

III

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 19 2024.

IT IS SO ORDERED 5/24/2024

CHIKA SUNQUIST
REAL ESTATE COMMISSIONER



By: Marcus L. McCarther
Chief Deputy Real Estate Commissioner

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

In the Matter of the Accusation against:

MISIPOUENA SUAESI TAGALOA, Respondent.

Agency Case No. H-42683 LA

OAH No. 2023120676

PROPOSED DECISION

Julie Cabos Owen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on March 28, 2024. Ray Dagnino (Complainant) was represented by Judith Buranday, Counsel for the Department of Real Estate (Department). Misipouena Suaesi Tagaloa (Respondent) represented himself.

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on March 28, 2024.

FACTUAL FINDINGS

Jurisdictional Matters

1. Complainant filed the Accusation while acting in his official capacity as a Supervising Special Investigator of the State of California.

2. Respondent filed a Notice of Defense requesting a hearing.

Respondent's License History

3. Respondent was originally licensed by the Department as a real estate salesperson on October 19, 1988. He was issued a real estate broker's license on May 28, 1991. His broker's license is scheduled to expire on April 29, 2024.

Respondent's Criminal Conviction

4. On September 1, 2020, a felony complaint was filed in the Los Angeles Superior Court, Case Number NA115208, alleging Respondent committed theft from an elder or dependent adult, in violation of Penal Code section 368, subdivision (d), and grand theft, in violation of Penal Code section 487, subdivision (a).

5. On August 8, 2022, in Case No. NA115208, Respondent was convicted on his plea of nolo contendere of violating Penal Code section 368, subdivision (d) (theft from an elder or dependent adult), a felony. The court placed Respondent on two years of formal probation and ordered him to pay his victim \$96,000 in restitution and to complete 200 hours of community service, but not at any church, veteran's center, or veteran-oriented program. The court also barred Respondent from being a representative, trustee, or guardian of any veteran while on probation.

6. The circumstances giving rise to Respondent's 2022 criminal conviction were established through Respondent's testimony at hearing and by his admissions documented in the Investigation Report of peace officers with the Department of Justice, Bureau of Medi-Cal Fraud and Elder Abuse. At the hearing, Respondent initially asserted his Fifth Amendment right against self-incrimination. However, after invoking this privilege, Respondent chose to answer some of the questions posed, and refused

to answer others. The ALJ noted for the record that no inference may be drawn from Respondent invoking this privilege. (Evid. Code §913; See, *Garrity v. New Jersey* (1967) 385 U.S. 493, 17 L.Ed.2d 562, 87 S.Ct. 616; *Spevack v. Klein* (1967) 385 U.S. 511, 17 L.Ed.2d 574, 87 S Ct. 625.) Nevertheless, note can be taken of Respondent's failure to explain or deny evidence against him. (Evid. Code §413.)

7. The circumstances giving rise to Respondent's 2022 criminal conviction arose after Respondent befriended an elderly veteran (Victim) who came to the church where Respondent was a pastor. From 2016 through 2019, Respondent acted as Victim's fiduciary, and he was responsible for Victim's finances, which included Victim's income from Social Security and Veteran's Administration benefits. During that time, Respondent withdrew Victim's funds from the fiduciary account and used Victim's income for personal gains as follows: opening investment accounts in Respondent's name; paying for Respondent's credit card bills; paying for Respondent's internet purchases and downloaded music; paying for car washes, parking, and gasoline for Respondent's vehicle; paying for Respondent's hotel expenses and dinners; and writing checks for donations to Respondent's church.

Failure to Disclose Felony Complaint and Criminal Conviction

8. Respondent was required to report to the Department, within 30 days, the filing of a felony criminal complaint against him or his incurring any criminal conviction. Respondent failed to do so.

Respondent's Testimony Regarding Mitigation and Rehabilitation

9. Respondent did not admit his wrongdoing and did not express any remorse for his crime.

10. Respondent remains on formal probation.

11. Respondent had been making \$25 monthly payments toward the court-ordered \$96,000 restitution. Respondent contended he stopped making payments because at some point he was "disallowed," and "the payment-taking system would not receive [his] payments anymore." Respondent testified the probation department "just said it was paid in full." This is not credible. Respondent later admitted he "may likely still owe the full amount."

12. Respondent contended he has completed the court-ordered 200 hours of community service at "various non-profits." However, he provided no documentation to support his contention.

13. Respondent did not explain why he failed to report to the Department the filing of the felony complaint against him or his criminal conviction.

Costs

14. Complainant submitted evidence of the incurred costs of investigation and enforcement of this matter totaling \$2,913.35. This included \$1,540.55 in investigation costs and \$1,372.80 in attorney costs. All costs are deemed reasonable.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), the Department has the authority to suspend or revoke the licensing rights of a real estate salesperson or broker if the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of a licensed real estate salesperson.

2. California Code of Regulations, title 10, section 2910, subdivision (a) provides a "crime or act shall be deemed to be substantially related to the qualifications, functions, or duties of a licensee . . . if it involves [¶] . . . [¶] (4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end[; or] [¶] . . . [¶] (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."

3. Respondent's criminal conviction for felony theft from an elder or dependent adult constitutes an unlawful act with the intent of conferring a financial or economic benefit upon Respondent and the use of deceit to achieve an end. Consequently, Respondent's criminal conviction is substantially related to the qualifications, functions, or duties of a real estate licensee.

4. Cause exists to suspend or revoke Respondent's real estate broker's license, pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), and California Code of Regulations, title 10, section 2910, subdivision (a)(4) and (8), for his criminal conviction which is substantially related to the duties, qualifications, and functions of a real estate licensee, as set forth in Factual Findings 4 through 7, and Legal Conclusions 1 through 3.

5. Business and Professions Code section 10186.2 requires a licensee to report specified occurrences to the Department as follows:

(a) (1) A licensee shall report any of the following to the department:

(A) The bringing of a criminal complaint, information, or indictment charging a felony against the licensee.

(B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.

(C) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government.

(2) The report required by this subdivision shall be made in writing within 30 days of the date of the bringing of the indictment or the charging of a felony, the conviction, or the disciplinary action.

(b) Failure to make a report required by this section shall constitute a cause for discipline.

6. Cause exists to suspend or revoke Respondent's real estate broker's license, pursuant to Business and Professions Code sections 10186.2, for his failure to report the filing of the felony complaint against him or his criminal conviction to the Department within 30 days of either the filing of the felony criminal complaint or within 30 days of his criminal conviction, as set forth in Factual Findings 4 through 8, and Legal Conclusion 5.

7. California Code of Regulations, title 10, section 2912, lists criteria developed by the Department to evaluate the rehabilitation of a licensee following the licensee's conviction of a crime. The criteria include: (1) The passage of not less than two years from the most recent criminal conviction that is "substantially related" to the qualifications, functions, or duties of a licensee. The passage of less than two years after the most recent criminal conviction is inadequate to demonstrate rehabilitation. (subd.

(a)); (2) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee (subd. (b)); (3) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action (subd. (c)); (4) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code (subd. (d)); (5) Successful completion or early discharge from probation or parole (subd. (e)); (6) Abstinence from the use of controlled substances or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance or alcohol (subd. (f)); (7) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license (subd. (g)); (8) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted (subd. (h)); (9) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question (subd. (i)); (10) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction (subd. (j)); (11) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement (subd. (k)); (12) Significant and conscientious involvement in community, church or privately sponsored programs designed to provide social benefits or to ameliorate social problems (subd. (l); and (13) Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by the absence of further criminal convictions, by the testimony of the licensee, and by evidence from family, friends, probation or parole officers, psychiatrists, or clinical psychologists (subd. (m)).

8. Respondent has failed to establish compliance with any of the Department's rehabilitation criteria. Less than two years have transpired since his

August 2022 felony conviction "which is inadequate to demonstrate rehabilitation" (subd. (a)). Respondent still owes about \$96,000 in restitution, and he stopped making monthly payments without adequate explanation (subd. (b)). He remains on probation (subds. (c) and (e)), and he has failed to acknowledge his wrongdoing and expressed no remorse or change of attitude from that which existed at the time of the commission of his crime (subd. (m)).

9. Respondent's criminal conviction for felony theft from an elder or dependent adult demonstrates his lack of honesty and integrity, which are essential qualifications to maintain licensure as a real estate broker. (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394; *Golde v. Fox* (1979) 98 Cal.App.3d 167.) Respondent provided no assurances of his current honesty and integrity, and he submitted no reference letters from real estate colleagues and clients, friends, or family members to attest to his current character for honesty and integrity. Character references from colleagues and associates familiar with Respondent's work practices would be given careful consideration. (See *Werner v. State Bar of Cal.* (1954) 42 Cal.2d 187, 196-197; *Preston v. State Bar of Cal.* (1946) 28 Cal.2d 643, 650-651.)

10. The purpose of this administrative proceeding is not to impose punishment on Respondent. Rather, its purpose is to protect the public. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.) Given the gravity of Respondent's crime and his lack of rehabilitation, revocation of Respondent's real estate broker's license is necessary to protect the public.

11. Pursuant to Business and Professions Code section 10106, the Department may recover its reasonable costs of investigation and enforcement of this matter in the amount of \$2,913.35, as set forth in Factual Finding 14. However, given

the order below, payment of these costs will be due only upon Respondent's application for license reinstatement or new licensure.

ORDER

All licenses and licensing rights of Respondent, Mispouena Suaesi Tagaloa, under the Real Estate Law are revoked.

If Respondent later applies for a new real estate license or reinstatement of his revoked licensing rights, Respondent shall pay costs of \$2,913.35 to the Real Estate Commissioner, in the form of a cashier's check or certified check, before reinstatement or issuance of any new real estate license, or on a payment plan by agreement with the Commissioner, or as the Commissioner may otherwise order.

DATE: **04/16/2024**



JULIE CABOS OWEN

Administrative Law Judge

Office of Administrative Hearings