

FILED

AUG 10 2017

BUREAU OF REAL ESTATE

By Cal Delous

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	No. H-04818 SD
)	
JONATHAN DAVID COX,)	OAH No. 2016120542
)	
Respondent.)	
_____)	

STIPULATION AND AGREEMENT AND DECISION AFTER REJECTION

It is hereby stipulated by and between Respondent JONATHAN DAVID COX ("Respondent"), individually, represented by William R. Winship, Jr., and the Complainant, acting by and through Steve Chu, Counsel for the Bureau of Real Estate ("Bureau"), as follows for the purpose of settling and disposing of the Accusation filed on July 28, 2016, in this matter:

1. On March 9, 2017, a formal hearing was held on the Accusation in accordance with the provisions of the Administrative Procedure Act ("APA") before Administrative Law Judge Roy W. Hewitt ("ALJ Hewitt") where, after evidence and testimony were received, the record was closed and the matter was submitted for decision.
2. On March 30, 2017, ALJ Hewitt issued a Proposed Decision.
3. On May 17, 2017, the Commissioner rejected the Proposed Decision.
4. The parties wish to settle this matter without further proceedings.

1 makes application therefor and pays to the Bureau the appropriate fee for the restricted license
2 within ninety (90) days from the effective date of this Decision. The restricted license issued to
3 Respondent shall be subject to all of the provisions of Section 10156.7 of the Code and to the
4 following limitations, conditions, and restrictions imposed under Section 10156.6 of the Code:

5 1. The restricted license issued to Respondent may be suspended prior to
6 hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction,
7 plea of guilty, or plea of nolo contendere to a crime which is substantially related to
8 Respondent's fitness or capacity as a real estate licensee.

9 2. The restricted license issued to Respondent may be suspended prior to
10 hearing by Order of the Real Estate Commissioner on evidence satisfactory to the
11 Commissioner that Respondent has violated provisions of the California Real Estate Law, the
12 Subdivided Lands Law, Regulations of the Real Estate Commissioner, or the conditions
13 attaching to this restricted license.

14 3. Respondent shall not be eligible to apply for the issuance of an
15 unrestricted real estate license nor for the removal of any of the conditions, limitations or
16 restrictions of a restricted license until two (2) years have elapsed from the effective date of this
17 Decision and Order.

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

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

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


27 5. Respondent shall, within nine (9) months from the effective date of this

1 Decision and Order, present evidence satisfactory to the Commissioner that Respondent has,
2 since the most recent issuance of an original or renewal real estate license, taken and
3 successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the
4 Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this
5 condition, Respondent's real estate license shall automatically be suspended until Respondent
6 presents evidence satisfactory to the Commissioner of having taken and successfully completed
7 the continuing education requirements. Proof of completion of the continuing education
8 courses must be delivered to the Bureau of Real Estate, Flag Section at P.O. Box 137013,
9 Sacramento, CA 95813-7013.

10 6. Respondent shall notify the Commissioner in writing within 72 hours of
11 any arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate,
12 Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013. The letter shall set forth the
13 date of Respondent's arrest, the crime for which Respondent was arrested and the name and
14 address of the arresting law enforcement agency. Respondent's failure to timely file written
15 notice shall constitute an independent violation of the terms of the restricted license and shall
16 be grounds for the suspension or revocation of that license.

17 7. All licenses and licensing rights of Respondent are indefinitely
18 suspended unless or until Respondent pays the sum of \$1,058.50 for the Commissioner's
19 reasonable cost of the investigation and enforcement which led to this disciplinary action. Said
20 payment shall be in the form of a cashier's check made payable to the Bureau of Real Estate.
21 The investigative and enforcement costs must be delivered to the Bureau of Real Estate,
22 Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of
23 this Decision and Order.

24
25 DATED: 7-25-2017


26 
Steve Chu, Counsel
Bureau of Real Estate

27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

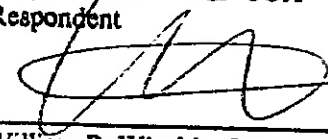
I have read the Stipulation and Agreement. I understand that I am waiving rights given to me by the California Administrative Procedure Act, (including but not limited to Sections 11521 and 11523 of the Government Code), and I willingly, intelligently, and voluntarily waive those rights, including the right to seek reconsideration and the right to seek judicial review of the Commissioner's Decision and Order by way of a writ of mandate. I can signify acceptance and approval of the terms and conditions of this Stipulation and Agreement by mailing the original signed Stipulation and Agreement to: Steve Chu, Bureau of Real Estate, 320 West 4th Street, Suite 350, Los Angeles, California 90013-1105.

DATED: 7-20-17



JONATHAN DAVID COX
Respondent

DATED: 7/24/17



William R. Winship, Jr.
Counsel for Respondent
Approved as to Form

///
///
///
///
///
///
///
///
///
///
///
///


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

* * *

The foregoing Stipulation and Agreement is hereby adopted by me as my
Decision in this matter as to Respondent JONATHAN DAVID COX, and shall become
effective at 12 o'clock noon on AUG 30 2017.

IT IS SO ORDERED 8/7/17

WAYNE S. BELL
REAL ESTATE COMMISSIONER



By: DANIEL J. SANDRI
Chief Deputy Commissioner

FILED

MAY 19 2017

BUREAU OF REAL ESTATE

By 

Saldon

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)	CalBRE No. H-04818 SD
)	
JONATHAN DAVID COX,)	OAH No. 2016120542
)	
Respondent.)	

NOTICE

TO: JONATHAN DAVID COX, Respondent, and WILLIAM R. WINSHIP JR.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated March 30, 2017, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated March 30, 2017, is attached hereto for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on Thursday, March 09, 2017, and any written argument hereafter submitted on behalf of respondent and complainant.

Written argument of respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of Thursday, March 09, 2017, at the Sacramento office of the Bureau of Real Estate unless an extension of the time is granted for good

1 cause shown.

2 Written argument of complainant to be considered by me must be submitted within
3 15 days after receipt of the argument of respondent at the Sacramento Office of the Bureau of Real
4 Estate unless an extension of the time is granted for good cause shown.

5 DATED: 5/17/17.

6 WAYNE S. BELL
7 REAL ESTATE COMMISSIONER

8
9 *Daniel J. Sandri*

10 By: DANIEL J. SANDRI
11 Chief Deputy Commissioner

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JONATHAN DAVID COX,

Respondent.

Case No. H-04818 SD

OAH No. 2016120542

PROPOSED DECISION

Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on March 9, 2017.

Bureau of Real Estate (BRE) Counsel Steve Chu represented complainant, Veronica Kilpatrick, Supervising Special Investigator, BRE, Department of Consumer Affairs, State of California.

William R. Winship, Jr., Esq., represented respondent, Jonathan David Cox.

The matter was submitted on March 9, 2017.

FACTUAL FINDINGS

Jurisdictional Matters

1. On October 16, 2002, the bureau issued a real estate salesperson license to respondent. Respondent's license was in full force and effect at all relevant times.
2. On July 25, 2016, complainant signed, and thereafter filed, an accusation against respondent. The accusation alleged that cause for discipline of respondent's license existed based on respondent's March 26, 2015, misdemeanor criminal convictions. As part of the accusation, complainant requested reimbursement of the costs of investigation and prosecution of this matter.
3. Respondent timely filed a Notice of Defense, and this hearing ensued.

Respondent's March 26, 2015, Misdemeanor Criminal Convictions

4. On March 26, 2015, respondent, after entry of guilty pleas, was convicted in San Diego Superior Court of one count of violating California Unemployment Insurance Code section 2117.5 (acting with intent to evade taxes), a felony, later reduced to a misdemeanor pursuant to California Penal Code section 17, subdivision (b), and California Labor Code section 3700.5, subdivision (a) (failure to secure the payment of compensation), a misdemeanor. Both convictions resulted from the same set of operative facts.

Facts Underlying Respondent's Convictions

5. Respondent, a 37-year-old man with a college degree in Communications, and two of his lifetime friends, Scott Wolfe and John Murphy, decided to join forces and begin a "house-flipping"¹ business. Respondent and Murphy were to locate properties for potential purchase and Wolfe, who owned a copy machine company, was in charge of Investor Relations. Wolfe raised over three million dollars from investors and the three friends developed "Three Frogs Real Estate," a house-flipping business. Three Frogs Real Estate commenced business on January 1, 2013. House-flipping was a new venture for the friends and they gathered information from others who were in the business. The house-flipping industry, in general, was in its infancy and those engaged in the industry were all learning the ropes together and helping each other out. Initially, respondent and his friends contemplated using a full sub-contractor base for all services with no in-house construction services.

6. Respondent was charged with obtaining all of the necessary insurance for Three Frogs. Based on advice of others in the industry, respondent contacted Susan McDonald, a Michael Kennedy Insurance Agency, Inc., commercial account manager, who had gained a reputation in the house-flipping industry as the "go-to person" for house-flipping business insurance. Ms. McDonald told respondent that Kennedy Insurance Agency "works with house-flippers" and provides a full range of "house-flipping insurance." Respondent retained Mark Youngblood, a person who had house-flipping experience,² to engage independent contractors, "1099 workers," to do the renovation work on the properties. Mark Youngblood gathered a work force and Three Frogs began renovating "seven or eight" properties. The business was "doing fantastic" until November 12, 2013.

7. On November 12, 2013, a tree-trimming worker died on the job as a result of being hit by a falling branch. Following the incident, respondent learned for the first time that the tree-trimmer was not covered by Workers' Compensation. Respondent was in "complete shock" by this revelation because he had relied on Kennedy Insurance Agency's expertise in the house-flipping insurance business to ensure that all insurance policies were in place.

¹ "House-flipping" involves purchasing, renovating, developing and selling real property.

² Respondent believed that Mr. Youngblood was a licensed contractor.

8. Cal/OSHA, the California Division of Labor Standards Enforcement, the California Employment Development Division (EDD), and the San Diego County District Attorney all commenced investigations focused on Three Frogs's failure to have the required Workers' Compensation Insurance coverage for the deceased tree-trimmer. At all times prior to the tree-trimming incident, and for a period of time thereafter, respondent believed that all legally required insurance was in place. However, as a result of the investigations by the governmental agencies and the District Attorney's Office, respondent was criminally charged.

9. Ultimately, respondent came to understand that Mr. Youngblood was not licensed by the Contractors' State License Board; therefore, he and the "independent contractors" he hired were deemed to be employees of Three Frogs and they were not properly covered by Workers' Compensation Insurance. Based on this information, respondent pleaded guilty to the two misdemeanor charges and the rest of the charges were dismissed pursuant to plea negotiations. As a result of the convictions, respondent was placed on summary probation for three years under certain terms and conditions, including 14 days of public work service, a \$2,500 fine, payment of \$314,000 in restitution, and a \$1,000 donation to charity.

Evidence in Mitigation and of Rehabilitation

10. Respondent is in full compliance with the terms and conditions of his probation. He has paid the fine, made restitution and donated \$1,000 to charity. Three Frogs was forced to seek protection from the U.S. Bankruptcy Court and lost profits in the multi-million-dollar range.

11. At all times respondent believed that Mr. Youngblood was a licensed contractor and that all personnel Mr. Youngblood retained to work on the renovations were independent contractors. Additionally, respondent reasonably relied on the expressed expertise of Kennedy Insurance Agency representatives and the representations they made that all required insurance for "house-flipping" was in place.

12. On July 6, 2015, respondent signed, and thereafter submitted to the bureau, a Salesperson Renewal Application. In that application respondent fully disclosed his criminal convictions. (Exh.3) A July 8, 2015, entry in the bureau's license history report concerning respondent evidenced that respondent's Salesperson license was renewed as of July 6, 2015. (Exh. 2)

13. Respondent has taken the necessary steps to ensure that a similar incident does not occur in the future by hiring an "Insurance Compliance Analyst" to review all of the insurance required for the business, "as well as anyone who comes on the premises." As respondent testified, had he been advised of the Workers' Compensation Insurance requirement(s), a \$1,000 policy "would have eliminated the reason we are here."

14. Respondent's summary probation is due to expire on March 25, 2018, and respondent intends to file for early termination of probation and expungement of his criminal convictions "within the next month or so."

15. Respondent has a stable family life and he participates with his wife in the Christian Youth Theater, a non-profit nationwide program designed to "shape the character of our youths." Additionally, respondent coaches football (offense and defense) at Bishops High School.

16. Respondent is further educating himself in the industry by taking courses necessary to prepare him for a Real Estate Broker's License.

Costs

17. The reasonable costs of the investigation and prosecution of this matter total \$1,058.50.

LEGAL CONCLUSIONS

1. California Code of Regulations, title 10, section 2910 provides, in part:

(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in Section 480(a)(2) or 480(a)(3) of the Code, the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the department within the meaning of Sections 480 and 490 of the Code if it involves:

[¶] . . . [¶]

(7) Willfully violating or **failing to comply with a statutory requirement that a license, permit or other entitlement be obtained from a duly constituted public authority before engaging in a business or course of conduct.**

[¶] . . . [¶]

(c) If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or acts were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee. (Bold added.)

Respondent failed to comply with a statutory requirement to obtain Workers' Compensation Insurance for his worker(s); therefore, his convictions were for crimes that are substantially related to the qualifications, functions and duties of a licensee. Although respondent's felony conviction was ultimately reduced to a misdemeanor, he nonetheless pled guilty and was convicted of a felony when he entered his pleas. Therefore, cause for discipline exists pursuant to Business and Professions Code sections 490³ and 10177, subdivision (b)(1)⁴.

2. The purpose of discipline is not to punish, but to protect the public by eliminating practitioners who are dishonest, immoral, disreputable or incompetent. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.) Rehabilitation is a state of mind and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.)

3. Business and Professions Code section 2912 provides:

The following criteria have been developed by the department pursuant to Section 482 (b) of the Business and Professions Code for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee.

(a) 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 of the department. (A longer period will be required if there is a

³ Business and Professions Code section 490 provides, in part "(a) . . . a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued. . . .

⁴ Business and Professions Code section 10177 provides, in part:

The commissioner may suspend or revoke the license of a real estate licensee . . . who has done any of the following:

[¶] . . . [¶]

(b)(1) **Entered a plea of guilty to . . . a felony**, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee. . . . (Bold added.)

history of criminal convictions or acts substantially related to the qualifications, functions or duties of a licensee of the department.)

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee.

(c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action.

(d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.

(e) Successful completion or early discharge from probation or parole.

(f) 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.

(g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.

(h) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.

(i) 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.

(j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.

(k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

(l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by any or all of the following:

- (1) Testimony of applicant.
- (2) Evidence from family members, friends or other persons familiar with the licensee's previous conduct and with subsequent attitudes and behavioral patterns.
- (3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.
- (4) Evidence from psychiatrists, clinical psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.
- (5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

In this case it has been over two years since respondent's convictions. Respondent has made complete restitution to the victim's survivors. Respondent did not commit a crime requiring registration pursuant to Penal Code section 290. Respondent is seeking early discharge from probation and expungement of his convictions, and he is in full compliance with all of the terms and conditions of his probation. Controlled substances and/or alcohol were not involved. Respondent paid all fines associated with his convictions. Respondent has hired an insurance consultant to ensure a similar event will not occur in the future.

Respondent has a "solid" family life. Respondent is studying for his Broker's License. Respondent works with his wife in the Christian Youth Theater and he coaches football (both offense and defense) at Bishops High School. Respondent has no record of any other criminal conduct either before or after the convictions discussed herein and, these two convictions resulted from the same set of operative facts. In sum, respondent's convictions arose from conduct without likelihood of recurrence and public protection does require discipline in this case. Respondent has taken all steps necessary to prove that he has gotten the message and that he is fully rehabilitated; accordingly, given the particular facts of this case, imposition of discipline could only be viewed as unduly punitive.⁵

⁵ The purpose of discipline is not to punish, but to protect the public by eliminating practitioners who are dishonest, immoral, disreputable or incompetent. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.) Administrative proceedings to revoke, suspend, or impose discipline on a professional license are noncriminal and nonpenal; they

Costs

4. As set forth in Finding 17, the reasonable costs of the investigation and prosecution of this matter totaled \$1,058.50. However, the inquiry concerning costs does not end with a finding of reasonableness. *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 held that awarding costs of investigation and enforcement under California Code of Regulations, title 16, section 317.5 did not violate due process. However, the court held that it was incumbent on the board to exercise its discretion to reduce or eliminate cost awards in such a manner that it did not “deter chiropractors with potentially meritorious claims or defenses from exercising their right to a hearing.” The Court set forth four factors required to be considered when deciding whether to reduce or eliminate costs: (1) Whether the chiropractor used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the chiropractor had a “subjective” good faith belief in the merits of his position; (3) whether the chiropractor raised a “colorable challenge” to the proposed discipline; and (4) whether the chiropractor had the financial ability to make payments.

Since the Board of Chiropractic Examiners’ cost recovery provision and Business and Professions Code section 10106 have substantially the same language, *Zuckerman’s* reasoning applies. Accordingly, complainant’s request for cost recovery is denied based on application of the *Zuckerman* factors, in conjunction with the conclusion that discipline is not warranted in this case.

ORDERS

1. The accusation against respondent, Johnathan David Cox, is dismissed without imposition of discipline.
2. Complainant’s cost recovery request is denied.

DATED: March 30, 2017

DocuSigned by:
Roy Hewitt
8225E047DD7D48A

ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings

are not intended to punish the licensee, but rather to protect the public. (*Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195, 1206.)