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**FILED**

OCT 18 2017

BUREAU OF REAL ESTATE

By B. Nicholas

BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	
	)	
KENNETH ROBERT THORNE,	)	No. H-6487 SAC
	)	
Respondent.	)	OAH No. 2017020666
	)	

STIPULATION AND AGREEMENT  
AND  
DECISION AFTER REJECTION

The California Bureau of Real Estate (Complainant) filed an Accusation against KENNETH ROBERT THORNE (Respondent), on January 24, 2017. On June 15, 2017, a hearing was held and evidence was received, the record was closed, and the matter was submitted.

On July 17, 2017, the Proposed Decision of the Administrative Law Judge was issued revoking Respondent's real estate broker license, with the right to apply for a restricted broker license.

On August 24, 2017, the Commissioner rejected the Proposed Decision of July 17, 2017.

The parties wish to settle this matter without further proceedings.

///

1 IT IS HEREBY STIPULATED by and between Respondent and the Complainant,  
2 acting by and through Megan Lee Olsen, Counsel for the Bureau, as follows for the purpose of  
3 settling and disposing of the Accusation filed by Complainant.

4 1. It is understood by the parties that the Real Estate Commissioner may adopt  
5 the Stipulation and Agreement as his Decision in this matter, thereby imposing the penalty and  
6 sanctions on Respondent's application for a real estate license as set forth in the "Decision and  
7 Order". In the event the Commissioner in his discretion does not adopt the Stipulation and  
8 Agreement, the Stipulation shall be void and of no effect; the Commissioner will review the  
9 transcript and the evidence in the case, and will then issue his Decision after Rejection as his  
10 Decision in this matter.

11 2. The Order or any subsequent Order of the Commissioner made pursuant to  
12 this Stipulation shall not constitute an estoppel, merger or bar to any further administrative or  
13 civil proceedings by the Bureau with respect to any matters which were not specifically alleged to  
14 be cause for accusation in this proceeding.

#### 15 DETERMINATION OF ISSUES

16 By reason of the foregoing stipulations, admissions and waivers, and solely for  
17 the purpose of settlement of the pending Accusation without a hearing, it is stipulated and agreed  
18 that the acts and/or omissions of Respondent, as described in the Accusation, constitute grounds  
19 for the suspension or revocation of the licenses and license rights of Respondent under the  
20 provision of Section 10177.5 of the Business and Professions Code (Code).

#### 21 ORDER

22 1. All real estate licenses(s) and licensing rights of Respondent are revoked;  
23 provided, however, a restricted real estate salesperson license shall issue subject to the  
24 requirements of Section 10156.5 of the Code if within ninety (90) days of the effective date of  
25 the Order, Respondent makes application therefore and pays to the Bureau the appropriate fee  
26 for said license. The restricted license issued to Respondent shall be subject to all of the  
27 provisions of Section 10156.7 of the Code and to the following limitations, conditions, and

1 restrictions imposed under authority of Section 10156.6 of said Code:

2 a. The restricted license issued to Respondent may be suspended prior to  
3 hearing by order of the Real Estate commissioner in the event of his conviction or plea of nolo  
4 contender to a crime that is substantially related to his fitness or capacity as a real estate licensee.

5 b. The restricted license issued to Respondent may be suspended prior to  
6 hearing by order of the Real Estate Commission on evidence satisfactory to the Commissioner  
7 that he has violated provisions of the California Real Estate Law, the Subdivided Lands Law,  
8 Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

9 c. Respondent shall not be eligible to apply for the issuance of an  
10 unrestricted real estate license nor the removal of any of the conditions, limitations, or  
11 restrictions attaching to the restricted license until three (3) years have elapsed from the date of  
12 issuance of the restricted license to Respondent.

13 3. With the application for license, or with the application for transfer to a  
14 new employing broker, Respondent shall submit a statement signed by the prospective employing  
15 real estate broker on a form approved by the Bureau which shall certify as follows:

16 (a) That the employing broker has read the Decision which is the basis  
17 for the issuance of the restricted license; and

18 (b) That the employing broker will carefully review all transaction  
19 documents prepared by the restricted licensee and otherwise  
20 exercise close supervision over the licensee's performance of acts  
21 for which a license is required.

22 4. Respondent shall, within nine (9) months from the effective date of this  
23 Order, present evidence satisfactory to the Commissioner that Respondent has, since the most  
24 recent issuance of an original or renewal real estate license, taken and successfully completed the  
25 continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal  
26 of a real estate license. If Respondent fails to satisfy this condition, Respondent's real estate  
27 license shall automatically be suspended until respondent presents evidence satisfactory to the

1 Commissioner of having taken and successfully completed the continuing education  
2 requirements. Proof of completion of the continuing education courses must be delivered to the  
3 Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013.

4 5. Respondent shall, within six (6) months from the effective date of this  
5 Order, take and pass the Professional Responsibility Examination administered by the Bureau  
6 including the payment of the appropriate examination fee. If respondent fails to satisfy this  
7 condition, respondent's real estate license shall automatically be suspended until Respondent  
8 passes the examination.

9 6. All licenses and licensing rights of respondent are indefinitely suspended  
10 unless or until respondent pays the sum of \$2,252.85 for the Commissioner's reasonable cost of  
11 the investigation and enforcement which led to this disciplinary action. Said payment shall be in  
12 the form of a cashier's check made payable to the Bureau of Real Estate. The investigative and  
13 enforcement costs must be delivered to the Bureau of Real Estate, Legal Section at P.O. Box  
14 137007, Sacramento, CA 95813-7007, prior to the effective date of this Order.

15  
16 October 2, 2017

17 DATED


15  
16 

17 MEGAN LEE OLSEN, Counsel  
BUREAU OF REAL ESTATE

18 \* \* \*

19  
20 I have read the Stipulation and Agreement and Decision After Rejection, and its  
21 terms are understood by me and are agreeable and acceptable to me. I willingly and voluntarily  
22 agree to enter into this Stipulation.

23  
24 9/20/2017  
25 DATED

23  
24   
25 KENNETH ROBERT THORNE  
Respondent

26  
27 9/20/2017

26 \* \* \*

27 

1 *I have reviewed this Stipulation and Agreement as to form and content and have*  
2 *advised my client accordingly.*

3  
4 9-25-17

5 DATED

6 

7 FRANK M. BUDA  
8 Attorney for Respondent

9 DECISION AND ORDER

10 The foregoing Stipulation and Agreement and Decision After Rejection is hereby  
11 adopted by the Real Estate Commissioner as his Decision and Order.

12 This Decision and Order shall become effective at 12 o'clock noon on  
13 NOV 08 2017

14 WAYNE S. BELL  
15 REAL ESTATE COMMISSIONER

16 By: DANIEL J. SANDRI  
17 Chief Deputy Commissioner

18 

19 IT IS SO ORDERED

October 16, 2017



Flay

**FILED**

AUG 24 2017

BUREAU OF REAL ESTATE

By       P. dew      

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BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	CalBRE No. H-6487 SAC -
	)	
KENNETH ROBERT THORNE,	)	OAH No. 2017020666
	)	
Respondent.	)	

NOTICE

TO: KENNETH ROBERT THORNE, Respondent, and FRANK M. BUDA, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated July 17, 2017, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated July 17, 2017, is attached hereto for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on Thursday, June 15, 2017, and any written argument hereafter submitted on behalf of respondent and complainant.


Written argument of respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of Thursday, June 15, 2017, at the Sacramento office of the Bureau of Real Estate unless an extension of the time is granted for good cause shown.

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Written argument of complainant to be considered by me must be submitted within 15 days after receipt of the argument of respondent at the Sacramento Office of the Bureau of Real Estate unless an extension of the time is granted for good cause shown.

DATED: 8/24/2017

WAYNE S. BELL  
REAL ESTATE COMMISSIONER



A handwritten signature in cursive script, appearing to read 'Wayne S. Bell', is written over a horizontal line.

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

In the Matter of the Accusation Against:

KENNETH ROBERT THORNE,

Respondent.

Case No. H-6487 SAC

OAH No. 2017020666

**PROPOSED DECISION**

Tiffany L. King, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on June 15, 2017, in Sacramento, California.

Megan Lee Olsen, Counsel, represented Tricia D. Parkhurst, Supervising Special Investigator, Bureau of Real Estate (Bureau), State of California (Complainant).

Frank M. Buda, Attorney at Law, represented Kenneth Thorne (respondent), who was present.

The case was submitted for decision on June 15, 2017.

**FACTUAL FINDINGS**

1. Complainant made and filed the Accusation in her official capacity on January 24, 2017. The Accusation seeks to suspend or revoke respondent's real estate license on the sole basis that a final judgment in a civil action was obtained against respondent upon grounds of fraud, misrepresentation, or deceit with reference to a transaction for which a real estate license was required. (Bus. & Prof. Code, § 10177.5.) Respondent timely filed a Notice of Defense.

2. The Bureau issued respondent an original salesperson license on July 8, 1987, and a broker license on April 24, 1995. The broker license will expire on June 22, 2019, unless renewed or revoked.



### *Bankruptcy Judgment*

3. On March 21, 2014, in the United States Bankruptcy Court for the Eastern District of California, in Case No. 12-35545-C-7, a judgment was entered against respondent based on grounds of fraud, misrepresentation, or deceit with reference to transactions for which a real estate license was required. Specifically, the court excepted from bankruptcy discharge the amount of \$1,182,009.46 pursuant to Title 11 United States Code sections 523(a)(2)(A) (money, property or services obtained by false pretenses, false representation, or fraud), and 523(a)(4) (fraud or defalcation while acting as a fiduciary). The judgment included an award of punitive damages in the amount of \$400,000 pursuant to California Civil Code section 3294.<sup>1</sup> Respondent appealed the judgment. On July 2, 2015, the United States Bankruptcy Appeal Panel for the Ninth Circuit issued a memorandum of decision reducing the amount of nondischargeable debt, but affirming the remainder of the judgment, including the punitive damages award.<sup>2</sup> The judgment is now final.

### *Facts and Circumstances Underlying Bankruptcy Judgment*

4. From 1995 to 2009, respondent served as a property manager and real estate broker for Shirley Andre. Over the course of their relationship, Ms. Andre bought or sold approximately 30 properties with respondent as her broker. Respondent typically managed any rental properties Ms. Andre added to her portfolio. They had a good working relationship and Ms. Andre came to rely on respondent for real estate advice and general financial advice.

5. In 2006, the real estate market began to deteriorate and Ms. Andre's properties were no longer generating a positive cash flow. Around this time, respondent also began assisting Ms. Andre's son, Joseph, with real estate transactions. Concerned about her investments on which she was relying for her retirement, Ms. Andre asked respondent for advice. Respondent suggested Ms. Andre consider becoming a hard money lender. A hard money loan is a short term loan at a higher interest rate than those charged by banks or other lending institutions.

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<sup>1</sup> Civil Code section 3294 provides, in relevant part:

(a) In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

<sup>2</sup> Specifically, the appellate court reversed portions of the judgment related to \$94,903.67 in allegedly misappropriated loan payments, and \$14,343.08 in loan origination fees.

6. With respondent's assistance, both Ms. Andre and Joseph Andre became hard money lenders. Respondent acted as a loan broker and recommended a prospective borrower, George Popescu, to the Andres. Respondent and Ms. Andre funded a total of four loans to Mr. Popescu, with Joseph Andre participating as an additional lender on one of the loans. Before the loans were funded, respondent represented to the Andres that the loans would be fully secured by real estate collateral which had sufficient equity to cover the full amount of the loan. At that time, none of the properties had been recently appraised and Mr. Popescu had refused to pay for an appraisal. Respondent's estimated valuation of the properties was based solely on his own experience. Additionally, respondent vouched for Mr. Popescu's creditworthiness. For each of these loans, respondent also received an origination fee of four percent.

7. For three of the loans,<sup>3</sup> respondent did not disclose to the Andres the existence or amount of senior encumbrances held against the properties, even though said encumbrances were disclosed on the title reports. Initially, Mr. Popescu made the loan payments. However, as the economic downturn continued into 2007 and 2008, Mr. Popescu began to miss payments. Ms. Andre asked respondent about it, who promised to follow up with Mr. Popescu and assured payment would be made soon. Ultimately, however, Mr. Popescu went into foreclosure on all three properties. Respondent received notices of default on each loan, but did not communicate these defaults to the Andres. Because the Andres and respondent's loans were junior to more senior encumbrances on the properties, they lost their total investment. The bankruptcy judgment determined the Andres total compensatory loss to be \$487,796.23, including principal and accrued interest. Respondent losses totaled approximately \$600,000 as a result of the defaulted loans.

8. In September 2011, the Andres filed a civil action in state court against respondent and Mr. Popescu. In August 2012, respondent "was broke" and filed for bankruptcy. In January 2013, the Andres filed their nondischargeability claim against respondent's bankruptcy action.

#### *Post-Judgment Actions by the Bureau and Respondent*

9. Following the entry of the bankruptcy judgment against respondent, the Bureau opened its own investigation and requested the relevant court documents from respondent. Respondent provided the requested documents on August 31, 2015, and inquired what the investigation was regarding. By email dated September 3, 2015, Jerusha White of the Bureau's Enforcement Section advised respondent that the Bureau was investigating whether possible disciplinary action against respondent's license was appropriate since the bankruptcy judgment was based, in part, on a finding that respondent engaged in fraudulent conduct.

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<sup>3</sup> The bankruptcy judgment was based on and discusses three of the four loans, as Mr. Popescu fully repaid the fourth loan.

10. On September 24, 2015, respondent inquired about the status of the Bureau's investigation. On September 28, 2015, Ms. White advised she would submit the file to her supervisor who would then determine if the case "can be closed with no action taken or if it will need to be forwarded to our Legal Section for further review [and] possible disciplinary action."

11. On October 2, 2015, Ms. White advised respondent that her supervisor's review of the file was delayed because she was waiting to receive certified copies of the court records directly from the bankruptcy court.

12. On November 10, 2015, the Real Estate Commissioner paid to the Andres the sum of \$175,332.27 from the Real Estate Consumer Recovery Account (Recovery Account), on account of the bankruptcy judgment against respondent. Pursuant to Business and Professions Code section 10475,<sup>4</sup> respondent's broker license was suspended indefinitely.

13. By letter dated December 3, 2015, Ms. White advised respondent of the following:

This is to advise you that the Bureau of Real Estate has concluded with its investigation into your civil fraud judgment  
.....

It has been determined that no further action by the Bureau is warranted, for this matter, at this time. The information obtained in this case will be kept on file for reference purposes.

Thank you for your cooperation during our inquiry.

14. Respondent believed the December 3, 2015 letter to mean he was "in the clear" and the Bureau would not pursue disciplinary action against his license. Relying on this, he borrowed \$183,114.14 from a friend and client, Brian Meux, and, on April 20, 2016 paid this amount (principal with interest) to the Recovery Account in partial satisfaction of the bankruptcy judgment. On the same date, the Bureau reinstated respondent's license. On July 6, 2016, respondent made another partial payment on the bankruptcy judgment in the amount of \$33,204.48. He has made no further payments.

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<sup>4</sup> "Should the commissioner pay from the Consumer Recovery Account any amount in settlement of a claim or toward satisfaction of a judgment against a licensed broker . . . the license of the broker . . . shall be automatically suspended upon the date of payment from the Consumer Recovery Account. No broker . . . shall be granted reinstatement until he or she has repaid in full, plus interest at the prevailing legal rate . . . the amount paid from the Consumer Recovery Account on his or her account." (Bus. & Prof. Code, § 10475.)

### *Mitigation/Rehabilitation*

15. Respondent has been a real estate licensee for 30 years, and a licensed broker for more than 27 years. Over his career, he has closed approximately 450 real estate transactions and managed between 150 and 200 rental properties. Prior to the instant action, he has no history of discipline against his license.

16. Respondent first met Ms. Andre in the early 1990s. Ms. Andre was also a licensed real estate salesperson. They owned nearby rental properties and became acquaintances. Eventually, respondent began to manage Ms. Andre's rental property. Over the years, they developed a robust business relationship. Respondent brokered numerous real estate transactions for Ms. Andre and managed several of her rental properties.

17. The real estate market reached its peak in October 2005. In 2006, it began to gradually change downward, people lost jobs, and tenants were vacating properties. Still, respondent could not foresee the market decline that would come over the next couple of years. At the time, Ms. Andre owned approximately 13 rental properties and had a declining cash flow. She was frustrated and asked respondent what he was doing to increase his cash flow. Respondent explained he was diversifying his portfolio by investing in hotels and hard money lending. However, he maintains he never told Ms. Andre to get into investment lending, or hard money loans.

18. Respondent had previously invested in loans to Mr. Popescu and believed him to be "a great payer." Respondent invited the Andres to join him in another hard money loan to Mr. Popescu, which they did. Respondent admitted it was a "big mistake" to not advise the Andres he was a broker for the loans only, he was not representing them in the transaction, and they should retain their own real estate agent. He further conceded he did not make adequate disclosures to the Andres regarding the three loans he brokered for them to Mr. Popescu, including copies of the title reports which listed the senior encumbrances. Finally, he admitted he should have advised the Andres when the properties went into foreclosure and respondent began receiving notices of default. He explained that his office was "overwhelmed" and being "flooded" with notices of default and foreclosure. Regrettably, the notices concerning the Popescu properties "fell through the cracks."

19. Notwithstanding these admissions, respondent maintained he never acted in a fraudulent manner or made willful misrepresentations to the Andres. He regrets the Andres lost their investment. If he could do it again, he would do more due diligence, provide all notices and advisements in writing, and "cross T's and dot I's" multiple times. However, he pointed out that he also lost \$600,000 in the same deals and would not knowingly enter a bad investment.

20. Respondent no longer invests in hard money lending. He also stopped managing rental properties and sold his property management portfolio a "couple of years ago." He is still involved in real estate transactions. He is current on his continuing education requirements, including courses in ethics and trust fund handling.

21. When respondent's license was initially suspended, respondent did not have the funds to repay the Recovery Account. Mr. Meux, his friend and client, offered to lend him the money so respondent's license could be reinstated. The loan was unsecured as respondent had nothing to offer as collateral. Respondent averred he never would have borrowed such a large sum if he had known the Bureau would pursue revocation of his license, explaining it was "not moral to borrow what you know you cannot pay back."

22. Respondent was a member of the National Association of Real Property Managers until 2016. He attended meetings every other month and networked with other members and company owners. He also participated in the annual Can Tree event – where members donated canned goods during the holidays and arranged them into a giant tree.

23. Over the course of his career, respondent has mentored and continues to mentor others. Prior to becoming a realtor, respondent was also a licensed psychotherapist for 14 years. He also taught as a graduate student. He loves teaching and believes his prior experience lends itself well to mentoring and helping others.

24. Respondent is 68 years old. He has joint custody of his 12 year old son whom he helps support financially. He enjoys a good relationship with his son's mother and stepfather. He regularly attends church.

25. Respondent does not know what he would do if his real estate license were revoked, noting his income would be "severely impacted." He has no personal savings or retirement, nor college savings for his son. He does not know how he would repay the loan from Mr. Meux, though asserted he would find a way to do so.

#### *Character References*

26. Nezih Sabankaya testified on respondent's behalf. He is a real estate investor and general contractor. He has known respondent since 2012, when he first became interested in real estate investing. After buying his first investment property and renovating it, Mr. Sabankaya hired respondent to help him sell the property. Mr. Sabankaya described respondent as "very knowledgeable" and "unbelievably professional." He noted respondent is easy to work with, "very honest," and "very conscious in every aspect of [the] transaction." Respondent has helped him with over 20 real estate transactions. Mr. Sabankaya was generally aware of the bankruptcy judgment, having discussed it with respondent; however, he was not familiar with its details. Mr. Sabankaya believes respondent is a "great asset" to the real estate market and he looks forward to continuing to use respondent's services should he retain his license in some form.

27. Daniel Rosenblatt, Jr. also testified and submitted a character letter on respondent's behalf. He is the stepfather of respondent's son since 2009. Mr. Rosenblatt describes respondent as an "exceptional father and friend," and a "man of deep wisdom and upstanding character." Mr. Rosenblatt has previously performed landscaping services for respondent's properties. Respondent always paid him on time, and he believes respondent to

be an honest and forthright person. He recalled that respondent was "heavily distraught" about the real estate market crash and its effect on his clients. Respondent was remorseful regarding the losses the Andres suffered as a result. Mr. Rosenblatt is familiar with the bankruptcy judgment and aware of the fraud findings. Nonetheless, he does not believe respondent poses a risk to the public as a real estate licensee and would use respondent's services in the future.

28. Leilani Rosenblatt is Mr. Rosenblatt's wife and the mother of respondent's son. She testified on respondent's behalf. Ms. Rosenblatt met respondent in October 2003 and began working for him as a real estate agent. Later, she helped him with bookkeeping and property management. Ms. Rosenblatt was familiar with Ms. Andre as respondent's client. She performed bookkeeping and property management services for Ms. Andre until Ms. Andre terminated her relationship with respondent in 2008. Ms. Rosenblatt described Ms. Andre as a "sharp woman" who was more experienced than most of respondent's clients and was very active with her properties.

Ms. Rosenblatt is aware of the bankruptcy judgment as she was still working for respondent during that time. Although she found the bankruptcy judgment disconcerting, she nonetheless believes respondent is truthful and has always been honest in his dealings with her. She believes respondent should retain his license and described him as a "walking encyclopedia" with respect to real estate.

Ms. Rosenblatt described respondent as a good father. Even though their romantic relationship ended in 2008, they maintain good relations as they raise their son. She stopped working for respondent in 2014, when he sold his property management portfolio. She is a real estate licensee and property manager for a real estate company. Respondent has helped her with her own investments and she has referred several of her clients to him. She has never received a complaint regarding respondent; to the contrary, her clients want to do further business with him.

29. Tammi Mellor has been a licensed real estate salesperson since 2001. She testified on respondent's behalf. She met respondent many years ago through a mutual client and has done two or three transactions with him, including investing in a property with respondent. She believes respondent is honest and truthful in his dealings with others, noting that he "really takes care of his clients, and helps them understand . . ." Ms. Mellor was familiar with the underlying facts of the bankruptcy judgment, and had discussed them with respondent. Respondent admitted to her that he had not provided adequate disclosures and had become lax with some clients. Ms. Mellor empathized that "it is easy to get lax when you have multiple transactions with clients," however, she recognized that licensees owe certain fiduciary duties to their clients.

30. Dennis Lanni also testified and submitted a character letter on respondent's behalf. Mr. Lanni is a professional real estate investor. He has known respondent between 10 and 17 years, and has retained respondent as a broker for "12 to 100" transactions. Mr.



Lanni has had a good experience with respondent; his last transaction with respondent was "a few years ago."

Mr. Lanni has read "bits and pieces" of the bankruptcy judgment and discussed it with respondent over coffee between "3 and 12 times." Respondent expressed remorse to him on several occasions regarding losses incurred by his investors. Respondent regretted certain decisions he made and, in hindsight, would have done more due diligence. Mr. Lanni believes respondent is honest and truthful and wants his clients to succeed. He is not concerned regarding respondent's honesty after the bankruptcy judgment, referring to it as a "beauty case," because Ms. Andre hired a "much better attorney" and was a "sophisticated" investor who knew what she was doing when she made the loans. Mr. Lanni conceded, however, he had never met Ms. Andre and had no personal knowledge about her. Notwithstanding the bankruptcy judgment, Mr. Lanni would "absolutely" use respondent again in the future. He could not believe "we are here, [and the case is] dragging on so long."

31. Finally, respondent introduced letters from his son, Vincent Thorne (Vincent), and client, Craig Letvin. These letters were admitted as administrative hearsay and have been considered to the extent permitted under Government Code section 11513, subdivision (d).<sup>5</sup>

In his letter, Vincent extolls respondent's virtues as a father and outlines the many activities they do together. He notes they rarely disagree, but when they do, "they separate and begin once again." He concludes, ". . . my dad and I get along quite well and swell. He is easily a person that I can hang out with for hours and hours without boredom."

Mr. Letvin has known respondent for almost 18 years. He credits respondent's "knowledge, experience, guidance and mentoring" with helping him become a very successful real estate investor and acquiring "as many as 50 properties." Mr. Letvin became a real estate agent at respondent's suggestion, even though that meant respondent would miss out on future commissions from him. Mr. Letvin writes that respondent "has always treated me fairly and responsibly while acting as my broker." He also referred friends and family to respondent when he was still offering property management services.

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<sup>5</sup> Government Code section 11513, subdivision (d), in relevant part, provides:

Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

## Discussion

### BANKRUPTCY JUDGMENT AS A FINAL JUDGMENT

32. Pursuant to Business and Professions Code section 10177.5, a real estate license may be suspended or revoked when “a final judgment is obtained in a civil action against [the licensee] upon grounds of fraud, misrepresentation, or deceit with a reference to any transaction for which a license is required under this division . . . .” Section 10177.5 is the sole ground for discipline alleged in the Accusation.

33. The bankruptcy judgment against respondent is a final judgment in a civil action within the meaning of Business and Professions Code section 10177.5. Respondent cited no authority supporting his argument that a bankruptcy judgment is not a final judgment in a civil action. There is nothing in the statute that requires the judgment be on a jury verdict nor anything to suggest any reason for distinguishing between a bankruptcy judgment and a judgment of a superior or federal district court.

### APPLICABLE STANDARD OF PROOF

34. Respondent further asserts that the bankruptcy judgment cannot form the basis for discipline against his license because its findings of fraud and misrepresentation were rendered based on a preponderance of the evidence standard, and not the clear and convincing evidence standard required to discipline a professional license. (*Grubb Co., Inc. v. Dept. of Real Estate* (2011) 194 Cal.App.4th 1494, 1505 (*Grubb*) [Commissioner may impose discipline based on Business and Professions Code section 10177.5, “. . . only when the plaintiff in the civil action proved fraud, misrepresentation, or deceit by *clear and convincing evidence*.” (italics in original.)]).

The standard of proof for nondischargeability of debt is preponderance of the evidence. (11 U.S.C. § 523(a); *Gomeshi v. Sabban* (9th Cir. 2010) 600 F.3d 1219, 1222.) Respondent thus contends that the bankruptcy judgment against him was based on a lower standard of proof and cannot serve as the basis for disciplining his license. However, respondent ignores the fact that the bankruptcy court also found an award of punitive damages was appropriate under Civil Code section 3294. An award of punitive damages under that section requires a finding, *by clear and convincing evidence*, that “the defendant has been guilty of oppression, fraud, or malice . . . .”<sup>6</sup> Accordingly, the bankruptcy judgment was based on a finding of fraud by clear and convincing evidence and is sufficient to form the basis for discipline under Business and Professions Code section 10177.5. (See *Grubb, supra*, 194 Cal.App.4th at 1505, citing *California Real Estate Loans, Inc. v. Wallace* (1993)

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<sup>6</sup> Fraud is defined as “an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury.” (Civ. Code, § 3294, subd. (c)(3).)

18 Cal.App.4th 1575, 1581-84 [section 10177.5 applies if the underlying civil judgment included a punitive damages verdict].<sup>7</sup>

#### ESTOPPEL

35. Finally, respondent asserts the Bureau is equitably estopped from taking disciplinary action against him because of its representation in the December 3, 2015 letter that its case against him was closed. The doctrine of equitable estoppel rests upon a foundation of conscience and fair dealing and has long been established in the judicial decisions of this state: “The vital principle is that he who by his language or conduct leads another to do what he would not otherwise have done shall not subject such person to loss or injury by disappointing the expectations upon which he acted. Such a change of position is sternly forbidden. It involves fraud and falsehood, and the law abhors both.” (*Seymour v. Oelrichs* (1909) 156 Cal. 782, 795, quoted in *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 488.)

36. “Generally speaking, four elements must be present in order to apply the doctrine of equitable estoppel: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury . . . . The doctrine of equitable estoppel may be applied against the government where justice and right require it.” (*Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 305-306.) The party asserting the estoppel bears the burden of proof. (*Killian v. City and County of San Francisco* (1978) 77 Cal. App. 3d 1, 16.)

37. “The government may be bound by an equitable estoppel in the same manner as a private party when the elements requisite to such an estoppel against a private party are present and, in the considered view of a court of equity, the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel.” (*City of Long Beach v. Mansell, supra*, 3 Cal.3d at 496-497.) Still, the doctrine “ordinarily will not apply against a governmental body except in unusual instances when necessary to avoid grave injustice and when the result will not defeat a strong public policy. . . .” (*Schafer v. City of Los Angeles* (2015) 237 Cal.App.4th 1250, 1262, quoting *Steinhart v. County of Los Angeles* (2010) 47 Cal.4th 1298, 1315.)

38. Respondent contends the Bureau knew it would pursue disciplinary action against him when it sent the December 3, 2015 letter; it intended respondent to rely on the letter’s representations to induce respondent to remit payment to the Recovery Account; respondent believed the Bureau had closed its case against him and would not pursue further

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<sup>7</sup> In his appeal of the nondischargeability judgment, respondent did not assert the lower court used the wrong standard of proof to award punitive damages under Civil Code section 3294.

disciplinary action; and, he detrimentally relied on the letter's representations insofar as he would not have repaid the Recovery Account if he knew of the Bureau's intention to seek revocation of his license.

39. The Bureau's representation in its December 3, 2015 letter that it was not pursuing disciplinary action against respondent included the qualifier, "at this time." The letter included no promises as to whether the Bureau would take disciplinary action in the future. Moreover, no evidence was offered showing that Ms. White or anyone at the Bureau knew, at the time the letter was written, that the Bureau would later initiate disciplinary action against respondent. Lastly, it is clear respondent believed the letter to mean he would not face discipline in the future over the bankruptcy judgment. However, his assertion that he would not have paid restitution to the Recovery Account but for this belief is not persuasive. Respondent knew his license would remain under suspension until he fully paid the restitution. He testified that he is financially dependent on his real estate activities and that, at age 68, he does not know what he would do alternatively to generate income to support himself and his minor son. While the belief that no disciplinary action was forthcoming may have informed his decision to pay the restitution in part, it was not his sole reason for doing so. Accordingly, there was no detrimental reliance on the Bureau's representation necessary to establish equitable estoppel.

#### REHABILITATION AND FITNESS FOR LICENSURE

40. The Bureau has adopted criteria for evaluating the rehabilitation of a licensee facing potential discipline on the basis of a criminal conviction. (Cal. Code Regs., tit. 10, § 2912.) Although this case does not involve a criminal conviction, many of these criteria are nevertheless instructive in evaluating respondent's rehabilitation and fitness for licensure since engaging misconduct. Such criteria include, in relevant part: the lapse of time since the misconduct occurred; restitution to any person who suffered monetary loss through the licensee's actions; payment of any fines imposed as a result of the misconduct; correction of the business practice responsible in some degree for the misconduct; significant and conscientious community involvement; change in attitude since the misconduct occurred. (Cal. Code Regs., tit. 10, § 2912, subds. (a), (b), (g), (h), (l), and (m).)

41. At hearing, respondent's testimony was candid and forthright. Although he disagreed with the bankruptcy court's characterization of his actions as fraud or misrepresentations, he readily admitted he did not provide adequate disclosures to the Andres, did not conduct adequate due diligence and made significant mistakes as the loan broker for those hard money transactions. He expressed sincere remorse for the losses incurred by the Andres. Although the bankruptcy judgment became final in 2015, respondent's underlying conduct occurred more than a decade ago. In his 30-year career as a real estate licensee, respondent has suffered no other Bureau discipline or other consumer complaints. He no longer engages in hard money lending and is more diligent in his real estate transactions. He has paid more than \$200,000 toward the bankruptcy judgment, and credibly testified as to his inability to pay more should his livelihood be taken away. He is a good father and needs this income to support his son. He has served as a mentor to others

and is highly respected in the real estate community. Several of respondent's current and former clients testified to his honesty and trustworthiness, notwithstanding the bankruptcy court findings. When considering the evidence as a whole, respondent has demonstrated sufficient rehabilitation and general fitness such that it would not be against the public interest to allow him to retain his license with some restrictions.

#### Costs

42. Complainant has requested that respondent be ordered to pay investigation costs in the amount of \$628.60, and enforcement costs in the amount of \$1,624.25, for total cost of \$2,252.85. The investigation costs are supported by a Certified Statement of Investigation Costs which provided detail regarding the general tasks performed, the time spent on each task and the method of calculating the costs. Complainant also submitted a Certified Statement of Costs to support its prosecution costs which included similar detailing of the tasks performed, time spent, and calculation method used. The scope of work and amounts charged by complainant are reasonable in light of the allegations and legal issues in this matter. Therefore, the total of complainant's reasonable costs for investigation and enforcement is \$2,252.85.

#### LEGAL CONCLUSIONS

1. Complainant bears the burden of proving, by clear and convincing evidence, that the charges in the Accusation are true. (Evid. Code, § 115; *Ettinger v. Board 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. Superior Court* (2005) 130 Cal.App.4th 586, 594.)
2. Pursuant to Business and Professions Code section 10177.5, the Commissioner to suspend or revoke a real estate license when a final judgment is obtained in a civil action against the licensee upon grounds of fraud, misrepresentation, or deceit with reference to a transaction for which a real estate license is required. The brokering of hard money loans requires a real estate license. (Bus. & Prof. Code, § 10131, subd. (d).) As set forth in Findings 3, 33 and 34, the bankruptcy judgment is a final judgment upon grounds of fraud, misrepresentation or deceit relating to a transaction for which a real estate license was required. Accordingly, cause exists to discipline respondent's license pursuant to Business and Professions Code section 10177.5.
3. As set forth in Findings 35 through 39, respondent failed to establish the Bureau is equitably estopped from bringing the Accusation and seeking revocation of respondent's license. Accordingly, respondent's estoppel argument is rejected.
4. Business and Professions Code section 10106 provides that in any order issued in resolution of a disciplinary proceeding before it, the commissioner may request the

administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. As set forth in Finding 42, complainant's costs in the amount of \$2,252.85 are reasonable when considering the scope of the investigation in light of the alleged misconduct, and the activities, hourly rates, and time for each activity.

5. *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 lists additional factors for consideration in determining the amount of costs to be assessed under statutory provisions such as Business and Professions Code section 125.3. Those additional factors include whether the licensee was successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee raised a colorable challenge to the proposed discipline, and the financial ability of the licensee to pay. In applying those factors here, it is determined that respondent shall pay the Bureau's reasonable costs.

6. As stated in Findings 40 and 41, respondent has demonstrated it would not be against the public interest to allow him to retain his real estate license on a restricted basis.

#### ORDER

All licenses and licensing rights of respondent Kenneth Robert Thorne under the Real Estate Law are REVOKED; provided, however, a RESTRICTED real estate broker license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code.

The restricted broker license issued to respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:
  - (a) The conviction of respondent (including a plea of nolo contendere) of a crime which is substantially related to respondent's fitness or capacity as a real estate licensee; or
  - (b) The receipt of evidence 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 this restricted license.
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions

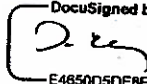


attaching to the restricted license until three years have elapsed from the date of issuance of the restricted license to respondent.

3. Respondent shall pay the Commissioner's reasonable cost for prosecution, investigation, and enforcement of this disciplinary action in the amount of \$2,252.85 within 60 days of this decision.

DATED: July 17, 2017

DocuSigned by:



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TIFFANY L. KING  
Administrative Law Judge  
Office of Administrative Hearings