FILED
JAN 03 2006
DEPARTMENT OF REAL ESTATE
By Anne Sharma

BEFORE THE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	
	)	NO. H-3202 SD
ROBERT D. BRAUN.	)	
	)	OAH NO. 2005060586
Respondent.	)	

DECISION

The Proposed Decision dated November 28, 2005, 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 on grounds of the conviction of a crime.

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 January 23, 2006.

IT IS SO ORDERED 1-3, 2006.

JEFF DAVI
Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against: ROBERT D. BRAUN, Respondent.	Case No. H-3202 SD OAH No. L2005060586

PROPOSED DECISION

On September 16, 2005, in San Diego, California, Timothy L. Newlove, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Truly Sughrue, Real Estate Counsel appeared on behalf of complainant J. Chris Graves, Deputy Real Estate Commissioner, Department of Real Estate, State of California.

Edgardo Gonzalez, attorney at law, appeared and represented respondent, Robert D. Braun, who was also present at the hearing.

The matter was submitted on September 16, 2005.

FACTUAL FINDINGS

1. On May 13, 2004, J. Chris Graves, acting in his official capacity as a Deputy Real Estate Commissioner, issued the pending Accusation against the real estate salesperson license held by respondent Robert D. Braun.

2. The Accusation charges that respondent's real estate salesperson license is subject to discipline under Business and Professions Code sections 490 and 10177, subdivision (b) based upon a criminal conviction suffered by respondent under Penal Code section 532a, subdivision (1) (intent to defraud).

3. On June 22, 2005, the Department of Real Estate ("Department") filed a Notice of Defense received from respondent contesting the Accusation.

4. On March 6, 2005, respondent Braun was convicted upon his plea of nolo contendere of violating one count of Penal Code section 532a, subdivision (1), in the criminal case entitled *The People of the State of California vs. Robert David Braun*, Superior Court of California, County of San Diego. This was a misdemeanor conviction. As punishment, respondent was placed upon informal probation to the criminal court for one year, and required to pay a fine in the amount of $250.

5. With a check dated March 31, 2005, respondent paid the $250 fine assessed in the criminal case. Respondent remains on probation until March 6, 2006. Respondent stated his intent to expunge the conviction which, under Penal Code section 1203.4, cannot occur until his probation has terminated.

6. The facts and circumstances of the criminal conviction are as follows. Respondent Braun has been licensed as a real estate salesperson since 1997. Upon receiving his license, respondent started working as a mortgage loan officer at Cambridge Home Loans where he remains. As a loan officer, respondent originated and processed loan packages for the company's clients. At the same time, respondent's father, Robert David Braun, Sr., worked at Cambridge Home Loans in the capacity as a marketing manager. In early 2000, respondent purchased a new home located at 17244 Hollyleaf Court, San Diego, California, for $735,000. In the loan application to finance the purchase of the property, respondent checked a box indicating that the Hollyleaf Court home would be his primary residence. This was a misrepresentation because respondent knew that the home was intended as the residence for his father. More properly, respondent should have checked the box in the loan application indicating that the Hollyleaf Court home was an investment property. The falsified loan application was processed at Cambridge Home Loans. Respondent knew that what he was doing was illegal. He undertook this improper conduct to help his father who had bad credit and could not qualify for the loan. In addition, by indicating that the property was his primary residence instead of an investment property, respondent obtained a lower interest rate on the loan and thereby benefited his father. Respondent's father continues to reside in the Hollyleaf Court home, and refinanced the subject loan in June 2002.

7. Respondent's father continues to reside in the Hollyleaf Court home. In June 2002, the father refinanced the loan in which respondent obtained with the falsified loan application. During the administrative hearing, respondent testified that he retains a good relationship with his father, but that he has removed himself from his father's influence by not seeing him so often.

8. Respondent Braun is married and he has a six-year-old stepson. Respondent's wife is a homemaker, and he provides the sole financial support for his family. Respondent graduated from high school in 1995. He worked at an ice-skating rink for a time. He then became interested in real estate and obtained his real estate salesperson license.

9. Currently, respondent Braun is a Senior Loan Officer at Cambridge Home Loans. Merrill Moses, the Chief Executive Officer at the company and the person who originally hired respondent, testified at the administrative hearing. Mr. Moses was effusive in his praise for respondent, notwithstanding his knowledge of the underlying criminal conviction which he described as a "serious" violation. Mr. Moses testified that respondent is "a man of character" and has a "memory and mind like a steel trap." In fact, it appears that respondent is very adept in the mortgage loan brokerage field. He is a point man for other loan officers at the company who seek his assistance based upon his wide experience and knowledge in originating and processing loans.

10. The Indictment in the underlying criminal case was filed in October 2003. In the investigation leading-up to the Indictment, the authorities visited the offices of Cambridge Home Loans. These visits prompted Merrill Moses to perform an in-house review of loans originated by the company, including all loans processed by respondent Braun. Of significance, except for the loan application relating to the Hollyleaf Court property, the internal review determined that there were no discrepancies or improprieties with respondent's work product.

11. The Hollyleaf Court loan was reviewed by a single processor at Cambridge Home Loans. According to Merrill Moses, since the Indictment in the underlying criminal case, his company has instituted a "quality control" that involves five levels of review in order to avoid the same or similar misconduct practiced by respondent.

12. At the administrative hearing, respondent presented as remorseful regarding the conduct leading to his conviction. He acknowledged that mischaracterizing his relation to the Hollyleaf Court property was a serious offense, especially for a mortgage loan officer. Respondent also appeared sincere in his statement that he would not engage in the same misconduct. He expressed hope that he could continue to work as a Senior Loan Officer at Cambridge Home Loans where he ranks among the top ten in loan officers.

13. Javier Sapien, a fellow loan officer with respondent at Cambridge Home Loans, testified at the administrative hearing. Mr. Sapien described respondent's high aptitude for the loan brokerage business. Mr. Sapien also stated that, a year and a half ago, respondent helped with fundraisers to raise proceeds intended for Mr. Sapien's younger brother who was afflicted with leukemia.

LEGAL CONCLUSIONS

1. In an administrative disciplinary proceeding, such as the pending Accusation against respondent Braun, the burden of proof lies with the Complainant to establish the charging allegations by clear and convincing evidence. *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 857.

2. Respondent Braun was convicted for violating Penal Code section 532a, subdivision (1) which involves knowingly making a false statement regarding one's financial

condition. In this case, the false statement was a loan application in which respondent marked that a home that he was purchasing was his primary residence rather than an investment property. This was a dishonest act that constituted a fraud on the lender. This conclusion is based upon Factual Findings 4 and 6.

3. Business and Professions Code section 490 authorizes an agency such as the Department of Real Estate to revoke or suspend a license on the ground that the holder of the license has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business for which the license was issued. A conviction within the meaning of section 490 includes a conviction upon a plea of nolo contendere. Respondent's conviction under Penal Code section 532a, subdivision (1) is directly related to his fitness to practice as a real estate agent in that the underlying act was performed during a real estate transaction that respondent prepared on the job at Cambridge Home Loans. In addition, a dishonest act by a real estate agent is always substantially related to the qualifications, functions and duties of a real estate licensee. This conclusion is based upon Factual Findings 4 and 6.

4. Business and Professions Code section 10177, subdivision (b) also authorizes the Department to suspend or revoke the license of a real estate licensee based upon the conviction of "a crime involving moral turpitude." Crimes of moral turpitude include offenses with the element of dishonesty. *People v. Castro* (1985) 38 Cal.3d 301, 306. Accordingly, respondent's conviction under Penal Code section 532a, subdivision (1) is a crime of moral turpitude within the meaning of Business and Professions Code section 10177(b). This conclusion is based upon Factual Findings 4 and 6.

5. The Department has promulgated regulations which appear in California Code of Regulations, title 10, section 2705 et seq. (the "Department Regulations"). Pursuant to Business and Professions Code section 482, the Department has promulgated a Criteria of Rehabilitation "for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee." This Criteria of Rehabilitation appears at Department Regulation 2912.

6. In this case, respondent has met some of the criteria set forth in Department Regulation 2912. In his favor, respondent was not required to pay restitution as a sentence in the underlying criminal matter. (Dept. Reg. § 2912, subd. (b).) Respondent promptly paid the $250 fine that was assessed in the underlying criminal matter. (Dept. Reg. § 2912, subd. (g).) To a degree, there has been a correction in the business practice leading to respondent's conviction. This correction has come in the form of the improvement in quality control for the origination and processing of loans at Cambridge Home Loan. (Dept. Reg. § 2912, subd. (h).) To a degree, respondent has new and different social relationships from those that existed at the time of the commission of acts that led to the criminal conviction, in that respondent has removed himself from the influence of his father. (Dept. Reg. § 2912, subd. (i).) To a degree, respondent has involved himself in the community through his efforts on a fundraiser for the afflicted younger brother of a co-worker. (Dept. Reg. § 2912, subd. (l).) There have been no further criminal matters, and respondent has expressed remorse and a

determination not to repeat his offense. (Dept. Reg. § 2912, subd. (m).) This conclusion is based upon Factual Findings 4, 5, 6, 7, 11, 12 and 13.

7. Against his favor, respondent has not satisfied certain important criteria set forth in Department Regulation 2912. There has not been a passage of less than two years from the underlying criminal conviction which was entered on March 7, 2005. (Dept. Reg. § 2912, subd. (a).) There has been no expungement of the underlying conviction. (Dept. Reg. § 2912, subd. (c).) Also, respondent has not completed his probation to the criminal court, which will terminate in March 2006. (Dept. Reg. § 2912, subd. (e).) This conclusion is based upon Factual Findings 4, 5 and 7.

8. Cause exists for the Department to discipline respondent's real estate license under the authority of Business and Professions Code sections 490 and 10177, subdivision (b), but not to revoke the license. The underlying act of dishonesty leading to the criminal conviction occurred in 2000. Respondent committed the act of mischaracterizing his relation to the Hollyleaf Court property in order to assist his father. There is no further evidence of respondent committing the same or similar offenses. In fact, respondent's employer at Cambridge Home Loans performed an in-house review of the loans originated and processed by respondent, and did not discover further discrepancies. Respondent has satisfied several criteria of rehabilitation established by the Department.

The purpose of an administrative disciplinary proceeding is to protect the public. *Small v. Smith* (1971) 16 Cal.App.3d 450, 457. In this case, it is determined that the public will be protected by respondent being placed on probation to the Department and serving a thirty (30) day suspension from licensed activity. Both the probation, which will include the requirement of taking and passing the Department's Professional Responsibility Examination, and the suspension shall serve to remind respondent, and his fellow loan officers, that he must comport himself at all times in an honest and straightforward manner in performing activities under his license. This conclusion is based upon Factual Findings 4, 5, 6, 9, 10, 11, 12 and 13.

ORDER

The real estate salesperson license held by Respondent Robert D. Braun under the Real Estate Law is hereby revoked; provided, however, that a restricted real estate salesperson license shall be issued to Respondent pursuant to Business and Professions Code section 10156.5 if Respondent makes application therefore and pays to the Department of Real Estate the appropriate fee for the restricted license within ninety (90) days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7, and to the following limitations, conditions and restrictions imposed by Business and Professions Code section 10156.6:

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 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 (2) years have elapsed from the effective date of this Decision.

4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved the by Department of Real Estate which shall certify:

(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

(b) That the employing broker will exercise close supervision over the Performance by the restricted licensee relating to activities for which a real estate license is required.

5. Respondent shall, within nine (9) 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.

Any restricted license issued to Respondent pursuant to this Decision shall be suspended for thirty (30) days from the date of issuance of said restricted license.

Respondent shall, within six (6) months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of respondent's license until respondent passes the examination.

DATED: Nov. 28, 2005

TIMOTHY L. NEWLOVE
Administrative Law Judge
Office of Administrative Hearings

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FILED
MAY 13 2005
DEPARTMENT OF REAL ESTATE
By [signature]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of ROBERT D. BRAUN, Respondent.	No. H-3202 SD ACCUSATION

The Complainant, J. CHRIS GRAVES, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against ROBERT D. BRAUN (hereinafter "Respondent"), is informed and alleges as follows:

I

The Complainant, J. CHRIS GRAVES, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in his official capacity.

II

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) (Code) as a real estate salesperson.

III

On or about March 6, 2005, in the Superior Court, County of San Diego, Respondent was convicted of a violation of Section 532a(1) of the California Penal Code (Intent to Defraud), 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.

IV

The facts alleged above constitute cause under Sections 490 and 10177(b) of the Code for suspension 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 (Part 1 of Division 4 of the Business and Professions Code), and for such other and further relief as may be proper under the provisions of law.

J. Chris Graves

J. CHRIS GRAVES
Deputy Real Estate Commissioner

Dated at San Diego, California,
this 9th day of May, 2005