

FILED
FEB 14 2007

BEFORE THE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Ann Shanna

* * *

In the Matter of the Accusation of)	
GREGORY GEORGE ZANDI,)	NO. H-3513 SD
Respondent.)	OAH NO. L2006110374
_____)	

DECISION

The Proposed Decision dated January 21, 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 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 MAR 06 2007.

IT IS SO ORDERED 2-9, 2007.

JEFF DAVIS
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

GREGORY GEORGE ZANDI,

Respondent.

Case No. H-3513 SD

OAH No. L2006110374

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on January 17, 2007, in San Diego, California.

Truly Sughrue, Counsel, represented complainant J. Chris Graves, a Deputy Real Estate Commissioner, Department of Real Estate, State of California.

Jeffrey A. Agnew, Attorney at Law, represented respondent Gregory George Zandi, who was present throughout the administrative proceeding.

The matter was submitted on January 17, 2007.

FACTUAL FINDINGS

Jurisdictional Matters

1. On May 12, 2006, complainant J. Chris Graves, a Deputy Real Estate Commissioner, Department of Real Estate (the Department), State of California, signed the accusation in his official capacity. The accusation and other required jurisdictional documents were served on respondent Gregory George Zandi (Zandi or respondent).

Zandi timely filed a notice of defense on accusation.

On January 17, 2007, the administrative record was opened. Jurisdictional documents were presented. Sworn testimony and documentary evidence was received, closing arguments were given, the record was closed, and the matter was submitted.

License History

2. Zandi is presently licensed as a real estate broker and has licensing rights under the Real Estate Law.

Zandi was originally licensed as a real estate salesperson in February 1996. He had several employing brokers. In May 2001, Zandi became licensed as a real estate broker. He currently does business as "Your Money Store, Inc." in Ramona, California. Zandi primarily operates as a loan origination service. He employs more than a dozen licensed real estate salespersons.

Zandi's Conviction

3. On October 6, 2005, Zandi was convicted on his plea of no contest of violating Penal Code section 484 (Petty Theft), a misdemeanor necessarily involving moral turpitude, in the Superior Court of California, County of San Diego, East County Division, in Case No. C250651 entitled *The People of the State of California, Plaintiff v. Gregory George Zandi, Defendant*.

Imposition of sentence was suspended, and Zandi was placed on 18 months summary probation on condition that he pay fines and fees in the approximate amount of \$540, provide five days of public service, and obey all laws. He was not required to complete a petty theft offender's course.

Circumstances of the Offense

4. Zandi and his wife met with his physician on May 20, 2005. Zandi was told that he had a diagnosis of Hepatitis C and that if the condition was left untreated, it might result in his death. Treatment including daily medications and weekly Interferon injections was recommended. Zandi learned he had to be abstinent from alcohol for at least six months before treatment began and during treatment. Zandi was anxious and depressed as a result of the diagnosis and treatment plan.

On the morning of May 21, 2005, Zandi became increasingly depressed as he researched and found out more about the treatment protocol for Hepatitis C. A friend, Lance, stopped by Zandi's home around noon to help repair his wife's car. Zandi and Lance spent several hours drinking beer and Jim Beam whiskey, and then left to go to the Stater Brothers grocery store to purchase some food for a barbeque at Zandi's home later that evening. On the way to the grocery store, Zandi and Lance stopped off at Molly Malone's, a Ramona bar and grill, to consume more alcohol. Zandi described his experience as "one last hurrah."

By the time Zandi and Lance arrived at the Stater Brothers grocery store, Zandi had consumed three or four beers and six to eight Jim Beam whiskey and Cokes. He was quite intoxicated. Zandi approached the grocery store clerk with food for the barbeque and a bottle of Jim Beam whiskey. When he put the bottle of whiskey on the conveyor belt, the clerk told

Zandi he was obviously intoxicated to the extent the clerk refused to sell the bottle of whiskey to Zandi. Zandi had "a little bit of a discussion" with the clerk, and then paid for his groceries and went out to his car. He then returned to the store, took possession of the bottle of whiskey, and walked out of the store. Zandi has no real recollection of this, and believed he intended to pay for the alcohol the following day. The clerk contacted law enforcement, who promptly responded to the request for assistance. Zandi was cited for petty theft.

Zandi's Background and Rehabilitation

5. Zandi was born on May 12, 1954, in Pennsylvania. He graduated from high school in 1972. He attended Bryant & Stratton Business Institute in Buffalo, New York, where he received an Associate of Science degree in Applied Science in 1974.

After briefly working for the Catholic diocese, Zandi began a career in the insurance business with Prudential Insurance. He held a New York property and casualty insurance license, as well as a NASD Series 6 license. Zandi left New York and settled in Texas in 1977. He remained in Texas for several years, working in the insurance industry, selling manufactured homes, and selling oil and gas limited partnerships through private placements. Zandi was licensed by the State of Texas during his employment there. In 1992, Zandi moved to Oregon, where he lived for three years. He divorced while living in Oregon, and moved to California in September 1995.

6. Zandi has never had any discipline imposed against any professional license issued to him by any state or federal agency.

7. Zandi has three children from his first marriage: a 16-year-old, a 14-year-old, and a 13-year-old. He provides support to these children and has visitation with them on major holidays and over the summer vacation.

8. Zandi married his current wife, Mary, about six years ago. He and Mary live in Ramona, California. Mary has two adult children who live outside the family home.

9. Both Zandi and his wife described the incident involving the petty theft conviction as being "totally out of character." Zandi promptly paid his fine and promptly completed his public service obligation. He plans to petition the court to expunge his conviction in April 2007 when his probation terminates. Zandi was quite remorseful concerning the incident giving rise to the conviction.

10. Less than two years has passed since Zandi's conviction. He remains on probation. Zandi's offense was relatively minor in nature and it was totally inconsistent with his otherwise law-abiding history. The evidence presented was sufficient to conclude that Zandi is not by nature a thief and that he has rehabilitated himself to the extent that he would not pose a threat to the public if he were to be granted a restricted real estate broker's license.

LEGAL CONCLUSIONS

Purpose of an Administrative Disciplinary Action

1. The object of an administrative proceeding aimed at revoking a license is to protect the public. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.)

Burden and Standard of Proof

2. In a disciplinary administrative proceeding, the burden of proof is upon the party asserting the affirmative. Guilt must be established to a reasonable certainty. Guilt cannot be based on surmise or conjecture, suspicion or theoretical conclusions, or upon uncorroborated hearsay. (*Small v. Smith; supra*, 16 Cal.App.3d at 457.)

3. In an action seeking to impose discipline against the holder of a professional license, the burden of proof is on 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.)

Applicable Statutes

4. Business and Professions Code section 490 provides in part:

“A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere”

5. Business and Professions Code Section 10177 provides in part:

“The commissioner . . . may deny the issuance of a license to an applicant, who has done any of the following

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude”

Arneson v. Fox

6. *Arneson v. Fox* (1980) 28 Cal.3d 440 held that in an administrative disciplinary proceeding, an administrative agency may rely on a nolo contendere plea and the conviction based on that plea to establish a reasonable and substantial relationship to licensed activities. An applicant or licensee may introduce evidence of extenuating circumstances by

way of mitigation or explanation, as well as any evidence of rehabilitation, but an inquiry into the circumstances surrounding the offense should not form the basis of impeaching a prior conviction. Regardless of the various motives which may have impelled the nolo contendere plea, the conviction which was based thereon stands as conclusive evidence of appellant's guilt of the offense charged.

Substantial Relationship/Moral Turpitude

7. *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, 567-568 holds that in misdemeanor conviction cases the governing statutes require that the Department establish both that the offense involved moral turpitude and that the conviction has a substantial relationship to the qualifications, functions, and duties of a real estate licensee.

8. Petty theft is a crime necessarily involving moral turpitude. (*In re Rothrock* (1944) 25 Cal.2d 588, 589-590.)

9. California Code of Regulations, title 10, section 2910 sets forth the Department's substantial relationship criteria. Subdivision (a)(1) provides the fraudulent taking or obtaining of property belonging to another is substantially related. Subdivision (a)(8) provides the doing of any unlawful act with the intent of conferring a financial benefit upon the perpetrator is substantially related.

Rehabilitation

10. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.)

11. The evidentiary significance of an applicant's misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) Cal.3d 1061, 1070.)

12. The Department's criteria for rehabilitation, which are set forth in California Code of Regulations, title 10, section 2912 were discussed in Factual Findings 6-10 and have been considered.

Cause Exists to Authorize the Issuance of a Restricted License

13. Cause exists to impose discipline against Zandi's real estate broker's license under Business and Professions Code sections 490 and 10177, subdivision (b). In October 2005, Zandi was convicted of petty theft, a crime necessarily involving moral turpitude which is also substantially related to the functions, qualifications and duties of a real estate licensee. The conviction was wholly inconsistent with Zandi's history as a law-abiding citizen. Zandi remains on probation. His conviction has not been expunged. Zandi has

sufficiently rehabilitated himself so that it would not be contrary to the public interest to permit him to hold a restricted real estate broker's license. Zandi requested that a suspension be imposed, then stayed on condition that he violate no other laws to avoid perceived complications arising out of the holding of a restricted license. This disciplinary recommendation cannot be implemented without imposing a restricted license, and for that reason it has been rejected.

This conclusion is based on all Factual Findings and on all Legal Conclusions.

ORDER

All licenses and licensing rights of Respondent Gregory George Zandi under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to Business and Professions Code section 10156.5 if Respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 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 under authority of 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.

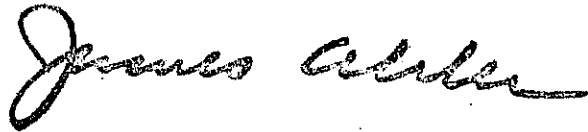
2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner 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 years have elapsed from the effective date of this Decision.

4. Respondent shall, within nine 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.

DATED: 1/22/07



JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings

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FILED
OCT 04 2006

DEPARTMENT OF REAL ESTATE

By *Cause Shaver*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-3513 SD
GREGORY GEORGE ZANDI)	OAH No.
Respondent.)	

ORDER STAYING EFFECTIVE DATE

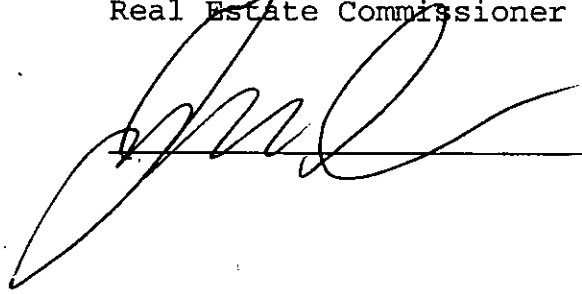
On August 16, 2006, a Decision was rendered in the above-entitled matter to become effective October 17, 2006.

IT IS HEREBY ORDERED that the effective date of the Decision of the Real Estate Commissioner of October 17, 2006, is stayed for a period of ten (10) days to allow Respondent to file a petition for reconsideration.

The Decision of the Real Estate Commissioner of August 16, 2006, shall become effective at 12 o'clock noon on October 27, 2006.

DATED: OCT 04 2006

JEFF DAVIS
Real Estate Commissioner



1 TRULY SUGHRUE, Counsel
2 State Bar No. 223266
3 Department of Real Estate
4 P.O. Box 187007
5 Sacramento, CA 95818-7007
6
7 Telephone: (916) 227-0781

FILED
JUL 27 2006

DEPARTMENT OF REAL ESTATE

By Anne Sawyer

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 GREGORY GEORGE ZANDI,) No. H-3513 SD
13 Respondent.) DEFAULT ORDER

14
15 Respondent, GREGORY GEORGE ZANDI, having failed to file
16 a Notice of Defense within the time required by Section 11506 of
17 the Government Code, is now in default. It is, therefore,
18 ordered that a default be entered on the record in this matter.

19
20 IT IS SO ORDERED July 11, 2006

21 JEFF DAVI
22 Real Estate Commissioner

23
24 By: Philipp J. [Signature]
25 DOLORES WEEKS for Dolores Weeks
26 Regional Manager

II

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

III

On or about October 6, 2005, in the Superior Court, County of San Diego, Respondent was convicted of violation of Section 484 of the California Penal Code (Petty Theft).

DETERMINATION OF ISSUES

I

Cause for disciplinary action against Respondent exists pursuant to Business and Professions Code Sections 490 and 10177(b).

II

The standard of proof applied was clear and convincing proof to a reasonable certainty.

ORDER

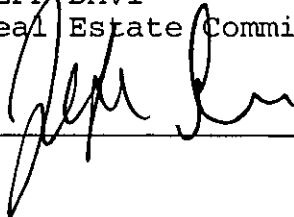
All licenses and licensing rights of respondent GREGORY GEORGE ZANDI, under the provisions of Part I of Division 4 of the Business and Professions Code are revoked.

This Decision shall become effective at 12 o'clock noon on OCT 17 2006 2006.

DATED: _____

8-16-06

JEFF DAVI
Real Estate Commissioner



1 TRULY SUGHRUE, Counsel
2 State Bar No. 223266
3 Department of Real Estate
4 P.O. Box 187007
5 Sacramento, CA 95818-7007
6 Telephone: (916) 227-0781

FILED
MAY 17 2006

DEPARTMENT OF REAL ESTATE

By Lenne Shaver

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 GREGORY GEORGE ZANDI,) No. H-3513 SD
13 Respondent.) ACCUSATION

14
15 The Complainant, J. CHRIS GRAVES, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against GREGORY GEORGE ZANDI (hereinafter "Respondent"), is
18 informed and alleges as follows:

19 I

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

23 II

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

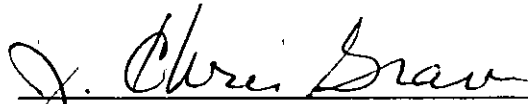
III

1 On or about October 6, 2005, in the Superior Court,
2 County of San Diego, Respondent was convicted of a violation of
3 Section 484 of the California Penal Code (Petty Theft), a crime
4 involving moral turpitude which bears a substantial relationship
5 under Section 2910, Title 10, California Code of Regulations, to
6 the qualifications, functions, or duties of a real estate
7 licensee.
8

IV

9 The facts alleged above constitute cause under Sections
10 490 and 10177(b) of the Code for suspension or revocation of all
11 licenses and license rights of Respondent under the Real Estate
12 Law.
13

14 WHEREFORE, Complainant prays that a hearing be
15 conducted on the allegations of this Accusation and that upon
16 proof thereof, a decision be rendered imposing disciplinary
17 action against all licenses and license rights of Respondent
18 under the Real Estate Law (Part 1 of Division 4 of the Business
19 and Professions Code), and for such other and further relief as
20 may be proper under the provisions of law.
21

22 
23 J. CHRIS GRAVES
24 Deputy Real Estate Commissioner

25 Dated at San Diego, California,
26 this 12th day of May, 2006
27