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FILED

JUL 16 2013

BUREAU OF REAL ESTATE

By *L. Frost*

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BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

ROBERT E. GRAVES,

Respondent.

No. H-5873 SAC
OAH No. 2012100054

ORDER DENYING RECONSIDERATION

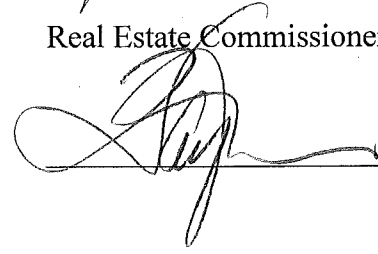
On May 24, 2013, a Decision was rendered in the above-entitled matter. The Decision was to become effective June 17, 2013, and was stayed by separate Order to July 17, 2013.

On June 5, 2013, Respondent petitioned for reconsideration of the Decision of May 24, 2013.

I have given due consideration to the petition of Respondent for reconsideration. I find no good cause to reconsider the Decision of May 24, 2013, and reconsideration is hereby denied. Therefore, the Decision of the Real Estate Commissioner of May 24, 2013, shall become effective at 12 o'clock noon on July 17, 2013.

IT IS HEREBY ORDERED 7/9/2013

Real Estate Commissioner



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FILED
JUN 06 2013
DEPARTMENT OF REAL ESTATE
By L. Frost

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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| In the Matter of the Accusation of |) | No. H-5873 SAC |
| |) | |
| ROBERT E. GRAVES, |) | OAH No. 2012100054 |
| |) | |
| Respondent(s). |) | |

ORDER STAYING EFFECTIVE DATE

On May 24, 2013, a Decision was rendered in the above-entitled matter to become effective on June 17, 2013 ("the Decision").

On June 5, 2013, Respondent requested a stay for the purpose of filing a petition for reconsideration of the Decision.

IT IS HEREBY ORDERED that the effective date of the Decision is stayed for a period of thirty (30) days, with a new effective date of 12 o'clock noon on July 17, 2013.

DATED: 6/6/2013

REAL ESTATE COMMISSIONER

Wayne S. Berry

FLAG

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
MAY 29 2013
DEPARTMENT OF REAL ESTATE
By *[Signature]*

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|------------------------------------|---|--------------------|
| In the Matter of the Accusation of |) | |
| |) | NO. H-5873 SAC |
| ROBERT E. GRAVES, |) | |
| |) | OAH NO. 2012100054 |
| Respondent. |) | |
| _____ |) | |

DECISION

The Proposed Decision dated April 16, 2013, 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 JUN 17 2013

IT IS SO ORDERED May 29, 2013
REAL ESTATE COMMISSIONER
[Signature]

By: Jeffrey Mason
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ROBERT E. GRAVES,

Respondent.

Case No. H-5873 SAC

OAH No. 2012100054

PROPOSED DECISION

Administrative Law Judge Wilbert E. Bennett, State of California, Office of Administrative Hearings, heard this matter on March 27, 2013, in Sacramento, California.

Annette Ferrante, Counsel, Department of Real Estate (Department), and Samira Shokrgozar, Certified Legal Intern, represented complainant Tricia D. Sommers, Deputy Real Estate Commissioner.

Respondent Robert E. Graves represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on March 27, 2013.

FACTUAL FINDINGS

Procedural Background

1. On September 5, 2012, complainant filed the accusation in her official capacity.
2. Respondent is presently licensed under the real estate law as a real estate salesperson. Respondent's license was in full force and effect at all times material hereto, and will expire on January 19, 2015, unless renewed.

Criminal Conviction

3. On May 17, 2012, in the Placer County Superior Court, Case No. 62-111180, respondent was convicted, by nolo contendere plea, of violating Penal Code section 485 (grand theft of lost property), a misdemeanor. Pursuant to said conviction, respondent was placed on conditional sentence probation for a period of three years on certain terms and conditions, including service of 90 days in jail and payment of applicable fines and fees.

4. The facts and circumstances underlying this conviction involved respondent's unlawful appropriation to his own use of lost personal property, consisting of two Yamaha Quad ATV motorcycles ("quads") which were valued in excess of \$12,000. This unlawful appropriation of property occurred on November 28, 2011, after respondent previewed a vacant house for a potential real estate investor and noticed the quads on the side of the house. After initially moving the quads into the house garage, with the assistance of two unsuspecting neighbors, he later returned to the property and loaded the quads into a white trailer marked "Auburn Moving Company," which respondent had borrowed from a friend. Respondent's teenaged son and two of his son's friends assisted him in loading the quads. He informed the neighbors that he was going to return the quads to Roseville Yamaha, because they were stolen and that the males with him were employees from Roseville Yamaha. After one of the neighbors called Roseville Yamaha and discovered that the quads had not been "returned," and that no quads had been reported missing or stolen, she then called the Roseville Police Department regarding the suspicious circumstances.

The investigating police officers contacted respondent and directed him to bring the quads to the Roseville Police Department. They advised him that he had no legal authority to take any property from the vacant house. After respondent brought in the quads, the police officers were soon able to locate the rightful owner. When respondent was initially contacted by the Roseville Police Department, he stated that he had called the police and had spoken with the owner of the property about the quads. He later admitted that he had not called the police or the owner of the property and said that he was going to store the quads for safekeeping until the rightful owner could be determined by means of a Craigslist posting. The police officer who arrested respondent noted that respondent kept "changing his story" and appeared to be "making up a story as we spoke." On the occasion of respondent's arrest, the arresting officer accessed the following earlier message, to his son, on respondent's cell phone: "dumb bitch ruined it, let [sic] buy them at the police auction super cheap."

Factors in Aggravation, Mitigation, or Rehabilitation

5. Respondent is 36 years old, married, and has three children, ages 19, 15, and 7 years old. He has been employed at Sell State Realty First, in Rocklin, California, since 2011. He was allowed to serve his 90-day sentence by means of ankle monitoring, in lieu of jail time. Prior and subsequent to his conviction, he has served his community in various capacities, including Little League coaching, coordinating canned food drives, and coordinating fundraising efforts for high school football and various academic programs.

(Community service was not one of his probationary conditions.) In 2011, he started a "Give Back to Your School" program, whereby \$500 from each closed real estate transaction in which he was involved was donated to an area school's academic or athletic program. Since his conviction, he has obtained lay and pastoral counseling focused on helping him to deal with the psychological consequences of his conviction and "to readjust [his] moral compass." Respondent has paid approximately one-half of the \$1700 fees associated with his conviction.

6. At hearing, respondent testified that the only thing he did wrong was not calling the police, which he characterized as "a complete lapse in judgment." He stated that he did not intend to do anything illegal. He failed to acknowledge that he performed the acts and omissions constituting the elements of the offense to which he pled nolo contendere: that he appropriated to his own use lost personal property without first making reasonable efforts to find the owner and to return the property. (See, Penal Code section 485, defining "theft of lost property" offense.) Instead of acknowledging his wrongful acts, he cast aspersions on the neighbor who reported his suspicious activities to the police. He stated that his actions in removing quads from the vacant property premises were attributable to his concern that the neighbor planned to steal the quads. He further testified that he tried to contact the broker involved in the sale of the vacant house, which was owned by a bank. He denied the ruse reported by neighbors that he informed them that he was returning stolen quads to Roseville Yamaha. Significantly, a party in an administrative proceeding cannot impeach his conviction by denying the elements of the offense. (*Arneson v. Fox* (1980) 28 Cal. 3d 440, 449 [proof of a conviction "stands as conclusive evidence of [his] guilt of the offense charged."].)

7. In assessing respondent's rehabilitation, several factors must be considered. Initially, it must be noted that insufficient time has passed for him to demonstrate rehabilitation from his criminal conviction. The passage of not less than two years since the conviction is one of the criteria developed by the Department to evaluate the rehabilitation of a licensee after conviction of a "substantially related" crime. (Cal. Code of Regs., tit. 10, § 2912, subd. (a).) When this criterion is applied, rehabilitation is not indicated because respondent's conviction occurred less than one year ago, on May 12, 2012. Another criterion developed by the Department is successful completion of criminal probation. (Cal. Code of Regs., tit. 10, § 2912, subd. (e).) The application of this criterion also does not point to rehabilitation because respondent's three-year probation does not expire until May 17, 2015.

8. Furthermore, respondent's testimony reflected denial and minimization, if not justification, of his criminal conduct. In steadfastly asserting that he did not intend to do anything illegal and that he was motivated by a "Good Samaritan" instinct to safeguard the quads for their rightful owner, it appears that he does not truly believe that he was guilty of a theft offense. Similarly, his statement that the only thing that he did wrong was not calling the police shows he has yet to acknowledge that he committed an act of theft. Overall, respondent's testimony failed to indicate any attitudinal changes, or expression of regret, regarding the wrongfulness of the conduct in question. That is perhaps the most telling sign of a lack of rehabilitation. A change in attitude from that which existed at the time of the

commission of the criminal acts in question is another criterion developed by the Department to evaluate rehabilitation. (Cal. Code of Regs., tit. 10, § 2912, subd. (m); see, *Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Cal. 3d 933, 940 ["Fully acknowledging the wrongfulness of his actions is an essential step towards rehabilitation."].) In light of respondent's theft offense, which involved the unlawful appropriation of the lost property of another, his failure to acknowledge the extent of his wrongdoing indicates that he has not taken the first step towards rehabilitation. However, it should be noted that respondent's extensive community involvement, prior and subsequent to his conviction, is a favorable indicator of his rehabilitation potential, when supplemented by an extensive period of time in which he displays exemplary conduct and fully acknowledges the wrongfulness of his actions.

9. In consideration of all of the above factors, it would not be consistent with the public interest to allow respondent to retain a real estate license, even on a restricted basis. As discussed below, cause exists to discipline respondent's license and he has failed to demonstrate any cognizable rehabilitation to mitigate the discipline to be imposed. Therefore, respondent's license should be revoked.

Costs of Investigation and Enforcement

10. Complainant offered declarations that supported investigative costs of \$120.40 and enforcement costs of \$667.50.

The Department is entitled to recover \$787.90 in costs.

LEGAL CONCLUSIONS

1. Business and Professions Code section 493 permits the Department to inquire into the circumstances surrounding the commission of a crime, by one of its licensees, to determine if the crime is substantially related to the qualifications, functions, or duties of a real estate licensee. In this case, such an inquiry results in the conclusion that the requisite substantial relationship exists, in at least several respects. Respondent conducted himself in a manner inimical to the functions and duties of a real estate licensee, which require the exercise of a fiduciary responsibility. The theft offense, of which respondent was convicted, could not be more substantially related to the functions and duties of a real estate licensee. It was perpetrated in the course of the licensed activity, as respondent was previewing a house for a potential investor. In this regard, access to a vacant house is intrinsic to the performance of the duties of a real estate licensee. Furthermore, respondent's theft offense, by its nature, although not perpetrated upon a client, reflects unfavorably on two important qualifications for a real estate licensee: honesty and integrity.

2. A real estate license may be disciplined when the licensee has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee. (Bus. & Prof. Code, §§ 490, subd. (a); 10177, subd. (b).) Respondent was

convicted of grand theft of lost property. (Factual Findings 3 and 4.) Such a crime is deemed to be substantially related to the qualifications, functions, or duties of a real estate licensee. (See, Cal. Code of Regs., tit. 10, § 2910, subs. (a)(1) ["The fraudulent taking, obtaining, appropriating ... of funds or property belonging to another person."], (a)(4) ["The employment of fraud, deceit, falsehood or misrepresentation to achieve an end."], and (a)(8) ["Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent of doing substantial injury to the person or property of another."].) Therefore, cause for discipline exists pursuant to Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b), individually and collectively.

3. Cause exists to discipline respondent's real estate salesperson's license, as noted in Factual Findings 3 and 4 and Legal Conclusions 1 and 2. For the reasons discussed in Factual Findings 5 through 9, respondent's license should be revoked.

4. Business and Professions Code section 10106 permits the Real Estate Commissioner to request an administrative law judge hearing a disciplinary matter to direct a licensee to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case, except as otherwise provided by the law. Evidence is required to support an award.

5. Complainant provided sufficient evidence to support an award of the costs of investigation and enforcement in the amount of \$787.90.

ORDER

All licenses and licensing rights of respondent Robert E. Graves under the real estate law are REVOKED.

Respondent Robert E. Graves shall pay \$787.90 to the Department of Real Estate as its costs of investigation and enforcement of this case.

Dated: April 16, 2013

Wilbert E. Bennett

Wilbert E. Bennett
Administrative Law Judge
Office of Administrative Hearings