

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.

OCT 25 2018

This Decision shall become effective at 12 o'clock noon on _____.

IT IS SO ORDERED October 3, 2018

DANIEL J. SANDRI
ACTING REAL ESTATE COMMISSIONER



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

JAMES THOMAS HARO,

Respondent.

Case No. H-12213 SF

OAH No. 2018050770

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter on August 16, 2018, in Oakland, California.

Adriana Z. Badilas, Real Estate Counsel, represented complainant Robin S. Tanner, a Supervising Special Investigator of the Department of Real Estate.

Respondent James Thomas Haro appeared and represented himself.

The record was closed and the matter was submitted for decision on August 16, 2018.

FACTUAL FINDINGS

1. Respondent James Thomas Haro is presently licensed and has license rights under the Real Estate Law (Bus. & Prof. Code, div. 4, pt. 1) as a real estate broker (License No. 00785343). Respondent has been licensed as a real estate broker since June 11, 1982, and the license is current through August 25, 2019. Respondent is also licensed by the Department of Real Estate as a mortgage loan originator (MLO/NMLS Identification No. 3143600).

2. On April 3, 2018, complainant Robin S. Tanner filed the accusation in her capacity as a Supervising Special Investigator with the Department of the Real Estate.¹ Complainant alleges that respondent has been convicted of the substantially-related offense of grand theft in 2017, and failed to report the conviction to the Department as required by law. Respondent filed a notice of defense. This hearing followed.

¹ At the time the accusation was filed, the complaining agency was named the Bureau of Real Estate. The Bureau became the Department of Real Estate effective July 1, 2018.

Criminal conviction

3. On December 5, 2017, respondent was convicted, on his plea of nolo contendere, in the California Superior Court, County of Contra Costa, of violating Penal Code section 487, subdivision (a) (grand theft), a misdemeanor. Imposition of sentence was suspended, and respondent was placed on court probation for three years on standard terms and conditions. Respondent was ordered to pay a \$100 restitution fine.

4. The offense took place in May 2007, but was not discovered until August 2013. Torsten and Tineke Jacobsen were clients of respondent, who was the president of Alamo Mortgage Corporation. The Jacobsens demanded return of \$200,000 they had invested with him for bridge loans. Respondent had not used the Jacobsen investment as intended, but had used it for his own business purposes.

Failure to report

5. Respondent did not report his 2017 misdemeanor grand theft conviction to the Department.

6. The criminal information filed by the District Attorney arising out of this incident was filed on March 16, 2015, and charged respondent with three felony counts. (Two charges concerned another transaction with the Jacobsens.) Respondent did not report the pending felony charges on the June 18, 2015 application he filed with the Department to renew his broker's license.

Respondent's evidence

7. Respondent appears to have complied with all terms and conditions of probation to date.

8. The Jacobsens were long-running investors with Alamo Mortgage Corporation. Respondent admits that he was unable to pay the Jacobsens because he did not have it. Respondent testified that he has paid the Jacobsens what he owes them in connection an out-of-court settlement of the civil suit they filed against him stemming from the two transactions underlying the criminal information. No competent documentary evidence of payment was presented. However, respondent's testimony appears consistent with what is reflected in the criminal records which allowed him to plead to a single misdemeanor conviction and to receive informal probation.

9. At hearing, respondent attempts to paint a different picture of the events of the transactions with the Jacobsens. Respondent's explanation of the events amounts to a collateral attack on the conviction, something he is not permitted to do in this case. The Legislature has authorized the use respondent's plea of nolo contendere to the grand theft as the basis for this administrative disciplinary action. It stands as conclusive evidence of guilt

of grand theft, and respondent may not re-litigate that determination here. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 447-449.)

10. Respondent did not report the criminal conviction to the Department because he did not think he had a reporting obligation.

11. Respondent did not present evidence of a change in business practices other than his statement that the corporation stopped doing hard money loans in 2016, and that he will not do them again. Respondent believes that Alamo Mortgage Corporation offered good quality investments up until the end, and asserts that very few of his investors lost money. Respondent did not express any regret or remorse regarding his conduct with the Jacobsens.

12. Although respondent maintains that Alamo Mortgage Corporation no longer operates, he is listed on Department records as an officer of the corporation through August 26, 2019.

13. Respondent is also listed on Department records as a broker associate of United Lending Partners, Inc. as of January 1, 2018.

14. Respondent seeks to retain his broker's license so he can earn a living and pay off his other existing debts. He has two significant real-estate based debts in a consolidated case that is currently pending before the Court of Appeal. Respondent no longer owns a home. He is currently residing in the home of his deceased mother, in which he has no ownership interest.

15. Respondent did not present character evidence other than his own testimony.

Costs

16. In connection with the investigation and prosecution of this accusation, the Bureau has incurred expenses of \$2,279.25. These expenses reflect \$1,723 in investigation costs and \$556.25 for legal services. The costs are supported by certifications which detail the task performed, the time spent on each task, and the method of calculating the task, in compliance with the requirements of California Code of Regulations, title 1, section 1042. In the absence of any evidence to the contrary, these costs are found to be reasonable.

LEGAL CONCLUSIONS

1. The standard of proof applied in this proceeding is clear and convincing evidence. The burden of proof is on complainant to show cause for license discipline. (Evid. Code, § 500.)

Criminal conviction

2. Pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), the Commissioner may suspend or revoke a real estate license if a licensee has been convicted of a crime that bears a substantial relationship to the licensed activity. In California Code of Regulations, title 10, section 2910, the Commissioner has developed criteria for determining whether a crime is substantially related to the qualifications, functions or duties of a licensee. Among other things, a crime is deemed substantially related if it involves: the fraudulent taking, obtaining, appropriating or retaining funds belonging to another (subd. (a)(1)); the employment of fraud, deceit, falsehood or misrepresentation to achieve an end (subd. (a)(4)); or, the doing of an unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator (subd. (a)(8)). Respondent's criminal conduct, as set forth in Findings 3 and 4, involved each of these acts, rendering the conviction substantially related to the qualifications, functions or duties of the licensed activity. Cause therefore exists to suspend or revoke respondent's real estate broker license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b).

Failure to report

3. Pursuant to Business and Professions Code section 10186.2, subdivision (a), a real estate licensee must report any felony or misdemeanor conviction to the Department within 30 days of conviction. The failure to make such a report constitutes cause for discipline. (Bus. & Prof. Code, § 10186.2, subd. (b).) Pursuant to Business and Professions Code section 10177, subdivision (d), the Commissioner may suspend or revoke a real estate license if the licensee has been willfully disregarded or violated the Real Estate Law.

As set forth in Findings 3 and 5, respondent did not report his grand theft conviction to the Department as was required of him by Business and Professions Code section 10186.2, subdivision (a). Respondent has not established a legal basis which would exempt him from the reporting requirement. Even an unintentional violation of a reporting obligation can constitute a violation of the Real Estate Law within the meaning of Business and Professions Code section 10177, subdivision (d). (*Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513, 517.) Cause therefore exists to suspend or revoke respondent's real estate broker license pursuant to Business and Professions Code section 10177, subdivision (d).

Appropriate level of discipline

4. In California Code of Regulations, title 10, section 2912, the Commissioner has established criteria to be used in evaluating the rehabilitation of a licensee who has committed a criminal offense. The burden is on respondent to show that he is sufficiently rehabilitated so that it would be appropriate to allow respondent to remain a licensee.

The purpose of this proceeding is not to further punish respondent for his criminal conduct. (*Donaldson v. Department of Real Estate* (2005) 134 Cal.App.4th 948, 958,

fn. 10.) The purpose of the licensing scheme is to ensure that real estate licensees will be honest, truthful, and worthy of the fiduciary responsibilities they bear. (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402; *Ring v. Smith* (1970) 5 Cal.App.3d 197, 205.)

Respondent's misconduct is serious. It took place during a real estate transaction and involved clients with whom respondent had a fiduciary obligation under the Real Estate Law. For these reasons, respondent has a heavy burden in order to establish rehabilitation, a burden he has not sustained in this case. Respondent expresses no remorse for his actions. The conviction occurred less than a year ago, and respondent remains of criminal probation for through December 2020. Rehabilitation cannot be completely assessed until respondent is no longer under a threat of violation. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) And, a truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (19995) 11 Cal.4th 975, 991.)

In addition to being convicted of grand theft from clients, respondent failed to comply with his legal obligation to inform the Department of the conviction, a separate violation of the Real Estate Law. This conduct raises additional concerns regarding respondent's willingness and ability to comply with his obligations under the Real Estate Law. Finally, the Commissioner may consider as a matter in aggravation that respondent failed to disclose on his renewal application the felony charges filed against him. This is a third matter demonstrating a lack of integrity.

On this record, the Commissioner cannot be confident that respondent is capable of performing licensed activities in an honest and truthful manner which is consistent with his fiduciary obligations to clients. The only disciplinary action consistent with public protection is license revocation.

Costs

5. Business and Professions Code section 10106 authorizes the Department to recover in disciplinary proceedings its reasonable costs of investigation and enforcement. As set forth in Finding 16, complainant established by competent evidence that the Department has incurred \$2,279.25 in reasonable costs in connection with the investigation and enforcement of this matter.

In *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth the standards by which a licensing agency must exercise its discretion to reduce or eliminate cost awards to ensure that it does not deter licensees with potentially meritorious claims from exercising their right to an administrative hearing. The court held that a licensing agency may not assess the full costs of investigation and prosecution when a licensee, who has committed some misconduct, has used the hearing process to obtain a dismissal of other charges or a reduction in the severity of the discipline imposed. (*Id.* at p. 45.) The licensing agency must consider the licensee's "subjective good

faith belief” in the merits of his position and whether the licensee has raised a “colorable challenge” to the proposed discipline. The agency must consider whether the licensee will be “financially able to make later payments.” Lastly, the agency may not assess the full costs of investigation and enforcement when it has conducted a disproportionately large investigation to prove that the licensee engaged in “relatively innocuous misconduct.” (*Ibid.*)

Consideration has been given to all the *Zuckerman* factors. No basis for a reduction of the costs in this case has been established. Respondent will be ordered to pay full cost recovery pursuant to Business and Professions Code section 10106.

ORDER

1. All licenses and licensing rights of respondent James Thomas Haro as a real estate broker under the Real Estate Law are revoked

2. Respondent shall pay the Department’s costs associated with the investigation and enforcement of this action pursuant to Business and Professions Code section 10106, in the amount of \$2,279.25.

DATED: September 13, 2018

DocuSigned by:

Melissa G. Crowell

ACFB74A338CF4C0...

MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings