FIAG

FILED
APR 22 2008
DEPARTMENT OF REAL ESTATE
By L. Frost

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of GOLDEN HILLS FINANCIAL, a Nevada Corporation, and WILLIAM BENSON PEAVEY, Jr., Respondents.	No. H-10012 SF N-2007060026

DECISION AFTER RECONSIDERATION

The Statement of Issues in this matter was filed on May 11, 2005. This matter was heard by Cheryl R. Tompkin, Administrative Law Judge ("ALJ") of the Office of Administrative Hearings, on November 2, 2007, in Oakland, California. The Complainant was represented by Michael B. Rich, Staff Counsel for the Department of Real Estate. Respondent WILLIAM BENSON PEAVEY, Jr. ("Respondent") was present and represented Respondent GOLDEN HILLS FINANCIAL ("Respondent").

On November 1, 2007, by facsimile transmission, Respondents submitted written notice of that Respondent GOLDEN HILLS FINANCIAL was withdrawing the license application.

The hearing was held, oral and documentary evidence was received, and the record was closed on November 2, 2007. On December 3, 2007, the ALJ submitted a Proposed Decision which recommended the denial of Respondent GOLDEN HILLS FINANCIAL's application for a corporate real estate broker license.

On January 2, 2008, the Commissioner adopted the Proposed Decision to become effective at 12 o'clock noon on January 24, 2008.

On January 15, 2008, Respondent, through legal counsel, requested a 30-day stay to petition for reconsideration of the Decision.

On January 23, 2008, an Order Staying the Effective Date was filed. The Decision was stayed to twelve o'clock noon on February 23, 2008.

On February 11, 2008, Respondent filed argument in support on Respondent's petition for reconsideration of said Decision. Respondent's argument sets forth that withdrawal of the license application removed the Department's jurisdiction to hold a hearing on the matter.

Counsel for Complainant filed argument on February 15, 2008.

I have considered the petition of Respondent and have concluded that good cause has been presented for reconsideration of the Decision of January 2, 2008.

///

///

///

WHEREFORE, THE FOLLOWING ORDER is hereby made:

ORDER

The Statement of Issues filed against Respondent GOLDEN HILLS FINANCIAL and WILLIAM BENSON PEAVEY, Jr., is hereby dismissed. This Order is effective immediately.

IT IS SO ORDERED 4-22-08.

JEFF DAVI
Real Estate Commissioner

FILED
FEB 22 2008
DEPARTMENT OF REAL ESTATE
By L. Frost

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of GOLDEN HILLS FINANCIAL, a Nevada Corporation, and WILLIAM BENSON PEAVEY, Jr., Respondents.	NO. H-10012 SF

ORDER GRANTING RECONSIDERATION

This matter came on for hearing before Cheryl R. Tompkin, Administrative Law Judge, Office of Administrative Hearings, State of California, in Oakland, California, on November 2, 2007. Michael B. Rich, Counsel, represented the Complainant. Respondents appeared in pro per. Evidence was received, the record was closed, and the matter was submitted.

On December 3, 2007, the Administrative Law Judge rendered a Proposed Decision (herein "the Proposed Decision") sustaining the allegations of the Statement of Issues and proposing denial of Respondent's corporate real estate broker

license. On January 2, 2008, the Real Estate Commissioner issued an order adopting the Proposed Decision, effective at noon on January 24, 2008.

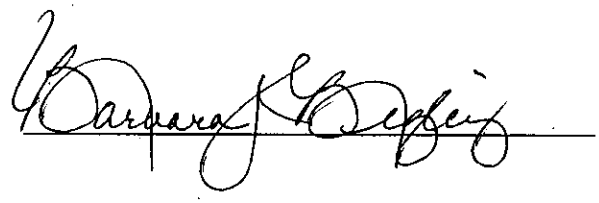
On January 15, 2008, Respondents through counsel requested a stay of thirty (30) days to petition for reconsideration of the Decision of January 2, 2008, until February 22, 2008. Respondents submitted their petition for through counsel reconsideration on February 11, 2008.

On November 1, 2007, Respondents submitted a written notice withdrawing the corporate real estate broker license application of Respondent GOLDEN HILLS FINANCIAL.

I find that there is good cause to reconsider the Decision of February 11, 2008. Reconsideration is granted. Respondent until March 7, 2008, to submit any additional argument. Complainant shall have until March 21, 2008, for any further argument.

IT IS SO ORDERED this 22 day of February, 2008.

JEFF DAVI
Real Estate Commissioner



FIAG

FILED
JAN 23 2008
DEPARTMENT OF REAL ESTATE
By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of GOLDEN HILLS FINANCIAL, a Nevada Corporation, and WILLIAM BENSON PEAVEY, JR., Respondents.	No. H-10012 SF

ORDER STAYING EFFECTIVE DATE

On January 2, 2008, a Decision was rendered in the above-entitled matter to become effective January 24, 2008.

IT IS HEREBY ORDERED that the effective date of the Decision of the Real Estate Commissioner of January 2, 2008, is stayed for a period of thirty (30) days.

The Decision of the Real Estate Commissioner of January 2, 2008, shall become effective at 12 o'clock noon on February 23, 2008.

DATED: 1-21-08

JEFF DAVI
Real Estate Commissioner

FLAG

FILED
JAN 04 2008
DEPARTMENT OF REAL ESTATE
By R. Frost

BEFORE THE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of GOLDEN HILLS FINANCIAL, a Nevada Corporation, and WILLIAM BENSON PEAVEY, JR. Respondent.	CASE NO. H-10012 SF OAH NO. N2007060026

DECISION

The Proposed Decision dated December 3, 2007, 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 application for a real estate corporation license for Golden Hills Financial and a real estate broker license for William Benson Peavey, Jr. as an officer of said corporation is denied. There is no statutory restriction on when application may again be made for this license. If and when application is again made for this license, all competent evidence of rehabilitation presented by Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto for the information of Respondent.

This Decision shall become effective at 12 o'clock noon on JAN 24 2008.

IT IS SO ORDERED 1-2-08.

JEFF DAVI
Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of GOLDEN HILLS FINANCIAL, a Nevada Corporation, and WILLIAM BENSON PEAVEY, JR., Respondents.	Case No. H-10012 SF OAH No. N2007060026

PROPOSED DECISION

Administrative Law Judge Cheryl R. Tompkin, State of California, Office of Administrative Hearings, heard this matter on November 2, 2007, in Oakland, California.

Michael B. Rich, Counsel, represented complainant E. J. Haberer II, Deputy Real Estate Commissioner of the State of California.

Respondent William Benson Peavey, Jr. appeared on his own behalf and on behalf of respondent Golden Hills Financial.

The matter was submitted on November 2, 2007.

FACTUAL FINDINGS

1. Complainant E.J. Haberer II made the Statement of Issues in his official capacity as Deputy Real Estate Commissioner of the State of California.

2. William Benson Peavey, Jr. (Peavey) is licensed and has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) as a restricted real estate broker. Peavey's license will expire on April 23, 2008.

At all times from December 8, 2005, Golden Hills Financial (Golden Hills) was and is now a corporation organized under the laws of Nevada and qualified to conduct business in California. Peavey is an officer and director of Golden Hills and owns or controls more than ten percent of the corporate stock.

3. On March 16, 2006, respondents Golden Hills and Peavey filed an application with the Department of Real Estate (Department) seeking a corporate real estate broker license and issuance to Peavey of a real estate broker license as an officer of Golden Hills Financial.

4. The Department seeks to deny the application because respondent Peavey has been convicted of a criminal offense and because Peavey's membership in the State Bar of California was suspended for three years effective July 23, 2003, and has not been reinstated.

5. On February 5, 2000, in the Superior Court of San Mateo, State of California, Peavey was convicted of violating Penal Code section 273.5 (willful infliction of corporal injury upon a spouse), a misdemeanor crime involving moral turpitude and which bears a substantial relationship to the qualifications, functions or duties of a real estate licensee. (*People v. Rodriguez* (1992) 5 Cal.App.4th 1398; *People v. Lepolo* (1997) 55 Cal.App.4th 85, 90-91; *People v. Sanders* (1992) 5 Cal.App.4th 1268, 1274.)

6. On December 13, 2002, the Review Department of the State Bar Court filed a decision in which it found Peavey culpable of seven counts of misconduct including failure to report a civil judgment for fraud to the State Bar, failure to avoid interests adverse to a client, violating his fiduciary duty and committing acts of moral turpitude and dishonesty. The State Bar Court found that on May 30, 1994, after representing George and Myrtle Henson over the course of 20 years, Peavey borrowed $25,000 from the Hensons, an elderly couple. The money was to be used to produce Peavey's book and was to be repaid in full by November 1, 1994. Peavey did not advise the Hensons to obtain independent counsel. Peavey failed to timely repay the loan and in response to the Hensons' repeated requests for payment, assured them payment was forthcoming. Ultimately, on November 13, 1998, the Hensons obtained a default judgment against Peavey for $124,1883.88, which included the original $25,000 loan amount plus interest and $50,000 in punitive damages. The judgment had not been paid as of the date of the State Bar Court decision.

The State Bar Court also found that on July 1, 1996, Peavey borrowed $25,000 from Kevin Chamberlain, a prior client who had been severely injured and was unable to work, to be used for a second printing of Peavey's book. The money was due and payable on January 1, 1997. Peavey did not advise Chamberlain to seek independent counsel. Peavey did not make any payments on the loan. In response to Chamberlain's requests for payment, Peavey made repeated assurances that payment was forthcoming, but failed to repay the loan. On March 9, 2001, Chamberlain, obtained a judgment for $43,794.89 against Peavey, which had not been paid as of the date of the State Bar Court decision. In aggravation, the State Bar Court found that Peavey had "committed multiple acts of wrongdoing in abusing his position of trust for personal gain and enticing his unsophisticated clients into believing that the loan was safe and that the return on the investment would be ludicrously high," Peavey's conduct had materially harmed the Hensons and Chamberlain, Peavey borrowed $25,000 in May 1994 from an individual with whom Peavey had played softball for 20 to 25 years and failed to repay the loan, and Peavey repeatedly lied to the Hensons and Chamberlain when he told them that

payment was forthcoming although he knew he was unable to pay.

The State Bar Court recommended that Peavey be suspended from the practice of law for three years, execution of the suspension stayed and Peavey placed on probation for three years on conditions that included actual suspension for two years, payment of restitution to George and Myrtle Henson in the amount of $124,188.33, plus interest at 10 percent per annum, payment of restitution to Kevin Chamberlain in the amount of $43,794.89, plus interest at 10 percent per annum, and providing satisfactory proof of such payments. It was also recommended that Peavey be ordered to take and pass the Multistate Professional Responsibility Examination and comply with rule 955 of the California Rules of Court, including performing the acts specified in subdivisions (a) and (c) within 30 and 40 days respectively of the California Supreme Court's order.

7. Effective July 23, 2003, the Supreme Court of California, sitting en banc, denied Peavey's writ seeking to overturn the decision of the State Bar Court. The Supreme Court ordered that respondent Peavey be suspended from the practice of law for three years. Execution of the suspension was stayed and Peavey was placed on probation for three years on condition that he be actually suspended for two years, and remain on probation until he made restitution to George and Myrtle Henson and Kevin Chamberlain in the amounts recommended by the State Bar Court and provided satisfactory proof of such payments. Peavey was also ordered to show satisfactory proof of rehabilitation, present fitness to practice law and present learning and ability in the general law, and to comply with the other conditions recommended by the State Bar Court.

8. On February 14, 2006, the State Bar Court filed a Notice of Disciplinary Charges against Peavey alleging, inter alia, that in at least five separate matters, he had failed to maintain client funds in a trust account, failed to pay client funds promptly, misappropriated client funds, and held himself out as practicing or entitled to practice law while not an active member of the bar. The Notice further alleged that Peavey had filed false documentation with the State Bar Court certifying that he did not have any clients, failed to obey a court order requiring him to notify opposing counsel and clients of his suspended status, and engaged in other dishonest conduct.

At a date not clear from the record, Peavey submitted a notice of voluntary resignation to the State Bar of California. Effective May 10, 2006, the California Supreme Court accepted the voluntary resignation of Peavey as a member of the State Bar of California without prejudice to further disciplinary proceedings. Peavey was ordered to comply with rule 955 of the California Rules of Court, including performing the acts specified in subdivisions (a) and (c) within 30 and 40 days respectively of the filing of the Court's order

9. At hearing Peavey claimed that his criminal conviction for infliction of corporal injury on a spouse had been expunged, but failed to produce any supporting documentation. With respect to his failure to repay the Hensons, Peavey maintained the Hensons were not his clients when they loaned him money, but were rather business partners. He seems to suggest

that because the Hensons were his "business partners," there was no breach of fiduciary duty when he failed to repay the loan. Peavey also claims the Hensons assigned their claim to the State Bar and received payment from the State Bar, and that the State Bar thereafter abandoned the Hensons' claim; but again, no supporting documentation was provided. With respect to the Chamberlain claim, Peavey asserted he paid the claim in 2002 and he produced photocopies of checks purporting to demonstrate such payment. However, given Peavey's history of dishonesty, little weight was given to the unverified documents. Peavey maintains that all outstanding obligations related to the State Bar action in 2003 have been resolved. With respect to his 2006 resignation from the State Bar with charges pending, Peavey claims all such charges were dismissed when he resigned. There is no evidence Peavey made any effort to address or satisfy the claims set forth in the State Bar Notice of Disciplinary Charges filed in 2006.

10. Respondent did not offer any evidence of rehabilitation other than his own testimony.

LEGAL CONCLUSIONS

1. Cause for denial of respondent Golden Hills and respondent Peavey's license application exists pursuant to Business and Professions Code sections 480, subdivision (a)(1), and 10177, subdivision (b), in that Peavey has been convicted of a crime involving moral turpitude which bears a substantial relationship to the qualifications, functions or duties of a real estate licensee, as set forth in Finding 5.

2. Business and Professions Code section 10177, subdivision (f), authorizes suspension or revocation of the real estate license of a licensee who has acted or conducted himself in a manner that would have warranted the denial of his application for a real estate license. Business and Professions Code section 10177, subdivision (j), authorizes denial of a license if an individual has engaged in conduct that constitutes fraud or dishonest dealing. Business and Professions Code section 480, subdivision (a)(3), authorizes denial of a license for any act, which if done by a licensee, would be grounds for suspension or revocation of a license.

As set forth in Findings 6 and 8, Peavey engaged in fraudulent or dishonest behavior on multiple occasions during the course of his career as an attorney, causing his license to be disciplined by the California Supreme Court and ultimately resulting in his voluntary resignation from the California State Bar. Cause for denial of respondent Golden Hills and respondent Peavey's license application pursuant to Business and Professions Code sections 480 and 10177, subdivisions (f) and (j), has therefore been established.

3. Peavey has been convicted of a crime involving moral turpitude. In 2003 he was suspended from legal practice due to dishonest and fraudulent conduct. He resigned from the State Bar in 2006 with new charges of dishonest conduct, misappropriation of client funds and fraud pending. Peavey claims all of the outstanding claims have been satisfied or

resolved, but failed to provide any verifiable evidence in support of his assertion. Even if Peavey's claims of resolution are true, his self serving testimony is insufficient, standing alone, to establish rehabilitation sufficient to justify granting him a license. Peavey failed to produce any witnesses, letters of reference or other documentation to establish rehabilitation. A primary purpose of the disciplinary scheme for real estate licensees is protection of the public. In this case, a determination of how best to protect the public requires consideration of the absence of independent evidence of rehabilitation, in conjunction with Peavey's significant record of discipline with the State Bar for matters involving fraud and dishonesty. That Peavey's misconduct is recent and occurred over a period of years must also be considered. After considering all of the evidence, it is determined that it would be contrary to the public interest to grant the application of Golden Hills Financial for a corporate real estate broker license, with Peavey as the designated broker-officer for that corporation.

ORDER

The application of respondents Golden Hills Financial and William Benson Peavey, Jr. for a corporate real estate broker license and issuance to William Benson Peavey, Jr. of a real estate broker license as an officer of Golden Hills Financial is denied.

Dated: 12/3/07

CHERYL R. TOMPKIN
Administrative Law Judge
Office of Administrative Hearings

MICHAEL B. RICH, Counsel
State Bar No. 84257
Department of Real Estate
P.O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-0789

FILED
MAY 1 1 2007
DEPARTMENT OF REAL ESTATE
By K. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of GOLDEN HILLS FINANCIAL, a Nevada Corporation, and WILLIAM BENSON PEAVEY, Jr., Respondents.	H-10012 SF SATEMENT OF ISSUES

The Complainant, E. J. HABERER II, a Deputy Real Estate Commissioner of the State of California, for Statement of Issues against GOLDEN HILLS FINANCIAL and WILLIAM BENSON PEAVEY, Jr., (hereinafter "Respondents"), is informed and alleges as follows:

I

Complainant, E. J. HABERER II, a Deputy Real Estate Commissioner of the State of California, makes this Statement of Issues in his official capacity and not otherwise.

///

///

II

At all times herein mentioned, WILLIAM BENSON PEAVEY, Jr., (hereinafter "Respondent PEAVEY") was and now is licensed and/or has license rights under the Real Estate law, Part 1 Division 4 of the Business and Professions Code (hereinafter "the Code") as a restricted real estate broker.

III

At all times mentioned from and after December 8, 2005, GOLDEN HILLS FINANCIAL, (hereinafter "Respondent CORPORATION") was and now is a corporation organized under the laws of the State of Nevada qualified to conduct business in the State of California, and Respondent PEAVEY was and now is an officer, director, and/or person owning or controlling 10 percent or more of the stock of Respondent CORPORATION.

IV

On or about March 16, 2006, Respondent CORPORATION, and Respondent PEAVEY to qualify Respondent COPORATION as its designated broker/officer and to act for said corporation as a real estate broker, made application (hereinafter "the application") to the Department of Real Estate of the State of California for the issuance to Respondent CORPORATION of a corporate real estate broker license and for the issuance to Respondent PEAVEY of a real estate broker license as an officer of Respondent CORPORATION.

V

On or about February 25, 2000, in the Superior Court, County of San Mateo, State of California, in case number

SCO44123A, Respondent PEAVEY was convicted of violating Section 273.5 of the California Penal Code (Willful infliction of corporal injury upon spouse/cohabitant and/or the mother of his child), a misdemeanor and a crime involving moral turpitude which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

VI

Effective July 23, 2003, before the Supreme Court of the State of California, in case number S114035 and California State Bar Case number 98-O-02234, Respondent PEAVEY's membership in the State Bar of California was suspended for three years, said suspension stayed for one year, and placed on probation for three years on terms and conditions that he make restitution to clients totaling $167,983.22 plus interest, that he show proof of rehabilitation, present fitness to practice, and present learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct, ordered to take and pass the Multistate Professional Responsibility Examination, and ordered to comply with rule 955 of the California Rules of Court. Said discipline was imposed on Respondent PEAVEY for violating Section 6068(a) of the Business and Professions Code (Attorney's duty to support and obey the laws and constitution of the State) and Section 6068(o)(2) of the Business and Professions Code (Failure to report to State Bar within 30 days civil judgment against attorney for fraud, breach of fiduciary duty, gross negligence),

which was conduct that would warrant denial or revocation of a real estate license pursuant to California Business and Professions Code Sections 10177(f) and 10177(j).

PRIOR PROCEDING

VII

Respondent made application to the Department of Real Estate for a real estate broker license on or about May 16, 2002.

VIII

In response to Question 20 of the application described in Paragraph VII, above, to wit: "Have you ever been convicted of any violation of law?", requiring Respondent to disclose all convictions other than minor traffic citations not constituting a misdemeanor or felony offense, Respondent answered "YES," disclosing the conviction set forth in Paragraph V, above.

IX

Effective June 23, 2003, in Case No. H-8328 SF, before the California Department of Real Estate, pursuant to Stipulation and Waiver, the application of Respondent for a conditional real estate license was denied for violation of Section 480(a) and Section 10177(b) of the Code with the right to apply for a restricted conditional real estate license.

X

The crime of which Respondent PEAVEY was convicted, as alleged in Paragraph V, above, constitutes cause for denial of Respondent CORPORATION's and Respondent PEAVEY's application for

a real estate license under Sections 480(a) and 10177(b) of the California Business and Professions Code.

XI

The suspension of Respondent PEAVEY's State Bar membership as described in Paragraph VI, above, constitutes cause for denial of for denial of Respondent CORPORATION's and Respondent PEAVEY's application for a real estate license under Sections 480(a)(3) and 10177(f) of the Business and Professions Code of the State of California.

WHEREFORE, the Complainant prays that the above-entitled matter be set for hearing and, upon proof of the charges contained herein, that the Commissioner refuse to authorize the issuance of, and deny the issuance of a real estate broker license to Respondent, and for such other and further relief as may be proper under other provisions of law.

E. J. HABERER II
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 10th day of April, 2007.