

FILED

MAY - 9 2017

BUREAU OF REAL ESTATE

BEFORE THE BUREAU OF REAL ESTATE By *W. Bell*

STATE OF CALIFORNIA

In the Matter of the Accusation of

THREE FROGS, INC., dba THREE FROGS,
THREE FROGS REAL ESTATE and
JOHN BENJAMIN MURPHY,

Respondents

CalBRE No. H-04819 SD

OAH No. 2016120155

DECISION

The Proposed Decision dated March 21, 2017, 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, but the right to a restricted broker license is granted to Respondent(s).

Pursuant to Government Code section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The Bureau'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. 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 MAY 29 2017.

IT IS SO ORDERED

5/1/17

WAYNE S. BELL
REAL ESTATE COMMISSIONER

Daniel J. Sandri

By: DANIEL J. SANDRI
Chief Deputy Commissioner

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

In the Matter of the Second Amended
Accusation Against:

THREE FROGS, INC., dba THREE
FROGS, THREE FROGS REAL ESTATE
and JOHN BENJAMIN MURPHY,

Respondents.

Case No. H-04819 SD

OAH No. 2016120155

PROPOSED DECISION

Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on February 21, 2017.

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

William R. Winship, Jr., Attorney at Law, Winship & Friedrichs, represented respondents John Benjamin Murphy, Three Frogs, Inc., dba Three Frogs, and Three Frogs Real Estate.

The matter was submitted on February 21, 2017.

FACTUAL FINDINGS

Jurisdictional Matters

1. On March 4, 2013, the bureau issued a corporate real estate license to respondent Three Frogs, Inc., dba Three Frogs, and Three Frogs Real Estate. The Designated Officer is respondent John Benjamin Murphy. Three Frogs' license was to expire on March 3, 2017. It is not known whether that license was renewed.

2. On March 11, 2005, the bureau issued a real estate salesperson license to respondent Murphy. On April 16, 2009, the bureau issued a real estate broker license to

respondent. Respondent's broker license will expire on April 15, 2017, unless renewed or revoked.

3. On September 23, 2016, complainant signed the Second Amended Accusation in her official capacity. The accusation sought disciplinary action against "all the licenses and license rights" of respondents Three Frogs and Murphy based on their having sustained a criminal conviction and based on respondent Murphy's failure to supervise and control the activities of the corporation. Complainant also sought recovery of the costs incurred for the investigation and prosecution of the case.

4. Respondents timely filed a Notice of Defense, and this hearing followed.

Start-up and Operation of Three Frogs

5. When respondent Murphy began his real estate career as a real estate salesperson, he worked as a loan officer for Cambridge Home Loans. He became a licensed real estate broker four years later and started his own loan brokerage shortly afterwards.

6. Through his work in real estate loans during the market downturn, he became aware of distressed properties that were uncared for, vacated and/or in foreclosure. In 2010 he worked for a company that refurbished distressed properties. Respondent Murphy observed neighborhoods losing value and homeowners losing equity, and he saw that the way to help those neighborhoods and homeowners increase the resale value of their real property was by renovating those distressed homes.

7. Respondent Murphy joined together with two longtime friends, Jonathan Cox and Scott Wolfe,¹ to start a "home flipping" business they called Three Frogs. Respondent Murphy had the real property experience, Mr. Cox was in charge of the day-to-day needs of the company, and Mr. Wolfe managed investor relations and supervised construction.

8. Three Frogs was the first business venture of this type for each of the friends. Mr. Wolfe said he had a family friend who was an investor and who might be willing to invest in their business. The potential investor flew to California and agreed to invest in Three Frogs beginning with a \$1.5 million investment and increasing it over time to \$3 million.

9. The Three Frogs shareholders/officers talked to several house flipping companies they knew to get advice about the pitfalls of such a business. They obtained all of the licenses they were required to have. One owner of a flipping company told respondent Murphy to make sure they obtained insurance. Respondent Murphy went to Michael Kennedy Insurance Agency, Inc., and asked it to give him an expert opinion about what insurance they needed for their house flipping business. Three Frogs obtained insurance that

¹ Respondent Murphy had known Mr. Cox since elementary school and Mr. Wolfe for over 10 years.

cost \$30,000 in annual premiums. Agents from Michael Kennedy Insurance Agency, Inc. visited Three Frog sites to inspect them and learn what the business was doing.

10. Other, larger, flipping companies worked with, and recommended, Mark Youngblood as someone who knew a lot of people in the construction industry and who managed projects. If Three Frogs needed a particular kind of construction/trade work completed, they contacted Mr. Youngblood. Mr. Youngblood orchestrated the work and workers needed, and he supervised the work being done. At the end of each week, Mr. Youngblood advised Three Frogs which tradesmen needed to be paid, and Three Frogs paid them.

11. According to respondent Murphy, the business was successful and the homeowners were very satisfied with the homes Three Frogs was refurbishing. By November 2013, Three Frogs had refurbished approximately 20 houses.

2015 Conviction for Intent to Evade Tax and Failure to Secure Compensation

12. In November 2013, Mr. Youngblood arranged a tree trimming company to do work on one of Three Frogs' properties. While working, an employee of the tree trimming company was struck by a falling limb and killed.

13. Subsequent to the worker's death, Occupational Safety and Health Administration, the Division of Labor Standards Enforcement, and the Employee Development Department (EDD), along with police officers in tactical gear and guns drawn, raided the offices of Three Frogs. The office was sequestered and, according to respondent Murphy, they took everything removable, including computers, phones, iPads and documents. In the aftermath of the incident, Three Frogs learned that Mr. Youngblood was not licensed and did not carry workers' compensation insurance. Three Frogs had operated under the assumption that Mr. Youngblood and the tradesmen he used were independent contractors and not employees of Three Frogs; they did not carry workers' compensation insurance, and they did not pay payroll taxes on the tradesmen that did work on their properties.

14. On March 26, 2015, in the Superior Court of California, County of San Diego, respondents Murphy and Three Frogs pled guilty to, and were convicted of, one count of failing to timely file a payroll tax return, a felony, in violation of Unemployment Insurance Code section 2117.5, and one count of failure to secure workers' compensation insurance, a misdemeanor, in violation of Labor Code section 3700.5, subdivision (a). As a result of their convictions, the court placed respondents on three years of informal probation with certain terms and conditions. Amongst other terms and conditions, respondent Three Frogs was ordered to pay a \$10,000 fine, restitution of \$290,000 to the deceased worker's family, restitution of \$24,000 to EDD, and donate \$1,000 to a charity. Amongst other terms and conditions, respondent Murphy was ordered to pay a \$2,500 fine, serve 14 days in a public service program, donate \$1,000 to a charity, and he was ordered to pay restitution jointly

with Three Frogs. Respondents' motions under Penal Code, section 17, subdivision (b), to reduce the felony count to a misdemeanor were granted.

Evidence of Mitigation and of Rehabilitation

15. Respondent Murphy testified at the hearing. He stated that he and his fellow shareholders/officers intended to do everything right in setting up and operating Three Frogs. They tried to do everything "by the book" and not take any shortcuts. They spoke to several large house flipping companies to get their advice and to fully understand the business. They went to an established insurance company who provided "a whole gambit of insurance needs" for respondents and trusted that the insurance agency had given them correct and complete advice about the insurance they needed to properly run the business. Because employees of the insurance agency went to the sites Three Frogs was working on and saw workers on the sites, respondent Murphy believed the insurance agency was fully aware of the way the corporation was run and what their insurance needs were.

16. Respondents also trusted Mr. Youngblood. They believed he was an independent contractor who was licensed by the Contractors State Licensing Board to do what he was doing. After the incident, they were told that Mr. Youngblood was not licensed, and therefore, he was deemed to be an employee of Three Frogs. Additionally, they were told that the deceased employee was properly classified as an employee of Three Frogs due to the fact that Mr. Youngblood was not licensed.

17. The worker's death and the criminal charges filed against respondents relating to the death were highly publicized. Three Frogs' investors "freaked out" and wanted their money out of the corporation. The investor's money was all respondent Murphy and his fellow shareholders/officers had to live on and defend the corporation and themselves. Three Frogs was forced to file for bankruptcy protection, and, in November 2015, the corporation and its shareholders/officers filed a lawsuit against the insurance agency for professional negligence and breach of fiduciary duty.

18. In May 2014, the insurance company sent Mr. Cox an email in which it advised its clients in house flipping businesses to protect themselves by obtaining a workers' compensation policy from the insurance agency costing approximately \$1,145 annually.

19. Respondents did not believe they had any employees, and they believed they hired independent contractors, for which workers' compensation insurance and payment of payroll taxes were not required.

20. Respondent Murphy and his fellow shareholders/officers desire, and need, to get back into business. They came close to losing everything and are starting over. They have hired an experienced individual whose job is to insure that the company is in compliance with all statutes and regulations governing license, insurance and other requirements of the business. They have taken all the steps they can to make sure they, and those that work with them, are fully covered.

21. Respondent Murphy stated he wants to be in the real estate industry for the rest of his life and that he has immense respect for his license. He is now particularly careful and "won't let anything like this happen again." He stated he learned a lot through the process and knows how to make sure it will never happen again.

22. Respondent Murphy is an active member of Journey Church in La Mesa. His mother is a member of St. Madeleine Sophie's Center, and he helps her from time to time with drug and alcohol fundraisers for the center.

23. Respondent Murphy is married and has three children. His 18-year-old son plays water polo for University of California, San Diego; his 12 year-old son is in 6th grade and also plays water polo; and his 10-year old daughter is in 4th grade and is involved in dance. The publicity and criminal charges brought against him embarrassed his children and family.

24. Respondent Murphy has been taking seminars to learn more about risk management and insurance for his company.

25. Respondent Murphy's testimony was sincere, remorseful and credible. He has no prior disciplinary history with the bureau.

Costs

26. The bureau filed a Cost Recovery Declaration of Enforcement Costs pursuant to Business and Professions Code section 10106 seeking recovery of \$979 as costs incurred by counsel for the bureau and a Certified Statement of Investigation Costs seeking recovery of \$525.80 for costs incurred for the investigation of the case. The amounts sought are reasonable.

LEGAL CONCLUSIONS

Applicable Statutory and Regulatory Provisions

1. The suspension or revocation of a professional license must be based upon conduct proven by clear and convincing evidence. (*Grubb Co., Inc. v. Department of Real Estate*, (2011) 194 Cal.App.4th 1494.)

2. Business and Professions Code section 482 requires the department to "develop criteria to evaluate the rehabilitation of a person when . . . (b) considering suspension or revocation of a license under Section 490." Section 482 also requires the Department to "take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

3. Business and Professions Code section 490 provides in part:

(b) . . . 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 license was issued.

[¶] . . . [¶]

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere

4. Business and Professions Code section 493 provides, in relevant part, that in a proceeding to revoke or suspend a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

5. Business and Professions Code section 10159.2, subdivision (a), provides:

(a) The officer designated by a corporate broker licensee pursuant to Section 10211 shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of this division, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required.

6. Business and Professions Code section 10177, subdivision (b), provides in relevant part, that the department can suspend or revoke the license of a real estate licensee who has entered a plea of guilty to a felony or a crime that is "substantially related to the qualifications, functions, or duties of a real estate licensee"

7. Business and Professions Code section 10177, subdivision (d), provides that the department can suspend or revoke the license of a real estate licensee who has disregarded or violated the statutes, rules or regulations governing real estate licensees.

8. Business and Professions Code section 10177, subdivision (g), provides in relevant part, that the department can suspend or revoke the license of a real estate licensee

who has "[d]emonstrated negligence or incompetence in performing an act for which he or she is required to hold a license."

9. Business and Professions Code section 10177, subdivision (h), provides that the department can suspend or revoke the license of a real estate licensee who has "failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required."

10. Business and Professions Code section 10106 states in pertinent part:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before the department, 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.

[¶] . . . [¶]

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the commissioner or the commissioner's designated representative, shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the commissioner to increase the cost award. The commissioner may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

11. Business and Professions Code section 10156.5 provides:

The commissioner may issue a restricted license to a person:

(a) Who is or has been licensed under this chapter and who has been found by the commissioner after a hearing to have violated

provisions of Division 4 of this code where such violation would justify the suspension or revocation of the license.

(b) Who is applying for a license under this chapter, who has met the examination and experience requirements, but who has been found by the commissioner after a hearing to have failed to have made a satisfactory showing that he meets all of the other requirements for the license applied for, where such failure would justify the denial of the license applied for.

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

(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:

[¶] ... [¶]

(3) Willfully attempting to derive a personal financial benefit through the nonpayment or underpayment of taxes, assessments or levies duly imposed upon the licensee or applicant by federal, state, or local government.

[¶] ... [¶]

(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.

13. California Code of Regulations, title 10, 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 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.

Evaluation

14. Cause exists under the First Cause of Action to impose discipline on respondent Three Frogs' corporate broker license and respondent Murphy's broker license pursuant to Business and Professions Code, sections 490 and 10177, subdivision (b), and California Code of Regulations, title 10, section 2910, because they were convicted of crimes that are substantially related to the qualifications, functions, and duties of a real estate licensee. (Bus. & Prof. Code, §§ 490; 10177, subd. (b).) Real estate salespersons and

brokers deal in complicated business and financial transactions and are often entrusted with financial, personal and confidential information about clients. They are required to complete complicated and extensive applications and other legal documents, to follow the rules and regulations governing real estate licensees, and to deal honestly in real estate transactions. They are required to comply with complex legal requirements in those transactions. Real estate licensees must be clear-headed and law-abiding, have integrity, and use good judgment in completing real estate transactions, including their own. Real estate licensees must deal openly and honestly in all transactions, and they must constantly be aware of others in the industry who may not be operating honestly or lawfully.

Respondents' convictions are substantially related to the qualifications, functions, and duties of real estate licensees in that the obligation to obtain necessary insurance and properly classify employees was their responsibility. Respondents relied upon their real estate licenses to assist them in conducting the business they wished to pursue. Flipping houses is directly related to the purchase and sale of real estate and the convictions are substantially related to their real estate licenses.

15. Cause does not exist under the Second Cause of Action to impose discipline on respondent Murphy's broker license. The Second Cause of Action is entitled, "Failure to Supervise." Business and Professions Code, section 10177, subdivision (h), provides that discipline may be imposed if the respondent fails "to exercise reasonable supervision and control of the activities of the corporation **for which a real estate license is required.**" (Emphasis added.). Complainant failed to prove by clear and convincing evidence that a real estate license is required to flip houses.

Appropriate Level of Discipline

16. The purpose of an administrative proceeding seeking the revocation or suspension of a professional license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

17. The determination as to whether respondents' real estate licenses should be subject to revocation, suspension or restriction includes the evaluation of the circumstances of their conviction and the rehabilitation criteria enumerated in California Code of Regulations, title 10, section 2912, set forth above.

Respondents were convicted of two misdemeanors in March 2015, two years ago. They have paid the restitution and fines ordered by the court. There was no evidence that respondents had any other involvement with the criminal justice system, either before or after the criminal complaint at issue here. Neither has any history of discipline with the bureau. The criminal convictions have not been expunged as respondents will not have completed probation until 2018, unless they seek an early termination of probation. Respondent Murphy testified credibly that he learned a valuable lesson about running a business, and he is attending additional seminars about risk management to insure there is not a repeat offense

and to keep abreast of any changes in the laws or regulations. Respondent Murphy has a stable family life, fulfills his parental and familial responsibilities, and is active in his church.

18. In his testimony, respondent Murphy was sincere, honest and remorseful. He expressed an earnestly held desire to run his company in an ethical and law-abiding manner. The classification of workers as employees or independent contractors has been, and continues to be, a highly litigated area of employment law. It can be subject to subtle nuances and interpretations, and it is often misunderstood. Respondent Murphy relied upon the expert advice of the insurance agency in obtaining insurance for the corporation's business. Respondent Murphy had no intent or motivation to forego an approximately \$1,500 annual premium that, had he known about it, would have protected him and the corporation. Complainant did not show by clear and convincing evidence that respondent Murphy's failure to pay payroll taxes or obtain workers' compensation was willful or knowing. It is highly unlikely that respondent Murphy will re-engage in the conduct that resulted in his criminal conviction. Respondents have achieved a level of rehabilitation sufficient to grant them restricted broker and corporation licenses.

The Reasonable Costs of Investigation and Prosecution

19. Under Business and Professions Code section 10106, complainant may request that an administrative law judge "direct a licentiate found to have committed a violation . . . to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case." "A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the commissioner or the commissioner's designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case." (Bus. & Prof. Code, § 10106, subd. (a) and (c).)

20. The Office of Administrative Hearings has enacted regulations for use when evaluating the bureau's request for costs. (Cal. Code Regs., tit. 1, § 1042.) Under the regulations, a cost request must be accompanied by a declaration or certification of costs that "contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs . . ." (Cal. Code Regs., tit. 1, § 1042, subd. (b).) For services provided by a person who is a regular agency employee, the declaration must be executed by the agency or its designee and describe the general tasks performed, the time spent on each task, and the method of calculating the costs. (Cal. Code Regs., tit. 1, § 1042, subd. (b)(1).)

21. The bureau sought \$979 in attorney costs. This amount is reasonable. The bureau sought \$525.80 for the costs of the investigation by a Special Investigator and a Supervising Special Investigator. Although some of the descriptions of tasks performed were vague, i.e., "Deputy Review," the Certified Statement of Investigation Costs signed by Ms. Kilpatrick and the attached billing records contained sufficient descriptions of the general tasks performed, the time spent on each task on each day and the method used to calculate the costs. The costs claimed for investigative tasks are reasonable.

22. Another consideration in determining costs is *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32. In *Zuckerman*, the California Supreme Court decided, in part, that in order to determine whether the reasonable costs of investigation and enforcement should be awarded or reduced, the Administrative Law Judge must decide: (a) whether the licensee has been successful at hearing in getting charges dismissed or reduced; (b) the licensee's subjective good faith belief in the merits of his or her position; (c) whether the licensee has raised a colorable challenge to the proposed discipline; (d) the financial ability of the licensee to pay; and (e) whether the scope of the investigation was appropriate to the alleged misconduct.

The reasonable and sufficiently supported costs are \$1,504.80. In this case, the scope of the investigation was appropriate to the alleged misconduct and the 2015 conviction was established. Respondents maintained a good faith belief in the merits of their positions, and they presented evidence justifying the issuance of a restricted license, which is a less severe penalty than that sought by complainant. After an appropriate consideration of *Zuckerman*, it is determined that the costs should be reduced by 25 percent, and respondent should pay investigation and enforcement costs in the amount of \$1,128.60.

ORDER

As to Respondent John Benjamin Murphy

1. All licenses and licensing rights of Respondent John Benjamin Murphy under the Real Estate Laws are revoked; provided, however, a restricted real estate broker 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 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:

2. 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.

3. 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.

4. 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.

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 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, jointly with respondent Three Frogs, and prior to the issuance of the restricted license and as a condition of the issuance of said restricted license, make payment to the Commissioner the amount of \$1,128.60 as reimbursement for reasonable costs of investigation and prosecution of the Accusation.

7. Respondent shall obey all federal, state, local laws, including all real estate laws and regulations. Failure to obey all laws, other than minor traffic infractions, and failure to comply with any court order shall be grounds for suspension or revocation of respondent's restricted license.

8. 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.

As to Respondent Three Frogs

1. All licenses and licensing rights of Respondent Three Frogs under the Real Estate Laws are revoked; provided, however, a restricted corporate real estate broker 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 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:

2. 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.

3. 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.

4. 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.

5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent's designated officer-broker 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 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, jointly with respondent John Benjamin Murphy, and prior to the issuance of the restricted license and as a condition of the issuance of said restricted license, make payment to the Commissioner the amount of \$1,128.60 as reimbursement for reasonable costs of investigation and prosecution of the Accusation.

7. Respondent shall obey all federal, state, local laws, including all real estate laws and regulations. Failure to obey all laws, other than minor traffic infractions, and failure to comply with any court order shall be grounds for suspension or revocation of respondent's restricted license.

DATED: March 21, 2017

DocuSigned by:
Susan J. Boyle
B190697BEFC743F...

SUSAN J. BOYLE
Administrative Law Judge
Office of Administrative Hearings