

FILED
MAY 26 2011

DEPARTMENT OF REAL ESTATE

By [Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
) DRE No. H-2516 FR
WILLIAM FRANKLIN HANCOCK, JR.,)
) OAH No. 2010100252
Respondent.)
_____)

DECISION

The Proposed Decision dated April 18, 2011, 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.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 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

JUN 16 2011

IT IS ORDERED

5/25/11

BARBARA J. BIGBY
Acting Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

WILLIAM FRANKLIN HANCOCK, JR.,

Respondent.

Case No. H-2516 FR

OAH No. 2010100252

PROPOSED DECISION

This matter was heard before Floyd D. Shimomura, Administrative Law Judge, Office of Administrative Hearings, State of California, on February 14, 2011, in Sacramento, California.

Jason Lazark, Counsel, represented complainant, Tricia D. Sommers, a Deputy Real Estate Commissioner with the Department of Real Estate (department).

William Franklin Hancock, Jr. (respondent) appeared on his own behalf.

Evidence was received and the evidentiary record was closed on February 14, 2011. On April 4, 2011, closing argument was heard and the matter submitted.

FACTUAL FINDINGS

Jurisdictional Facts

1. On May 8, 1979, the department issued Real Estate Broker License Number B00680933 to respondent. Respondent's license will expire on March 5, 2014, unless renewed or revoked.
2. On August 10, 2010, Deputy Real Estate Commissioner Luke Martin filed an Accusation in his official capacity against respondent seeking suspension and/or revocation of all of respondent's real estate licenses.
3. On August 30, 2010, respondent filed a Notice of Defense on Accusation.

4. On January 31, 2011, Deputy Real Estate Commissioner, Tricia D. Sommers, in her official capacity, filed a First Amended Accusation against respondent.

5. On February 2, 2011, Deputy Real Estate Commissioner, Tricia D. Sommers, in her official capacity, filed a Second Amended Accusation against respondent. The department's accusation seeks suspension and/or revocation of all of respondent's real estate licenses. The department alleges that respondent has violated Business and Professions Code section 10177, subdivisions (f) relating to suspension of a license by another state agency, (g) relating to negligence or incompetence, and/or (j) relating to fraudulent or dishonest conduct.

Suspension of Respondent's State Bar License

6. On November 29, 1978, respondent was admitted to the State Bar of California.

7. On September 29, 2009, the State Supreme Court ordered respondent suspended from the practice of law for two years, with a stay of execution, and placed respondent on two-year probation with conditions, including actual suspension from the practice of law for 30 days. The suspension was based on a stipulated statement of facts and conclusions of law agreed to by respondent and the State Bar.

8. The stipulated facts may be summarized as follows:

(a) In September 2002 James and Sheela Catalano (hereafter "Catalanos") hired respondent to represent them as a lawyer in two civil cases which were filed against them. They agreed to pay respondent \$250 an hour. The parties executed a "Security Agreement" in which the Catalanos agreed to grant respondent a security interest in their mobile home as security for respondent's legal fees. Respondent did not inform the Catalanos in writing that they could consult with another attorney before signing the security agreement. Respondent obtained the Certificate of Title (pink slip) to the mobile home. The Catalanos also gave respondent a deposit of \$600 for filing fees.

(b) Respondent rendered legal services to the Catalanos and resolved the legal matters for which he was retained. Respondent billed the Catalanos \$29,583.93 in total for his work. The Catalanos were elderly and their mobile home had an estimated value of \$60,000.

(c) In September 2003 the Catalanos filed for bankruptcy and achieved a discharge of their debts, including respondent's debt. Other than their initial payment of \$600 to respondent, the Catalanos have made no payments to respondent.

(d) About two years after the bankruptcy, respondent registered his security interest in the mobile home with the DMV. Respondent advised the Catalanos that they had to insure the motor home in order to protect his interest. This prompted the Catalanos to contact the State Bar of California. After investigation by the State Bar, respondent relinquished his ownership interest in the mobile home.

9. Respondent and the State Bar stipulated to the following conclusion of law:

By obtaining a security interest in the Catalano's mobile home without advising the Catalano's [sic] in writing that they may seek the advice of an independent lawyer of the client's choice; and by choosing terms that were not fair and reasonable due to the discrepancy in value between the mobile home and the billings, and the disputed nature of the billings, respondent willfully violated Rules of Professional Conduct, rule 3-300.¹

Matters in Aggravation

10. On May 18, 1990, the California Supreme Court issued a decision (No. 85-0-106552) suspending respondent from the practice of law for one year, the execution of suspension stayed, and placing him on probation for one year on condition that he be actually suspended for 30 days. Respondent was also ordered to comply with other conditions of probation. Respondent was found to have violated rule 5-103 of the Rules of Professional conduct by purchasing the real property of his clients at a foreclosure sale and Rule 5-103 by acquiring an ownership interest adverse to the interest of his client.

¹ Rules of Professional Conduct, **Rule 3-300** Avoiding Interests Adverse to a Client, provides the following:

"A member shall not enter into a business transaction with a client; or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client, unless each of the following requirements has been satisfied:

"(A) The transaction or acquisition and its terms are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which should reasonably have been understood by the client; and

"(B) The client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice; and

"(C) The client thereafter consents in writing to the terms of the transaction or the terms of the acquisition."

11. On March 25, 1991, the Department of Real Estate issued a decision suspending respondent's real estate licenses for 30 days on account of respondent's 1990 suspension from the practice of law. The department found, among other things, that the acts, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license under Business and Professions Code section 10177, subdivision (f).

LEGAL CONCLUSIONS

Burden of Proof

1. In an accusation seeking to revoke, suspend, or otherwise discipline respondent's professional license, the complainant has the burden of proof to establish the allegations in the accusation by "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

Suspension by Other Licensing Agency.

2. The Department may suspend or revoke a real estate license if the licensee had a license issued by another agency of the state revoked or suspended for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of California real estate license provided that the licensee was given fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act. (Bus. & Prof. Code, § 10177, subd. (f).)

3. Upon transfer of residential property, real estate licensees who are involved in the transfer are required to make various disclosures. (See, Civ. Code, §§ 1102 et seq.) For example, a licensee who represents the seller is required to complete an "Agent's Inspection Disclosure" as to the condition of the property. (Civ. Code, § 1102.6.) Buyers and sellers must be notified that they may wish to obtain professional advice or inspections of the property and, that an attorney should be consulted for legal advice. (Civ. Code, § 1102.6.) Violation of such disclosure requirements may be grounds for suspension or revocation of a licensee's real estate license. (Bus. & Prof. Code, § 10176.5, subd. (a).)

4. Respondent's 2009 suspension of his license to practice law was based on his failure to advise his clients in writing that they could seek the advice of an independent lawyer of the client's choice when he obtained a security interest in their mobile home. (See, Findings 7, 8, and 9.) The 2009 suspension of his law license falls within Business and Professions Code section 10177, subdivision (f) because, as indicated in Conclusion 3, respondent has similar disclosure requirements to his clients as a licensed real estate broker. This falls within subdivision (f) because his license to practice law was "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.” Respondent argues that the precise disclosure for which he was disciplined by the State Bar is not required of him as a real estate broker. Essentially, respondent argues that the required disclosure must be the same, not merely similar, to disclosures he must make as a real estate licensee. This reading is too narrow and, if adopted, would unreasonably reduce the scope of subdivision (f) because the essence of the misconduct is failure to make a required disclosure to a client, not the particular disclosure in question.

Negligence or Incompetence

5. The department may suspend or revoke a real estate license if the licensee demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license. (Bus. & Prof. Code, § 10177, subd. (g).)

6. The department failed to prove that respondent negligently or incompetently performed any act for which he is required to hold a real estate broker’s license under Business and Professions Code section 10177, subdivision (g). In this charge, the department appears to be focusing on the second prong of the State Bar’s grounds for suspending respondent’s license to practice law. That is, that “by choosing terms that were not fair and reasonable due to the discrepancy in value between the mobile home and the billings, and the disputed nature of the billings, respondent willfully violated Rules of Professional Conduct, rule 3-300.” While this conduct may have violated respondent’s duties as a lawyer, it did not violate any duty imposed upon him as a real estate licensee. Subdivision (g) requires the department to establish that respondent “demonstrated negligence or incompetence in performing an act for which he or she is required to hold a [real estate] license.”

Fraud or Dishonest Dealing

7. The department may suspend or revoke a real estate license if the licensee engaged in any conduct which constituted fraud or dishonest dealing. (Bus. & Prof. Code, § 10177, subd. (j).)

8. The department failed to prove that respondent engaged in fraud or dishonest dealing. This charge also appears to focus on the State Bar’s conclusion that the terms of respondent’s fee recovery arrangement with the Catalanos was not fair and reasonable due to the discrepancy in value between the mobile home and the billings. While the arrangement may have been unfair and unreasonable, the department failed to prove by clear and convincing evidence that the unfairness was a result of fraud or dishonest dealing.

Cause Exists to Suspend Licensure

9. Sufficient cause exists to suspend respondent's real estate broker's license. The 2009 suspension of his license to practice law falls within Business and Professions Code section 10177, subdivision (f) because respondent has similar disclosure requirements to his clients as a licensed real estate broker. There was insufficient evidence to prove the other charges. In 1991, respondent's real estate licenses were suspended for 30 days on account of his 1990 suspension from the practice of law. Thus, this is a second offense under Business and Professions Code section 10177, subdivision (f) for similar misconduct. While this is an aggravating circumstance, it is offset to some extent by the remoteness of time. The suspension shall be for 30 days.

ORDER

All licenses and licensing rights of respondent William Franklin Hancock, Jr. under the Real Estate Law are suspended for a period of 30 days from the effective date of this Decision.

Dated: April 18, 2011

Floyd D. Shimomura
FLOYD D. SHIMOMURA
Administrative Law Judge
Office of Administrative Hearings

FLAG

JASON D. LAZARK, Counsel (SBN 263714)
Department of Real Estate
P. O. Box 187007
Sacramento, CA 95818-7007
Office: (916) 227-0789
Direct: (916) 227-0822

FILED

FEB 02 2011

DEPARTMENT OF REAL ESTATE

By: [Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	No. H-2516 FR
)	
WILLIAM FRANKLIN HANCOCK, Jr.,)	<u>SECOND AMENDED</u>
)	<u>ACCUSATION</u>
)	
Respondent.)	

The Complainant, TRICIA D. SOMMERS, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against WILLIAM FRANKLIN HANCOCK, Jr. (herein "Respondent"), is informed and alleges as follows:

1.

Respondent is presently licensed and/or has license rights under the Real Estate Law Part 1 of Division 4 of the Business and Professions Code (herein "the Code") as a real estate broker.

2.

On or about November 29, 1978, the State Bar of California issued Respondent a license to practice law (License No. 82292). On or about February 24, 2009, after giving Respondent fair notice of the pending charges and affording him the opportunity for a hearing

1 and other due process protections, the State Bar of California and Respondent agreed in Case No.
2 05-O-02311 to a Stipulation re Facts, Conclusions of Law and Disposition and Order Approving
3 Actual Suspension (herein "Stipulated Suspension"), recommending to the California Supreme
4 Court that Respondent be disciplined for thirty (30) days actual suspension from the practice of
5 law within the State of California, placed on two (2) years probation, and be subject to other
6 conditions. The Stipulated Suspension was based upon Respondent's acknowledgement that he
7 committed the following acts in willful violation of Rule 3-300 of the California Rules of
8 Professional Conduct:

- 9 1) Obtaining a security interest in clients' mobile home without advising
10 the clients in writing of their right to seek the advice of independent
11 counsel;
- 12 2) Choosing terms in the hourly fee agreement that were not fair and
13 reasonable to the client due to the discrepancy in value between the
14 mobile home and the hourly billings.

15 On or about March 25, 2009, the California Supreme Court approved the
16 Stipulated Suspension and ordered Respondent suspended from the practice of law for two
17 (2) years, with a stay of execution, and placed him on two (2) years probation with
18 conditions, including actual suspension from the practice of law for thirty (30) days.

19
20 MATTERS IN AGGRAVATION

21 3.

22 On April 5, 1991, after an uncontested hearing in Department of Real Estate Case
23 Number H-1047 FRESNO, the Chief Deputy Commissioner of the Department of Real Estate
24 adopted the Proposed Decision of the Regional Manager of the Department of Real Estate
25 ordering all licenses and licensing rights of Respondent under Part 1 of Division 4 of the Code
26 (herein "the Real Estate Law") suspended for thirty (30) days.

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4.

In 1990, after giving Respondent fair notice of the pending charges and affording him the opportunity for a hearing and other due process protections, the State Bar of California and Respondent agreed in Case No. 85-O-10652 to a stipulated suspension for one (1) year, stayed, and thirty (30) days of actual suspension from the practice of law within the State of California. Respondent stipulated to a violation of Rule 5-103 and 5-101 of the California Rules of Professional Conduct in that case for purchasing his client's property at a foreclosure sale thereby acquiring an ownership interest adverse to his client's interest.

5.

The facts alleged above in Paragraph 2 constitute grounds under section 10177(f) (suspension of license issued by state agency), section 10177(g) (negligence or incompetence in performing act for which license was required) and/or section 10177(j) (fraudulent or dishonest conduct) of the Code for the suspension and/or revocation of all licenses and license rights of Respondent under the Real Estate Law.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a Decision be rendered imposing disciplinary action against all licenses and license rights of Respondent under the Real Estate Law, and for such other and further relief as may be proper under provisions of law.


TRICIA D. SOMMERS
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 2nd day of February, 2011.

FLAG

1 JASON D. LAZARK, Counsel (SBN 263714)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007
5 Office: (916) 227-0789
6 Direct: (916) 227-0822

FILED

JAN 31 2011

DEPARTMENT OF REAL ESTATE

By *[Signature]*

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	
)	No. H-2516 SAC
)	
12 WILLIAM FRANKLIN HANCOCK, Jr.,)	<u>FIRST AMENDED</u>
)	<u>ACCUSATION</u>
)	
14 Respondent.)	
15)	

16 The Complainant, TRICIA D. SOMMERS, acting in her official capacity as a
17 Deputy Real Estate Commissioner of the State of California, for cause of Accusation against
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23 estate broker.

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TRICIA D. SOMMERS
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 21st day of January, 2011.

Flag

1 JASON D. LAZARK, Counsel (SBN 263714)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007
5 Office: (916) 227-0789
6 Direct: (916) 227-0822

FILED

AUG 10 2010

DEPARTMENT OF REAL ESTATE

By *L. Frost*

7 BEFORE THE DEPARTMENT OF REAL ESTATE

8 STATE OF CALIFORNIA

9 * * *

10 In the Matter of the Accusation of)

No. H-2516 FR

11 WILLIAM FRANKLIN HANCOCK, JR.,)

ACCUSATION

12 Respondent.)
13)

14 The Complainant, LUKE MARTIN, acting in his official capacity as a Deputy
15 Real Estate Commissioner of the State of California, for cause of Accusation against WILLIAM
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23 of Professional Conduct in that case for purchasing his client's property at a foreclosure sale
24 thereby acquiring an ownership interest adverse to his client's interest.

25 4.

26 The facts alleged above in Paragraph 2 constitute grounds under Section 10177(f)
27 (Suspension of License Issued by State Agency), Section 10177 (g) (Demonstrated Negligence

1 or Incompetence in Performing Act for Which License Was Required) and/or Section 10177(j)
2 (Fraudulent or Dishonest Conduct) of the Code for the suspension and/or revocation of all
3 licenses and license rights of Respondent under Part 1 of Division 4 of the Code.

4 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
5 of this Accusation and that upon proof thereof, a Decision be rendered imposing disciplinary
6 action against all licenses and license rights of Respondent under the Code, and for such other
7 and further relief as may be proper under provisions of law.

8
9 

10 LUKE MARTIN
11 Deputy Real Estate Commissioner

12 Dated at Fresno, California,
13 this 3rd day of August, 2010.