

FILED

FEB 02 2017

BUREAU OF REAL ESTATE
By B. Nicholas

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
CHRISTOPHER CHARLES CAYCE,) CalBRE No. H-3022 FR
Respondent.) OAH No. 2016070958

DECISION

The Proposed Decision dated January 4, 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.

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 FEB 23 2017

IT IS SO ORDERED 1/31/17

WAYNE S. BELL
REAL ESTATE COMMISSIONER

Daniel J. Sandri

By: DANIEL J. SANDRI
Chief Deputy Commissioner

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

CHRISTOPHER CHARLES CAYCE,

Respondent.

Case No. H-3022 FR

OAH No. 2016070958

PROPOSED DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on November 7, 2016, in Oakland, California.

Adriana Z. Badilas, Real Estate Counsel, represented complainant.

Michael Ullom, Attorney at Law, represented respondent Christopher Charles Cayce, who was present.

The record was left open for the filing of closing briefs and for respondent to submit additional evidence regarding the payment of restitution. Complainant's brief was timely filed on November 18, 2016, and marked as Complainant's Exhibit 8. Respondent's brief was timely filed on December 2, 2016, and marked as Respondent's Exhibit 17.¹ Attached to respondent's brief was a notarized declaration, which has been marked as Respondent's Exhibit 18.

On December 7, complainant filed an objection to Respondent's Exhibit 18. The objection has been marked as Complainant's Exhibit 9. Complainant's objection to Exhibit 18 is overruled, and Exhibit 18 is admitted as administrative hearsay.

The record closed, and the matter was submitted on December 7, 2016.²

¹ Both parties used numbers to pre-mark their exhibits prior to the hearing.

² Additional argument was filed by the parties on December 9, 2016. Respondent's December 9 submission is marked as Respondent's Exhibit 19. Complainant's submission is marked as Complainant's Exhibit 10.

FACTUAL FINDINGS

1. Complainant Brenda Smith made the accusation in her official capacity as a Supervising Special Investigator for the Bureau of Real Estate, State of California.

2. Respondent Christopher Charles Cayce is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code, as a real estate broker. Respondent has been licensed since 1997. There have been no prior disciplinary actions against respondent by the Bureau.

State Bar Discipline

3. Respondent is an attorney and has been a member of the State Bar of California (State Bar) since 1984. The State Bar initiated disciplinary proceedings against respondent in December 2012, following a complaint by a former client. A hearing was conducted in 2013, followed by an appeal to the State Bar Court. The State Bar Court performed an independent review and affirmed the hearing judge's culpability findings. Respondent filed a petition for review in the California Supreme Court. The California Supreme Court denied respondent's petition in an order dated August 25, 2015. The Supreme Court ordered respondent suspended from the practice of law for two years, stayed, with an actual suspension of nine months. Respondent was placed on probation and will remain suspended until he pays \$17,215.19, plus interest dating from April 18, 2008, to victim M.C. Respondent was also ordered to take and pass the Multistate Professional Responsibility Examination, satisfactorily complete the Bar's Ethics School and Client Trust Accounting School, and pay costs. If respondent remains suspended for two years as a result of failing to pay restitution, he will be required to provide proof of rehabilitation, fitness to practice, and learning and ability in the general law before the suspension will be terminated.

4. The facts and circumstances underlying the State Bar's discipline involved two separate instances of misconduct. In the first matter, respondent was found to have failed to maintain client funds received on a client's behalf in a client trust account, in violation of California Rules of Professional Conduct 4-100(A).³ The misconduct arose in the course of his relationship with client M.C., who hired respondent in 2006 to represent her in a lengthy and contentious divorce. M.C. requested that her estranged husband's child support payments be sent to respondent so that she could conceal her location. Respondent's office received 18 checks between May 2007 and April 2008, which were deposited into the general business account and not into a client trust account. These payments were credited towards M.C.'s legal fees and were not disbursed to her. M.C. had five children and went on welfare during the divorce proceedings to provide for her children. Respondent maintained during the Bar's disciplinary proceedings (and continues to maintain) that M.C. directed

³ The California Rules of Professional Conduct govern members of the State Bar. Rule 4-100, subdivision (A), provides that all funds received or held for the benefit of clients must be deposited in a client trust account.

respondent's firm to apply the payments to her legal bills, by means of a lawful verbal assignment. This contention was rejected by the State Bar Court.

The second basis for discipline involved respondent's real estate business. Between 2007 and 2011, respondent ceased maintaining separate business and trust fund accounts for his real estate business. During this period, respondent repeatedly commingled funds by depositing his own funds, including real estate commissions, into his client trust account, in violation of California Rules of Professional Conduct 4-100, subdivision (A).⁴ He then used the client trust account to pay expenses for his business as well as personal expenses for his father, son, and wife. The State Bar rejected respondent's assertion that these family members were clients.

In reaching its determination on discipline, the State Bar Court found the following five factors in aggravation: 1) prior State Bar discipline; 2) multiple acts of misconduct; 3) serious harm to client M.C. and her children; 4) indifference towards rectification/atonement; and 5) overreaching.

5. During the investigation of this matter, the Bureau requested that respondent submit an "Interview Information Statement." Respondent returned this document to the Bureau on February 3, 2016. On the document, respondent was asked whether he had been disciplined by a licensing agency and to provide an explanation. Respondent reported that his State Bar membership had been disciplined for failure to maintain client funds in trust account and for commingling of non-client funds in a trust account. As an explanation, respondent wrote "Not criminal in nature; all accusations are denied. Matter was appealed without success. I continue to deny any violation of state bar rules."

Prior State Bar Discipline

6. Respondent was previously disciplined by the State Bar for four violations of California Rules of Professional Conduct Rule 3-300.⁵ In an order dated November 24,

⁴ Rule 4-100, subdivision (A), further provides that funds belonging to an attorney or law firm shall not be deposited into a client trust fund account or otherwise commingled.

⁵ Rule 3-300 provides that:

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

2004, the California Supreme Court ordered that respondent be suspended from the practice of law for one year, that the suspension be stayed, and that respondent be placed on probation for two years subject to conditions including passing the Multistate Professional Responsibility Examination and attending State Bar Ethics School.

The 2004 State Bar discipline arose from respondent's misconduct in relation to client C.M. during the period of 1998 through 2000. According to a stipulation entered into by respondent, respondent, without properly disclosing the terms and without receiving written consent, performed the following transactions: 1) prepared documents transferring a security interest in a property owned by C.M. to his law firm as payment for legal services; 2) issued a promissory note to C.M.; 3) arranged for an acquaintance to lend money to C.M. that was secured in part by respondent's property; and 4) arranged for his sister to purchase C.M.'s vehicle with the proceeds going towards payment of C.M.'s legal fees.

Respondent's Evidence

7. Respondent acknowledged his discipline, but disputes the State Bar's findings. He asserted that M.C. is a "liar" and accused her of committing perjury at the State Bar hearing. He continues to maintain that M.C. assigned her child support to his law firm and that this was a lawful assignment. He offered into evidence email correspondence and his own notes to bolster this assertion, evidence which was considered by the State Bar and found not convincing. Respondent denies being aware that M.C. and her children were on welfare at the time and stated that he believed that her parents were supporting her. Respondent views his misconduct in relation to M.C. as failure to get written consent, and failure to deposit the funds into his client trust account prior to transferring them into his business account. He is adamant that he did not intend to take money without her knowledge, that he is "not a thief," and that he understands that he must put his clients' rights first.

Regarding the commingling violation, respondent again disputed the State Bar's findings. Respondent explained that he used his client trust fund to operate his business because he did not trust one of his business partners and was trying to protect funds from embezzlement by this partner. Respondent further asserts that he was representing family members as an attorney and that using funds from his client trust account to pay their expenses was within his role as attorney. Respondent stated that this conduct was discovered by the State Bar when it was "digging around" while investigating M.C.'s complaint against him. He stated that he would handle things differently in the future. He would be sure to

(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.

maintain separate accounts and not be "lazy." He stated that he has learned to always put things in writing and maintain a clear trail.

8. Respondent testified that he was in compliance with the State Bar probation, with the exception of paying restitution to M.C. Had restitution been paid, he was eligible for reinstatement since June 2016.

Respondent explained that he has not paid any restitution because he lacks the funds and because he has been attempting to reach an agreement with M.C. Respondent has a lien on property she owns in Idaho, which he procured because M.C. owes him legal fees. He has offered to release the lien in exchange for M.C. agreeing to sign a declaration stating that restitution has been satisfied. He hopes that this declaration will be accepted by the State Bar, although he acknowledged that this is not guaranteed. The signed declaration, dated November 3, 2016, was submitted after hearing.

Respondent completed the State Bar's Ethic School on April 21, 2016, and the Client Trust Accounting School on April 22, 2016. Respondent took and passed the Multistate Professional Responsibility Examination on March 19, 2016. Respondent is on a payment plan with the State Bar to pay discipline costs in the amount of \$23,600.61, with the first payment being due in 2018.

9. Respondent is 67 years old. Respondent's law practice has been his primary career. However he has maintained his real estate license and has three agents working under his license. He has had no transactions in about two years. He does not maintain a client trust fund in his real estate practice, choosing to use a title company to hold funds instead. His broker's license is important to him and "goes hand in hand" with his law practice. Due to the State Bar suspension order, respondent has not practiced law since September 2015. He has been living off of social security and money lent to him by his elderly father.

10. Darrell Moon testified at the hearing. He is a member of the State Bar since 1999 and has known respondent for 30 years. He worked for respondent's law office from 2000 through 2009, and has continued to work with him since then as an independent contractor.

Moon was the attorney with primary responsibility on the M.C. divorce matter. It was a contentious case and generated a large amount of legal fees, around \$140,000. Moon testified that he discussed with M.C. the possibility of applying her child support payments towards her legal fees. Moon related that M.C. had come up with this idea because she owed \$10,000 to \$30,000 in fees. Moon did not want to stop representing M.C. because he was already her second attorney and he thought she would have difficulty finding another attorney in Monterey County. Moon believes that M.C. made a verbal request to apply child support to her legal fees and that this was a lawful assignment. He does not think it was necessary to send her a "Rule 3-300 letter" advising her to seek outside legal advice.

M.C. complained about Moon to the State Bar, but he was not disciplined in relation to his conduct in this matter. Moon testified on behalf of respondent at respondent's State Bar hearing, but his contention that there had been an assignment was not found persuasive. Moon disagrees with the State Bar's decision, which he believes was in error.

Costs

11. In connection with the investigation and prosecution of this accusation, the Bureau has incurred expenses of \$2,345.50. These costs reflect \$1,393.20 in investigation costs and \$952.30 for legal services. The costs are supported by certifications by complainant Brenda Smith, and attorneys Jason D. Lazark and Adriana Z. Badilas. These costs are found to be reasonable.

LEGAL CONCLUSIONS

1. Business and Professions Code section 10177, subdivision (f), authorizes the Real Estate Commissioner to discipline a licensee whose license issued by another California agency is suspended or revoked for acts that, if performed by a real estate licensee, would be grounds for discipline of a California real estate licensee. Respondent's license to practice law has been suspended by the State Bar of California for the mishandling of client trust funds and commingling of funds, conduct which would be grounds for discipline if performed by a real estate licensee.⁶ Accordingly, cause for discipline has been established in light of the matters set forth in Findings 3 and 4.

2. The State Bar disciplinary proceedings raise serious concerns regarding whether respondent possesses the requisite honesty and integrity demanded of real estate professionals. Respondent was found to have placed client funds into his own account and to have commingled client funds with business and personal funds. The actions shed doubt on his ability and willingness to fulfill his fiduciary duties and act in his clients' best interest. The fact that some of the conduct involved his real estate activities is noteworthy because it relates directly to the performance of his duties as a real estate licensee. Also noteworthy is the fact that these actions occurred shortly after he had been disciplined by the State Bar for engaging in similar conduct.

At the time of the hearing, respondent was not in compliance with the State Bar's probation conditions because he had failed to pay any restitution to the victim, although more than one year had passed since his State Bar discipline became final. This failure to pay restitution has delayed respondent's ability to resume the practice of law beyond the

⁶ Business and Professions Code section 10145 provides that client funds must be maintained in a trust account. Business and Professions Code section 10176, subdivision (e), provides that licensees who commingle their own funds with funds being held on behalf of another are subject to discipline. Business and Professions Code section 10176, subdivision (i), provides that real estate licensees may be disciplined for fraud or dishonest dealing.

minimum nine months. Respondent has since provided evidence that victim M.C. has signed a declaration stating that she has been provided with restitution equivalent to the amount ordered by the State Bar. It remains unclear whether the State Bar will find this declaration acceptable for purposes of satisfying the restitution order.

Respondent does not appreciate the seriousness of his misconduct and regards his transgressions as minor technical violations. He continues to challenge the State Bar's discipline as factually inaccurate, and he accuses victim M.C. of committing perjury at the State Bar hearing. This ongoing minimization of his conduct and refusal to accept responsibility for his actions is troubling.

Respondent has not established a change in attitude since the time of the incidents that resulted in discipline by the State Bar. Revocation of respondent's real estate license is necessary for the protection of the public. It would be against the public interest to permit respondent to retain his real estate license, even on a restricted basis.

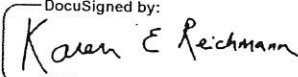
3. Business and Professions Code section 10106 authorizes the Bureau to recover in disciplinary proceedings its reasonable costs of investigation and enforcement. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of costs sought pursuant to statutory provisions such as 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 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.

Taking these factors into consideration, no cause to reduce costs has been established. Respondent will be ordered to pay \$2,345.50 in cost recovery, pursuant to Business and Professions Code section 10106.

ORDER

1. All licenses and licensing rights of respondent Christopher Charles Cayce under the Real Estate Law are revoked.
2. Respondent shall pay the Bureau's costs associated with the investigation and enforcement of this action pursuant to Business and Professions Code section 10106, in the amount of \$2,345.50.

DATED: January 4, 2017

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KAREN REICHMANN
Administrative Law Judge
Office of Administrative Hearings