prior to the recent criminal matter. He stopped representing real estate clients when he learned of the criminal charges. Respondent intends to resume his career in real estate with Keller Williams should he retain his licensure.

12. Complainant introduced evidence that the Department incurred \$2,242.02 in investigation costs, consisting of 33.71 hours of Special Investigator Cecilia Alvarado's time at \$62 per hour and 1.9 hours of Supervising Special Investigator Ray G. Dagnino's time at \$80 per hour. The Department made an arithmetic error in adding the two sums as it recited the total for investigation costs as \$2,244.02. Complainant also introduced evidence that the Department incurred enforcement costs of \$710.40, consisting of 7.5 hours of attorney Andrea Bentler's time at \$96.00 per hour. All of these costs, totaling \$2,952.42, are reasonable.

LEGAL CONCLUSIONS

1. Cause exists to revoke or suspend Respondent's real estate broker license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), and California Code of Regulations, title 10, section 2910, subdivision (a)(8), for his criminal conviction which is substantially related to the duties, qualifications, and functions of a real estate licensee. (Factual Finding 3 and Legal Conclusion 2.)

2(a). California Code of Regulations, title 10, section 2910, subdivision (a)(8) provides:

(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, . . . the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee . . . within the meaning of Sections 480 and 490 of the Code if it involves:

(8) Doing of any 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.

2(b). Respondent's crime of failure to secure payment of compensation is an unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator. Consequently, Respondent's conviction is substantially related to the qualifications, functions or duties of a licensee of the Department.

3. Complainant argued that Respondent's crime was also substantially related because it involved the employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end. (Cal. Code of Regs., tit. 10, § 2910, subd. (a)(4).) Respondent's conviction for failure to secure payment required proof that he knew, or because of his knowledge or experience should be reasonably expected to have known, of the obligation to secure the payment of compensation. Because Respondent's crime did not include bribery, fraud, deceit, falsehood or

misrepresentation, California Code of Regulations, title 10, section 2910, subdivision (a)(4), is inapplicable.

4. At paragraph 7 of the Accusation, Complainant alleges cause exists to revoke or suspend Respondent's license pursuant to Business and Professions Code section 10177, subdivision (j), which states "The commissioner may suspend or revoke the license of a real estate licensee . . . who has . . . [e]ngaged in any other conduct, whether of the same or a different character than specified in this section, that constitutes fraud or dishonest dealing." Respondent's crime of failure to secure payment required actual or constructive knowledge of his duty to secure the payment of compensation and a failure to secure payment, but it did not require fraud or dishonest dealing. Accordingly, no cause exists to revoke or suspend Respondent's license based on Business and Professions code section 10177, subdivision (j).

5. Cause exists to revoke or suspend Respondent's real estate broker license pursuant to Business and Professions Code section 10186.2, for failure to report his 2019 misdemeanor conviction to the Department within 30 days after it occurred. (Factual Finding 5.)

6. Because Complainant has established by clear and convincing evidence that there is cause to revoke or suspend Respondent's license, he has the burden of showing rehabilitation and fitness to hold a license. (*Martin v. Alcoholic Beverage Control Appeals Board* (1959) 52 Cal.2d 259.) Respondent has complied with many of the Department's applicable rehabilitation set forth in California Code of Regulations, title 10, section 2912, as follows: expungement of the conviction which culminated in the administrative proceeding to take disciplinary action (subd. (c)); successful completion or early discharge from probation (subd. (e)); payment of any fine imposed in connection with criminal conviction that is the basis for revocation or suspension of

the license (subd. (g)); correction of business practices responsible in some degree for the crime of which the licensee was convicted (subd. (h)); stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction (subd. (j)); significant and conscientious involvement in church to provide social benefits (subd. (l)); and evidence from friends familiar with the licensee's previous conduct and with subsequent attitudes and behavior patterns (subd. (m)(2)). These factors of rehabilitation are weighed against the concerning fact that less than two years have lapsed since his 2019 criminal conviction, providing little time to establish lasting rehabilitation. (Cal. Code. Regs., tit. 10, § 2912, subd. (a)(1), and Factual Finding 3.)

7. Licensing statutes are meant to protect the public. (*Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1016.) Respondent has been a real estate licensee for approximately 40 years without incident. The public relies on real estate licensees to obey the law and behave with integrity. In recent years Respondent has done neither. The evidence indicated that Respondent's continued unrestricted licensure could pose a threat to the public.

8. Complainant is entitled, under Business and Professions Code section 10106, to have Respondent pay Complainant's reasonable costs of investigation and enforcement, totaling \$2,952.42. (Factual Finding 11.)

ORDER

All licenses and licensing rights of respondent Brian Scott Krasnoff under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and

Professions Code if respondent 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 salesperson 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. 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.

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 nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.

4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

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

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

5. 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 the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

6. 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, CA 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 the suspension or revocation of that license.

7. Respondent shall pay the Department's investigation and enforcement costs of \$2,952.42, payable to the Real Estate Commissioner in the form of a cashier's check or certified check within 30 days of the effective date of this Decision, or on a payment plan by agreement with the Commissioner.

DATE: 04/06/2021

Marlo Nisperos

MARLO NISPEROS

Administrative Law Judge

Office of Administrative Hearings