

FLAG

BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

**FILED**

OCT 31 2017

BUREAU OF REAL ESTATE

BY 

\*\*\*

In the Matter of the Accusation of	)	CalBRE No. H-04897 SD
	)	
ALI LAREYBI,	)	OAH No. 2017050970
	)	
Respondent.	)	

DECISION

The Proposed Decision dated October 10, 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.

Pursuant to Section 11517(c)(2) of the Government Code, the following corrections are made to the Proposed Decision.

Page 5, section 4, 2nd paragraph reads "... under Sections 10177, subdivision (i)," shall be corrected to read "... under Sections 10176, subdivision (i),".

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 party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. 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 **NOV 20 2017**.

IT IS SO ORDERED 10/25/17

WAYNE S BELL  
REAL ESTATE COMMISSIONER



By: DANIEL J. SANDRI  
Chief Deputy Commissioner

BEFORE THE  
BUREAU OF REAL ESTATE  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ALI LAREYBI,

Respondent.

Case No. H-04897 SD

OAH No. 2017050970

**PROPOSED DECISION**

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on September 11, 2017.

Michelle Nijm, Real Estate Counsel, represented complainant Veronica Kilpatrick, Supervising Special Investigator, Bureau of Real Estate, Department of Consumer Affairs, State of California.

Ali Lareybi, respondent, appeared on his own behalf.

The matter was submitted for decision on September 11, 2017.

**FACTUAL FINDINGS**

*Background*

1. On January 9, 2006, the bureau issued broker license number 01728157 to respondent. Respondent has no history of license discipline.

2. On April 24, 2017, complainant, in her official capacity, signed the accusation seeking disciplinary action against respondent's broker license. The accusation alleged that, as a result of the California Supreme Court's order disbarring respondent from the practice of law, cause for discipline exists under Business and Professions Code section 10177, subdivision (f). Complainant also requested reimbursement of investigation and prosecution costs. Respondent filed a notice of defense; this hearing ensued.

### *The 2015 Disbarment*

3. On August 18, 2014, the State Bar of California (State Bar) filed a notice of disciplinary charges against respondent alleging six causes for discipline relating to his maintenance of client trust accounts (CTA) for two separate clients. Respondent filed a response to the notice in which he admitted the factual allegations but denied that he was dishonest or willfully violated the Business and Professions Code section 6106. On November 25, 2014, the parties filed a joint stipulation in which respondent admitted that his various conduct was wrongful, dishonest, or grossly negligent. A hearing was scheduled for April 8, 2017, regarding the NDC, but respondent did not appear at the hearing. As a result, the State Bar Court entered an order recommending disbarment; ordered respondent to be enrolled as an inactive member of the bar; and made the following findings:

Respondent received a settlement check for a client, for which he was required to maintain at least \$2,800 in his CTA until such time that this amount was to be disbursed. Instead, between May 22, 2013, and May 28, 2013, respondent made multiple online transfers from the CTA for his own purposes, resulting in the balance in the CTA dropping to \$200.46 on May 28, 2013. Respondent stipulated that he wrongfully took \$2,600 of funds belonging to this client and failed to maintain those funds in the trust account. Respondent issued a check to the client for \$2,800 on June 6, 2013.

In the second matter, respondent received a settlement check for two clients, for whom he was required to maintain \$24,500.29 in his CTA. Between July 16, 2013, and August 1, 2013, the CTA dipped below \$24,500.29 over a dozen times. On August 1, 2013, the balance was \$8,599.45. Respondent stipulated that he wrongly took \$15,900.84 belonging to his clients. On August 1, 2013, he issued his clients a check in the amount of \$24,500.29. Although there were insufficient funds, the overdrawn check was honored by the bank. The bank reported issuance of the check to the State Bar as required by statute.

On August 19, 2013, the State Bar requested that respondent provide a written explanation for the insufficient fund activity regarding this activity. By letter dated September 22, 2013, respondent stated that after he deposited the settlement check in his CTA, he checked to ensure there was no hold on the money, and wrote a check to his clients on August 1, 2013, for their share of the settlement. Respondent said that after writing the check, the bank notified him that there was a hold on the funds, which caused the check to overdraw his CTA. This explanation was false, and on December 30, 2013, respondent admitted that his prior statement to the State Bar was false.

The State Bar Court found that in both cases, respondent violated Rule 4-100(a) of the Rules of Professional Conduct, which requires that all funds held in trust shall be deposited in a designated CTA. Respondent admitted he withdrew funds from the trust accounts for his own purposes. The State Bar Court held, "Respondent's acts of removing the funds of [the clients] from his CTA for his own purpose constituted knowing and intentional misappropriations by him of those funds and represented acts of moral turpitude in willful [violation] of section 6106." The State Bar Court noted the fact that respondent returned the

funds he misappropriated to his clients was not a defense to his culpability. Additionally, by issuing two checks from his CTA against insufficient funds, when respondent knew, or in the absence of gross negligence should have known, that there were insufficient funds in the CTA to cover the checks, respondent committed acts of moral turpitude in violation of Business and Professions Code section 6106. Finally, the State Bar Court found that respondent knowingly provided false statements to the State Bar, which was an act of moral turpitude.

4. On September 16, 2015, the California Supreme Court ordered respondent disbarred from the practice of law in California.

#### *Respondent's Testimony*

5. Respondent testified that for each of his CTAs, the checks he wrote to his clients never bounced and his clients were paid. Respondent said he never admitted to, and does not believe, he was dishonest in the handling of the CTAs. Instead, he felt he was negligent in the handling of the accounts. He explained he did not keep track of expenses and wrote checks off of the account haphazardly. He stated he might have written checks to himself from the CTA, but he emphasized that he never embezzled or stole any money since his clients were immediately paid and they suffered no economic injury. He said he did not go to his State Bar Court hearing because he lost interest in the practice of law and did not intend to continue in the profession. He explained that his lack of interest in the profession was one of the reasons he failed to properly maintain the trust accounts. Respondent admitted to providing a false statement to the State Bar when he submitted his explanation regarding the insufficient funds.

Respondent wishes to retain his real estate license and said he will not maintain client trust accounts in the future. He does not wish to be involved in sales or property management. He is currently a business consultant for several family-owned businesses involved in flipping houses and rentals. Respondent said he saw a therapist weekly for five months in 2016.

#### *Cost Recovery*

6. Complainant requested cost recovery against respondent pursuant to Business and Professions Code section 10106. The declaration by complainant certified investigative costs in the amount of \$280.10. Complainant's counsel submitted a declaration for prosecution costs in the amount of \$979.

The evidence established that complainant's reasonable costs of investigation and enforcement totaled \$1,259.10. The certifications that were provided complied with the requirements of California Code of Regulations, title 1, section 1042, subdivision (b). The scope of the investigation was reasonable in light of the alleged misconduct.

## LEGAL CONCLUSIONS

### *Burden and Standard of Proof*

1. Complainant bears the burden of proving that the charges in the accusation are true. (Evid. Code § 115.) The standard of proof in an administrative action seeking to suspend or revoke a professional license is “clear and convincing evidence.” (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; it requires sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Sup. Ct.* (2005) 130 Cal.App.4th 586, 594.)

### *Relevant Statutory Authority*

2. Pursuant to Business and Professions Code section 10177, the commissioner may suspend or revoke a license if the licensee

(f) Acted or conducted himself or herself in a manner that would have warranted the denial of his or her application for a real estate license, or either had a license denied or had a license issued by another agency of this state, another state, or the federal government revoked or 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, if the action of denial, revocation, or suspension by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and only upon an express finding of a violation of law by the agency or entity.

[¶] . . . [¶]

(j) Engaged in any other conduct, whether of the same or a different character than specified in this section, that constitutes fraud or dishonest dealing.

3. Business and Professions Code section 10176 provides that the commissioner may revoke a license for the following acts:

(a) Making any substantial misrepresentation.

[¶] . . . [¶]

(i) Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

[¶] . . . [¶]

(m) Violating any section, division, or article of law which provides that a violation of that section, division, or article of law by a licensed person is a violation of that person's licensing law, if it occurs within the scope of that person's duties as a licensee.

*Cause Exists to Revoke Respondent's License*

4. Respondent contended that the accusation as pled was impermissibly vague by failing to specify the acts that would have warranted the denial of an application, or the acts, if done by a real estate licensee, would be grounds for revocation or suspension of a real estate license. Respondent's claim is rejected. Although the accusation did not specifically identify which statutory provisions would have been grounds for denial or revocation of a real estate license, the accusation listed the violations the State Bar Court found in its decision. The State Bar Court found respondent engaged in multiple counts of violating Business and Professions Code section 6106, for misappropriation, issuance of checks without insufficient funds, and misrepresentation to the State Bar. This placed respondent on sufficient notice of the acts that constituted the basis for license discipline.

The State Bar Court held, "Respondent's acts of removing the funds of [the clients] from his CTA for his own purpose constituted knowing and intentional misappropriations by him of those funds and represented acts of moral turpitude in willful [violation] of section 6106." This constitutes fraud or dishonest dealings under Section 10177, subdivision (j), and 10176, subdivision (i). Additionally, the accusation alleged, as it was found by the State Bar Court, that respondent knowingly provided a false statement to the State Bar, which is a "substantial misrepresentation" under Section 10176, subdivision (a), and dishonest dealings under Sections 10177, subdivision (i), and 10177, subdivision (j). Respondent was disbarred following an administrative hearing conducted under procedures similar to the Administrative Procedures Act. (Bus. & Prof. Code, § 6085.) The State Bar Court made express findings of violations of law that would be independent grounds for the revocation of respondent's real estate license, and grounds for license denial. Accordingly, cause exists to revoke respondent's license pursuant Business and Professions Code section 10177, subdivision (f).

### *Measure of Discipline*

5. The purpose of an administrative proceeding seeking the revocation or suspension of a professional license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) California Code of Regulations, title 10, section 2912, sets forth the bureau's criteria for rehabilitation for licensee's who have been convicted of a crime. Although respondent was not convicted of a crime, the rehabilitation factors are instructive.

6. 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.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.)

7. Real estate brokers deal in complicated business and financial transactions; they are fiduciaries, and they are expected to deal openly and honestly in all transactions. Even if respondent was only grossly negligent in the handling of his CTAs, he breached his fiduciary duties to his clients. If this were the only issue, a restricted license might have been appropriate. However, when asked to provide an explanation to the State Bar regarding the insufficient balances in the trust account, respondent provided a statement that was not truthful with the intent of covering up his misconduct. This directly impugns respondent's integrity and ability to operate as a real estate broker. Accordingly, there was insufficient evidence of rehabilitation, and public protection requires revocation of respondent's license.

### *Costs of Investigation and Enforcement*

8. Complainant is seeking recovery of the reasonable costs of prosecution. The California Supreme Court in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45 held that a regulation imposing costs for investigation and enforcement under California Code of Regulations, title 16, section 317.5, which is similar to Business and Professions Code section 10106, did not violate due process. But it was incumbent on the board in that case to exercise discretion to reduce or eliminate cost awards in a manner such that costs imposed did not "deter [licensees] with potentially meritorious claims or defenses from exercising their right to a hearing." (*Ibid.*)

The Supreme Court set forth five factors to consider in deciding whether to reduce or eliminate costs: Whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; whether the licensee had a "subjective" good faith belief in the merits of his or her position; whether the licensee raised a "colorable challenge" to the proposed discipline; whether the licensee had the financial ability to make payments; and whether the scope of the investigation was appropriate in light of the alleged misconduct. The reasoning of *Zuckerman* must be applied to Business and

Professions Code section 10106 since the language in the cost recovery regulation at issue in *Zuckerman* and section 10106 are substantially the same.

Applying the *Zuckerman* criteria, although respondent raised a “colorable challenge” to the proposed discipline, respondent did not receive a reduction in the severity of the discipline imposed. There was no evidence regarding respondent’s ability to pay costs. Investigation and prosecution costs are awarded in the amount of \$1,259.10.

ORDER

All licenses and licensing rights of respondent Ali Lareybi under the Real Estate Law are revoked.

Respondent is ordered to pay the bureau a total of \$1,259.10.as directed by the commissioner.

DATED: October 10, 2017

DocuSigned by:



19DED247708C4FB...

---

ADAM L. BERG  
Administrative Law Judge  
Office of Administrative Hearings