

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

FILED
FEB 16 2022
DEPARTMENT OF REAL ESTATE
By J. Taggart

In the Matter of the Accusation of:)
)
 DAVID JAMES BOWDEN,)
)
 Respondent.)

DRE No. H-7049 SAC

OAH No. 2021070211

DECISION

The Proposed Decision dated January 5, 2022, 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 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. 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 MAR 08 2022.

IT IS SO ORDERED 2.4.22.

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:

DAVID JAMES BOWDEN, Respondent

Agency Case No. H-7049 SAC

OAH No. 2021070211

PROPOSED DECISION

Administrative Law Judge Ed Washington, Office of Administrative Hearings, State of California, heard this matter on November 23, 2021, by video conference from Sacramento, California.

Real Estate Counsel Richard K. Uno represented complainant Tricia D. Parkhurst, Supervising Special Investigator, Department of Real Estate (Department).

David James Bowden (respondent) represented himself.

Evidence was received. The record was closed and the matter was submitted for decision on November 23, 2021.

FACTUAL FINDINGS

Respondent's License History

1. On October 18, 2000, the Department issued respondent a real estate salesperson license. On or about April 29, 2005, the Bureau of Real Estate Appraisers (BREA) issued respondent a real estate appraiser license (appraiser license). On November 21, 2006, the Department issued respondent a real estate broker license (real estate license). Respondent's real estate license will expire November 20, 2022, unless renewed or revoked.

BREA Discipline

2. On July 20, 2020, pursuant to a Stipulated Settlement and Disciplinary Order (Stipulated Settlement) in Case No. L20200626-02, before BREA, respondent's appraiser license was revoked, the order of revocation was immediately stayed, and the license was publicly reprobated and placed on probation for two years, subject to specified terms and conditions. Those conditions included that respondent pay a \$4,000 fine, pursuant to an established payment plan, and take and pass a BREA-approved 15-hour basic education course on the Uniform Standards of Professional Appraisal Practice within six months of the effective date of the Stipulated Settlement. As a condition of the Stipulated Settlement, respondent admitted that, on January 25, 2018, he made false declarations to the BREA on a Log of Appraisal Experience form he signed under penalty of perjury. He also admitted that he altered "application work sample reports" to include his name on a report that was not included on the original version of the same report when provided to the client.

3. Based on respondent's conduct, the BREa found that he failed to possess honesty, candor, integrity, and trustworthiness required for an appraiser. The BREa also found that respondent engaged in an act involving dishonesty, fraud, or deceit intending to benefit himself or another, and knowingly made a false statement of material fact required to be disclosed in an application for a license authorizing the practice of real estate appraisal.

Failure to Disclose

4. The BREa's revocation of respondent's appraiser license became effective July 20, 2020. Respondent did not report the appraiser license revocation to the Department within 30 days, as required. On September 25, 2020, 65 days after the revocation occurred and in response to an inquiry from the Department, respondent disclosed to the Department that the BREa had revoked his appraiser license.

Accusation

5. On May 26, 2021, complainant issued the instant Accusation, alleging cause exists to suspend or revoke respondent's real estate license because: (1) respondent had a license issued by another California agency revoked for acts that would be grounds for discipline of his real estate license; (2) for committing acts which, would have warranted the denial of an application for a real estate license, and constitute grounds to discipline a real estate licensee; and, (3) respondent's failure to report his BREa license discipline to the Department within 30 days. Respondent timely filed a Notice of Defense. This hearing followed.

Respondent's Evidence

RESPONDENT'S WRITTEN STATEMENT

6. On or about June 3, 2021, respondent submitted a written statement to the Department which, in pertinent part, included:

I wish the [Department] to know that these violations reported were conducted as a real estate appraiser and not as a real estate broker. I have been disciplined by the BREB by paying a fine of \$4,000, completing the required [Uniform Standards of Professional Appraisal Practice] class and currently serving a probationary period. As a result, I am unemployed as an appraiser and [this] has caused financial strain for my family.

The infractions occurred when I was employed by Mateo Associates. [The owner] encouraged me to take credit for my actual work performed, which I did, unknowingly, in error.

I have an excellent record, with no violations, for over 20 years as a real estate broker

[¶] ... [¶]

I want to make it clear that I never intended to defraud the BREB in any way. My only defense [is] my naivety [in] taking the word [of] my employer. I deeply regret my actions and I hope we can resolve this issue at the coming hearing.

RESPONDENT'S TESTIMONY

7. Respondent worked for an appraisal firm in San Francisco, under the supervision of a supervising appraiser, when the violations occurred. He was also working towards advancing his licensing levels. He worked as a "basic residential appraiser" at the time, and wanted to become a certified appraiser. The certification he sought required a minimum number of hours to qualify to take the certifying exam. To establish his qualifying hours, respondent had to submit a Log of Appraisal Experience reflecting the number of hours he worked as an appraiser to the BREa. Once respondent submitted proof that he satisfied the minimum number of required hours, he would be eligible to complete and pass the certified appraiser examination.

8. Each real estate appraisal report includes a certification page that specifically identifies the appraiser who performed the appraisal work and prepared the report. The original is provided to the customer and an official copy is recorded and available to the BREa. Respondent testified that for the certifications that resulted in his BREa discipline, he performed all the appraisal work for the appraisal firm, that would then take the information respondent provided and produce its own appraisal report for the consumer. The final appraisal reports produced by the firm identified the name of a supervising appraiser from the firm, rather than respondent, on the certifying documents. Respondent believed he could modify the certifications included with the firm's final appraisal reports to specify that he performed the appraisal work to permit him to receive credit for his work and qualify for the certified appraiser examination. According to respondent, he was informed by the appraiser he worked under at the appraisal firm, that this was an acceptable practice considering that respondent had performed the underlying work. He submitted the modified certifications to the BREa with his Log of Appraisal Experience. The BREa compared

the certifications respondent submitted to the original recorded documents and discovered respondent had modified the original certifications to reflect that he performed work recorded as being performed by another appraiser.

9. Respondent testified that he believed what he did was acceptable to establish his work experience and added that he did it for the advancement of his career and not to deceive the BREa. Despite what he previously believed, respondent now understands that he falsified an official document before the BREa, notwithstanding who performed the tasks described therein. Respondent did not know why his supervising appraiser did not list his name on the official certifications. His working relationship with the firm and supervising appraiser deteriorated shortly after the appraisals were completed and he moved on to other endeavors.

10. Regarding respondent's failure to timely disclose the BREa discipline to the Department, respondent testified that he was unaware of his reporting obligation. He also testified that he received a telephone call from a Department representative inquiring about the BREa discipline within days after the effective date of the Stipulated Settlement. Respondent testified that, despite being unaware of his reporting obligation, he also assumed the Department was already aware of the disciplinary action due to the telephone inquiry.

11. Respondent testified that if faced with similar circumstances in the future he would not modify appraisal certifications. He would instead inquire with the governing authority to discover whether preparing an amendment or addendum to the certifications would be an acceptable method to receive credit for his work, and would only issue such amendment or addendum after obtaining required approvals and making required disclosures. Respondent understands the Department's concerns

about his fitness for licensure, considering the work authorized by his license requires honesty, integrity, and the accurate completion of a significant number of documents.

ANALYSIS

12. On January 25, 2018, respondent falsely declared under penalty of perjury that he was the signing appraiser for reports identified on a Log of Appraisal Experience he submitted to the BRE. As a result, his appraiser license was disciplined by the BRE, and he was found to have intentionally made material misstatements to the BRE, to lack honesty, candor, integrity and trustworthiness, and to have engaged in a dishonest, fraudulent, and deceitful act for his own benefit. He also failed to timely report the discipline to the Department. Real estate licensees are expected to be "honest, truthful and worthy of the fiduciary responsibilities which they will bear." (*Harrington v. Dept. of Real Estate* (1989) 214 Cal.App.3d 394, 402.) Brokers are required to pay attention to detail and make numerous statutory disclosures in real estate transactions. Respondent's misconduct, and his failure to report the discipline that resulted from his misconduct, establish cause to discipline his real estate license and warrant examination of his fitness to perform duties authorized by that license.

13. However, respondent testified credibly to extenuating circumstances surrounding his BRE discipline. He modified real estate appraisal certifications to receive credit for work he actually performed to qualify to sit for the certified appraiser examination. He was told by his supervising appraiser that the modifications were permissible to establish his work experience, since he actually performed the underlying appraisal work. Respondent took responsibility for his misconduct at hearing and expressed genuine remorse. He understands the seriousness of his misconduct and testified to steps he would take to ensure his misconduct does not

recur. He has paid all fines owed to the BREa, has satisfied the educational requirements of his probation, and has complied with all other terms of his probation. There was no evidence of any actual or potential harm to the public. Respondent has been licensed for over 20 years, and there was no evidence he has ever engaged in any other misconduct.

14. As a licensed real estate broker and appraiser, it is respondent's responsibility to ensure he is aware of his licensing obligations and that he remains in full compliance with the rules and regulations of the governing authorities that issued those licenses. Rather than relying on the assurance of his supervising appraiser, respondent should have independently confirmed with the BREa, in advance, whether the modifications he planned to make to the certifications were permissible. He should have also remained aware of his reporting obligations. It is troubling that respondent has been licensed for over 20 years and was not aware of his obligation to report the BREa discipline or believed that he was relieved of that obligation because he received a telephone call from a Department representative about the discipline. Respondent must be more conscientious in ensuring he remains in full compliance with the rules and regulations governing his licenses.

15. When all the evidence is considered, the nature of respondent's misconduct, the resulting BREa discipline, and his failure to report that discipline to the Department within 30 days, do not warrant outright revocation of his real estate license. Given the circumstances surrounding his misconduct and that he has had no other disciplinary issues for over 20 years, granting respondent a restricted license for two years under appropriate terms and conditions would adequately protect the public interest, safety and welfare.

Costs

16. Complainant requested that respondent be ordered to pay costs for the investigative work conducted by Department investigators in the amount of \$1,099.75, and for the enforcement work conducted by their counsel in the amount of \$969.60, for a total of \$2,069.35. Complainant submitted declarations explaining and supporting these costs. It appears the time spent by the Department's investigators and counsel was appropriate, given the evidence presented at hearing, allegations in the Accusation, and legal issues in this matter, and that the amounts charged were reasonable. Complainant's request for costs is addressed further in the Legal Conclusions below.

LEGAL CONCLUSIONS

1. Complainant has the burden of proving the grounds for discipline alleged in the Accusation by clear and convincing evidence to a reasonable certainty. (*Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212.) Clear and convincing evidence is evidence that leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.) Complainant met this burden.

2. Pursuant to Business and Professions Code section 10177, the Commissioner may suspend or revoke the license of a real estate licensee who has engaged in any of the following acts:

[¶] ... [¶]

(d) Willfully disregarded or violated the Real Estate Law ... or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law.

[¶] ... [¶]

(f) [H]ad a license denied or had a license issued by another agency of this state, another state, or the federal government revoked, surrendered, or suspended for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, if the action of denial, revocation, surrender, or suspension by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act ... and only upon an express finding of a violation of law by the agency or entity.

3. As set forth in Findings 2, 3, and 12, on July 20, 2020, the BRE revoked respondent's appraiser license, which constitutes discipline of a license issued by another California agency for acts that if done by a real estate licensee, would be grounds for suspension or revocation of a California real estate license. Therefore, cause exists to discipline respondent's real estate license pursuant to Business and Professions Code section 10177, subdivision (f).

4. Business and Professions Code section 10186.2, provides, in pertinent part:

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

[1] ... [1]

(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.

[1] ... [1]

(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.

5. As set forth in Findings 4 and 12, respondent failed to report to the Department the BRE's revocation of his appraiser license in a timely manner. These facts constitute violations of Business and Professions Code section 10186.2, subdivisions (a)(1)(C), and (a)(2). Therefore, cause exists to discipline respondent's real estate license for willfully disregarding or violating Real Estate Law, pursuant to Business and Professions Code section 10177, subdivision (d).

6. As set forth in Findings 12 through 15, when all evidence is considered, it would be consistent with the public interest, safety and welfare to allow respondent to retain a restricted real estate license under the terms and conditions set forth below.

7. Business and Professions Code section 10106, which permits the award of costs, in relevant part, provides:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before the [Bureau], the commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

8. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of costs sought pursuant to statutory provisions similar to Business and Professions Code section 10106. These factors include: (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 in light of the alleged misconduct.

9. Complainant seeks \$2,069.35 in investigation and enforcement costs. As set forth in Finding 16, these costs are reasonable, given the evidence, allegations, and issues in this matter. When all the *Zuckerman* factors are considered, there is no basis for reduction. Consequently, respondent should be ordered to pay the Department these costs in full.

10. As set forth in the Findings as a whole, and in particular Findings 12 through 15, when all the evidence is considered, granting respondent a restricted real estate license for two years under appropriate terms and conditions would adequately protect the public interest, safety and welfare.

ORDER

All licenses and licensing rights of respondent David James Bowden under the Real Estate Law 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:

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 comply with the terms and conditions of the Stipulated Settlement and Disciplinary Order in Case No. L20200626-02, before the Chief of the Bureau of Real Estate Appraisers. Any violation of this probation shall be deemed a violation of the terms of respondent's restricted real estate 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 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.

DATE: January 5, 2022

Ed Washington

ED WASHINGTON

Administrative Law Judge

Office of Administrative Hearings