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FILED

AUG 20 2021

DEPARTMENT OF REAL ESTATE

By B. Nicholas

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

STEVEN MARCUS,

Respondent.

)
)
) No. H-6823 SAC
)
) OAH No. 2019070965.1
)
)

STIPULATION AND AGREEMENT AND DECISION AFTER REJECTION

The California Department of Real Estate (Complainant) filed an Accusation against STEVEN MARCUS (Respondent), on May 8, 2019. On April 26, 2021, a hearing was held and evidence was received, the record was closed, and the matter was submitted.

On May 12, 2021, 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 and revoking Respondent's MLO Endorsement, staying the revocation, subject to terms and conditions of his restricted license.

On June 16, 2021, the Commissioner rejected the Proposed Decision of May 12, 2021.

The parties wish to settle this matter without further proceedings.

1 IT IS HEREBY STIPULATED by and between Respondent, his counsel, Karen
2 M. Goodman, and the Complainant, acting by and through Richard K. Uno, Counsel for the
3 Department, as follows for the purpose of settling and disposing of the Accusation filed by
4 Complainant.

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

12 2. Respondent understands that by agreeing to this Stipulation and
13 Agreement in Settlement and Order, Respondent agrees to pay, pursuant to Section 10106 of the
14 Code, the cost of the investigation and enforcement which resulted in the determination that
15 Respondent committed the violations found in the Determination of Issues. The amount of said
16 costs is \$1,450.70.

17 DETERMINATION OF ISSUES

18 By reason of the foregoing stipulations, admissions and waivers, and solely for
19 the purpose of settlement of the pending Accusation without a hearing, it is stipulated and agreed
20 that the acts and/or omissions of Respondent, as described in the Accusation, constitute grounds
21 for the suspension or revocation of the licenses and license rights of Respondent under the
22 provisions of Sections 490 and 10177(b) of the Code and constitute grounds for the suspension
23 or revocation of the MLO Endorsement of Respondent under the provisions of Section 10166.05
24 and 10166.052(a) of the Code.

25 ORDER

26 1. All licenses and licensing rights of Respondent under the Real Estate Law
27 are revoked; provided, however, a restricted real estate broker license shall issue subject to the

1 requirements of Section 10153.4 of the Business and Professions Code. The restricted license
2 issued to the Respondent shall be subject to all of the provisions of Section 10156.7 of the
3 Business and Professions Code and to the following limitations, conditions, and restrictions
4 imposed under authority of Section 10156.6 of said Code:

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

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

12 c. Respondent shall not be eligible to apply for the issuance of an
13 unrestricted real estate license nor the removal of any of the conditions, limitations, or
14 restrictions attaching to the restricted license until two (2) years have elapsed from the date of
15 issuance of the restricted license to Respondent.

16 3. Respondent shall, within nine (9) months from the effective date of this
17 Order, present evidence satisfactory to the Commissioner that Respondent has, since the most
18 recent issuance of an original or renewal real estate license, taken and successfully completed the
19 continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal
20 of a real estate license. If Respondent fails to satisfy this condition, Respondent's real estate
21 license shall automatically be suspended until Respondent presents evidence satisfactory to the
22 Commissioner of having taken and successfully completed the continuing education
23 requirements. Proof of completion of the continuing education courses must be delivered to the
24 Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013..

25 4. Respondent shall notify the Commissioner in writing within 72 hours of
26 any arrest by sending a certified letter to the Commissioner at the Department of Real Estate,
27 Post Office Box 137013, Sacramento, CA 95813-7013. The letter shall set forth the date of

1 Respondent's arrest, the crime for which Respondent was arrested and the name and address of
2 the arresting law enforcement agency. Respondent's failure to timely file written notice shall
3 constitute an independent violation of the terms of the restricted license and shall be ground for
4 the suspension or revocation of that license.

5 5. All licenses and licensing rights of Respondent are indefinitely
6 suspended unless or until Respondent pays the sum of \$1,450.70 for the Commissioner's
7 reasonable cost of the investigation and enforcement which led to this disciplinary action. Said
8 payment shall be in the form of a cashier's check made payable to the Department of Real
9 Estate. The investigative and enforcement costs must be delivered to the Department of Real
10 Estate, Legal Section at P.O. Box 137007, Sacramento, CA 95813-7007, prior to the effective
11 date of this Order.

12 6. The Mortgage Loan Originator Endorsement of Respondent is revoked,
13 revocation is stayed, MLO Endorsement shall be subject to the terms and conditions applicable
14 to Respondent's Restricted Broker License.

15
16
17
18 7. 12. 2021

19 DATED

20 Richard K. Uno
21 RICHARD K. UNO, Counsel III
22 DEPARTMENT OF REAL ESTATE

23 * * *

24 I have read the Stipulation and Agreement and Decision After Rejection, and its
25 terms are understood by me and are agreeable and acceptable to me. I willingly and voluntarily
26
27

constitute an independent violation of the terms of the restricted license and shall be ground for the suspension or revocation of that license.

5. All licenses and licensing rights of Respondent are indefinitely suspended unless or until Respondent pays the sum of \$1,450.70 for the Commissioner's reasonable cost of the investigation and enforcement which led to this disciplinary action. Said payment shall be in the form of a cashier's check made payable to the Department of Real Estate. The investigative and enforcement costs must be delivered to the Department of Real Estate, Legal Section at P.O. Box 137007, Sacramento, CA 95813-7007, prior to the effective date of this Order.

6. The Mortgage Loan Originator Endorsement of Respondent is revoked, revocation is stayed, MLO Endorsement shall be subject to the terms and conditions applicable to Respondent's Restricted Broker License.

DATED

RICHARD K. UNO, Counsel III
DEPARTMENT OF REAL ESTATE

* * *

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

7-1-21
DATED

Steven Marcuis
STEVEN MARCUIS
Respondent

* * *

I have reviewed this Stipulation and Agreement as to form and content and have advised my clients accordingly.

7/8/21
DATED

Karen M. Goodman
KAREN M. GOODMAN

DECISION AND ORDER

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

1 agree to enter into this Stipulation.

2
3
4 DATED

STEVEN MARCUIS
Respondent

5
6 * * *

7 *I have reviewed this Stipulation and Agreement as to form and content and have*
8 *advised my clients accordingly.*

9
10 DATED

KAREN M. GOODMAN

11
12
13 DECISION AND ORDER

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

16 This Decision and Order shall become effective at 12 o'clock noon on
17 **SEP 10 2021**

18
19 IT IS SO ORDERED

8.17.21

20
21 DOUGLAS R. McCAULEY
22 REAL ESTATE COMMISSIONER

23
24 *Douglas R. McCauley*

FILED

JUN 22 2020

DEPARTMENT OF REAL ESTATE

By R. dew

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

STEVEN MARCUS

Respondents.

No. H-6823 SAC

OAH No. 2019070965

DECISION AFTER REJECTION

This matter came on for hearing before John E. DeCure, Administrative Law Judge ("ALJ"), Office of Administrative Hearings, State of California, in Sacramento, California, on November 25, 2019. Real Estate Counsel Richard K. Uno represented Complainant Tricia D. Parkhurst, Supervising Special Investigator of the Department of Real Estate ("Department"). Ronald Mullin, Attorney at Law, represented Steven Marcus (respondent), who was present at hearing.

Oral and documentary evidence was received. The hearing was closed, and the matter was submitted on November 25, 2019. The ALJ rendered a Proposed Decision ("Proposed Decision") which the Real Estate Commissioner declined to adopt as his Decision. Pursuant to Section 11517(c) of the Government Code of the State of California, Respondent were served with notice of the Real Estate Commissioner's determination not to adopt the Proposed Decision, along with a copy of the Proposed Decision. Respondent was notified that

1 the case would be decided by the Real Estate Commissioner based on the record, the transcript
2 of the proceeding, and the written argument offered by Respondents and Complainant.

3 Respondent submitted written argument on April 3, 2020. Complainant
4 submitted written argument on April 16, 2020.

5 The following constitutes the Decision of the Real Estate Commissioner in this
6 proceeding:

7 FACTUAL FINDINGS

8 The Factual Findings of the Proposed Decision are adopted as part of this
9 Decision.

10 LEGAL CONCLUSIONS

11 The Legal Conclusions of the Proposed Decision are adopted as part of this
12 Decision.

13 ORDER

14 Respondent's mortgage loan originator license is revoked. All remaining licenses
15 and licensing rights of Respondent, under the Real Estate Law are revoked; provided, however, a
16 restricted real estate broker license shall be issued to Respondent pursuant to Section 10156.5 of
17 the Code if Respondent makes application therefor for the restricted license within 90 days from
18 the effective date of this Decision and Order. The restricted license issued to Respondent shall
19 be subject to all of the provisions of Section 10156.7 of the Code and to the following
20 limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

21 1. The restricted license issued to Respondent may be suspended prior to
22 hearing by Order of the Commissioner in the event of Respondent's conviction or plea of nolo
23 contendere to a crime which is substantially related to Respondent's fitness or capacity as a real
24 estate licensee.

25 2. The restricted license issued to Respondent may be suspended prior to
26 hearing by Order of the Commissioner on evidence satisfactory to the Commissioner that
27 Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands

1 Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted
2 license.

3 3. Respondent shall not be eligible to apply for the issuance of an
4 unrestricted real estate license nor for removal of any of the conditions, limitations or restrictions
5 of a restricted license until three (3) years have elapsed from the effective date of this Decision
6 and Order.

7 4. Respondent shall notify the Commissioner in writing within 72 hours of
8 any arrest by sending a certified letter to the Commissioner at the Department of Real Estate,
9 Post Office Box 137000, Sacramento, CA 95813-7000. The letter shall set forth the date of
10 Respondent's arrest, the crime for which Respondent was arrested and the name and address of
11 the arresting law enforcement agency. Respondent's failure to timely file written notice shall
12 constitute an independent violation of the terms of the restricted license and shall be grounds for
13 the suspension or revocation of that license.

14 5. All licenses and licensing rights of Respondent are indefinitely suspended
15 unless or until Respondent pays the sum of \$2,484.00 for the Commissioner's reasonable cost of
16 the investigation and enforcement which led to this disciplinary action. Said payment shall be in
17 the form of a cashier's check made payable to the Department. The investigative and
18 enforcement costs must be delivered to the Department, Flag Section at P.O. Box 137013,
19 Sacramento, CA 95813-7013, prior to the effective date of this Order.

20
21 This Decision shall become effective at 12 o'clock noon on JUL 13 2020.

22 IT IS SO ORDERED 6-19-20

23 DOUGLAS R. McCAULEY
24 REAL ESTATE COMMISSIONER

25
26 Douglas R. McCauley
27

File

FILED

FEB 05 2020

DEPARTMENT OF REAL ESTATE

By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) DRE No. H-6823 SAC
STEVEN MARCUS,)
Respondent.) OAH No. 2019070965

NOTICE

TO: STEVEN MARCUS, Respondent, and RONALD MULLIN, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated December 24, 2019, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated December 24, 2019, 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 Monday, November 25, 2019, 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 Monday, November 25, 2019, at the

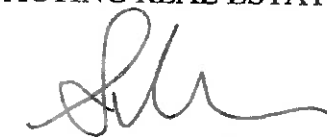
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1 Sacramento office of the Department of Real Estate unless an extension of the time is granted for
2 good cause shown.

3 Written argument of complainant to be considered by me must be submitted within
4 15 days after receipt of the argument of respondent at the Sacramento Office of the Department of
5 Real Estate unless an extension of the time is granted for good cause shown.

6 DATED: 2/4/20.

7 SANDRA KNAU
8 ACTING REAL ESTATE COMMISSIONER

9 
10 _____

**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Accusation against:

STEVEN MARCUS, Respondent

Agency Case No. H-6823 SAC

OAH No. 2019070965

PROPOSED DECISION

John E. DeCure, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on November 25, 2019, in Sacramento, California.

Richard K. Uno, Counsel for the Department of Real Estate (Department), represented Tricia D. Parkhurst (complainant), a Supervising Special Investigator for the State of California.

Ronald Mullin, Attorney at Law, represented respondent Steven Marcus, who was present at hearing.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on November 25, 2019.

FACTUAL FINDINGS

Jurisdictional Matters

1. On October 24, 1975, the Department issued Real Estate Salesperson License Number S/00541715 to respondent. On June 27, 1978, the Department issued a Broker License to respondent as an officer of the "Marcus Company[,] Inc." Respondent is presently licensed as a real estate broker and the designated officer of "Northern California Realty, Inc."¹ Respondent is also licensed to provide services as a Mortgage Loan Originator Endorsement in California (under the California Finance Law or the California Residential Mortgage Lending Act).

2. On May 8, 2019, complainant filed the Accusation in her official capacity. Complainant seeks to discipline respondent's broker license and mortgage loan originator endorsement for alleged violations of Real Estate Law, alleging respondent's 2018 felony conviction for conspiring to grow marijuana bears a substantial relationship to the qualifications, functions, or duties of a real estate licensee. Respondent timely filed a notice of defense and requested a hearing. All jurisdictional requirements have been met.

2018 Conviction

3. On March 27, 2018, respondent was convicted in United States District Court, Eastern District of California, Case No. 2:15 cr-06234-4, of one count of violating

¹ Respondent's broker license history since 1978 includes variations in employing broker affiliations not listed here.

21 United States Code sections 841, subdivision (a)(1) and 846 (conspiracy to manufacture/grow marijuana), a felony.² The court sentenced respondent to credit for time served, supervised release for a term of 24 months with various terms and conditions, and payment of fines and fees totaling \$6,100. On November 4, 2019, in response to respondent's written application, the United States Probation Office terminated respondent's term of probation early.

4. The facts and circumstances underlying the conviction involved a conspiracy among respondent and three co-defendants to manufacture at least 1,000 marijuana³ plants between February 2011 and June 21, 2011, in violation of federal law. Respondent described his actions in a Presentence Report submitted to the court upon his guilty plea, as follows:

I fully accept responsibility for my actions that led to my plea of guilty. At all times I was aware that federal law prohibited the cultivation [*sic*] and distribution of marijuana. I made the sad mistake of not seeking competent counsel to advise me as to reliance on the

² Although the Accusation alleges respondent committed "felonies" (plural) and the violation encompassed two United States Code sections, the court's official judgment and sentencing order deemed the offense a single felony for conspiracy to manufacture marijuana.

³ Marijuana is a Schedule I controlled substance.

existing medical marijuana law in California.⁴ The medical marijuana industry in California based on existing California law seemed like a good business venture because I was led to believe that the structure of the marijuana grows was approved by expert lawyers and based on the grows growing marijuana for medical use and there existed medical recommendations for ultimate users. I made a terrible error in judgment. Finding out the legal advice came from someone who was not really an expert and indeed, became a criminal defendant. So that it is clear, I accept responsibility for my criminal acts and I and [sic] deeply remorseful.

When I introduced the owners of the grow to an investor, I believed that the arrangement was based on expert legal advice. I hoped for compensation but never received compensation. I looked at this as a legitimate business venture – oh boy was I stupid. Obviously, obtaining compensation was my hope and I believe today that medical marijuana serves a valid and useful purpose for people with different medical conditions. But . . . (it) doesn't matter because it was illegal at least as to federal law. My

⁴ In 1996, California voters passed Proposition 215, which, by the "Compassionate User Act of 1996," legalized medical marijuana. (See Health and Safety Code section 11362.5.)

venture turned out to be a disaster for me and my family. I never wanted to be on the wrong side of the law again!

The stress of all this has led to a separation from my wife, who I love dearly, and we are attempting to keep our marriage together. If I am able to keep out of jail and keep my license, I will be on the right track. I am going to be 75 years old in December. I have COPD and peripheral artery disease in both my legs which cause swelling and constant discomfort. I have made many mistakes in my life, but the biggest mistake was doing something that has jeopardized my marriage to a great lady.

(Punctuation in original.)

Respondent's Evidence and Testimony

5. Respondent has been a California real estate salesman and broker for many years and has no prior consumer complaints. He disclosed a prior history of criminal convictions, including: 1970 convictions for conspiracy to commit larceny (a felony) and carrying a prohibited weapon; a 1973 conviction for counterfeiting (a felony); and a 2000 misdemeanor conviction for vandalism. He described his past crimes as part of a "pretty bad" past, during which he was "young and dumb" and "ran with the wrong crowd."

6. Regarding the 2018 conviction, respondent said he was approached to recruit interested investors in the marijuana cultivation enterprise. He also was asked to search for a lease on a suitable location for another grow site. His real estate company received \$5,000 per month for three months as expenses for his search

efforts, but he disagreed with a co-conspirator about whether they should disclose to interested parties their purpose for the lease,⁵ and was unsuccessful in finding a new location. Respondent's agreement for taking part in the conspiracy was that he was entitled to receive five percent of the profits, but he never received any payment.

7. Respondent believed the "grow" operation was properly permitted and proceeding under the advisement of an attorney. Had he known it was an illegal operation, he would have "had nothing to do with it." Respondent admitted his ignorance and took responsibility for his crime, stating: "I was wrong. I thought [the operation] was okay. I should have looked into it further, but I didn't."

Discussion

8. Title 10, California Code of Regulations, section 2912, states in relevant part:

The following criteria have been developed and will be considered by the Bureau pursuant to Section 482 of the Business and Professions Code for the purpose of evaluating whether or not a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee is rehabilitated:

⁵ Respondent advised the co-conspirator that they should disclose the fact that the property was to be used for a marijuana grow.

(a) The time that has elapsed since commission of the act(s) or offense(s):

(1) The passage of less than two years after the most recent criminal conviction or act of the licensee that is a cause of action in the Bureau's Accusation against the licensee is inadequate to demonstrate rehabilitation.

(2) Notwithstanding subdivision (a)(1), above, the two year period may be increased based upon consideration of the following:

(A) The nature and severity of the crime(s) and/or act(s) committed by the licensee.

(B) The licensee's history of criminal convictions and/or license discipline that are "substantially related" to the qualifications, functions, or duties of a real estate licensee.

[1] . . . [1]

(e) Successful completion or early discharge from probation or parole.

[1] . . . [1]

(g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.

[1] . . . [1]

(m) Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by any or all of the following:

(1) Testimony and/or other evidence of rehabilitation submitted by the licensee.

[11] . . . [11]

(5) Absence of subsequent felony convictions, misdemeanor convictions, or other conduct that provides grounds to discipline a real estate licensee, which reflect an inability to conform to societal rules when considered in light of the conduct in question.

9. Considering these factors, respondent's conviction is less than two years old. He was released early from his term of probation. His conspiracy to commit larceny and forgery convictions involved dishonesty and were substantially related to the qualifications, functions, and duties of a real estate licensee; however, the convictions are both nearly 50 years old, so they are very remote in time. He paid the court fines related to his 2018 conviction. His testimony was candid and straightforward, and he recognized his mistakes. He has no subsequent convictions or other conduct giving rise to discipline.

10. While respondent's current crime may have occurred after California state law made medicinal marijuana legal under certain circumstances, he knowingly committed a felony federal offense. Real estate practitioners must act as fiduciaries to parties to real estate transactions, and ably adhere to complex legal regulations involving disclosure, documentation, and the handling and maintenance of client

funds. As such, respondent's conviction for conspiracy to violate federal law related to marijuana cultivation represents his making a plan with others to commit a crime. Such defiance of the law is substantially related to the qualifications, functions, and duties of a real estate licensee.

11. Despite his conviction, respondent has a very long history of licensure with no discipline. The facts and circumstances of the conviction involve a business venture of an unusual nature, and respondent brought no experience to the marijuana trade; these factors make the likelihood respondent would repeat such conduct slim. At hearing, he displayed responsibility and sincere remorse. The sum of the evidence indicated that a probationary order as set forth below will adequately protect the public while ensuring respondent's rehabilitation.

Costs

12. The Department submitted written evidence of its costs of investigating and prosecuting this matter in the total of \$2,484. These costs are itemized for the individuals who billed time on the case. The Department's itemized costs were \$979, while complainant's counsel's costs were \$1,505. Considering the scope of the case and the violations it revealed, these costs are reasonable.

LEGAL CONCLUSIONS

1. In an Accusation seeking to revoke, suspend, or otherwise discipline a professional license, the Department has the burden of proof to establish the allegations in the Accusation by "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App. 3d 853, 856.) Complainant met her burden.

2. Business and Professions Code section 493 permits the Bureau to inquire into the circumstances surrounding the commission of a crime by a licensee to determine if the crime is substantially related to the qualifications, functions, or duties of a real estate licensee. In this case, complainant established that the requisite substantial relationship exists with respect to respondent's 2018 offense.

3. The Department may discipline the license of a licensee who has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate license. (Bus. & Prof. Code, §§ 10177, subd. (b)(1), and 490.) Cause exists to discipline respondent due to his 2018 conviction as set forth in Findings 3 through 7. (See, Cal. Code Regs., tit. 10, § 2910, subd. (a)(8) ["Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator"].)

4. Business and Professions Code section 10166.05 states, in pertinent part, that anyone holding a license endorsement to act as a mortgage loan originator must meet the following requirement:

(b) (1) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application for licensing, or at any time preceding the date of application, if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. Whether a particular crime is classified as a felony shall be determined by the law of the jurisdiction in which an individual is convicted.

Furthermore, the Department has the authority to deny, suspend, revoke, restrict, or decline to renew a mortgage loan originator license endorsement for a violation of the Real Estate Law or any rules or regulations. (Bus. & Prof. Code, § 10166.051, subd. (a).) Respondent's 2018 felony conviction was for a conspiracy to manufacture marijuana. An agreement to commit a crime is inherently dishonest. Thus, pursuant to Business and Professions Code section 10166.05, subdivision (b)(1), cause exists to discipline his mortgage loan originator license endorsement.

Costs Award

5. A licensee found to have violated a licensing act may be ordered to pay reasonable costs of investigation and prosecution. (Bus. & Prof. Code § 125.3.) Section 10106 of the Code is similar to section 125.3, in that it provides, in pertinent part, that the Commissioner may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. The California Supreme Court in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, instructs that the following factors should be considered when determining the reasonableness of costs sought pursuant to regulations such as section 125.3 regarding the recovery of prehearing investigation and enforcement costs:

The Board must exercise its discretion to reduce or eliminate cost awards in a manner that will ensure that regulation . . . does not deter . . . [licensees] with potentially meritorious claims or defenses from exercising their right to a hearing. Thus, the Board must not assess the full costs of investigation and prosecution when to do so will unfairly

penalize a . . . [licensee] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed. The Board must consider the . . . [licensee's] "subjective good faith belief in the merits of his or her position" [Citation.] and whether the . . . [licensee] has raised a "colorable challenge" to the proposed discipline. [Citation.] Furthermore, as in the cost recoupment schemes in which the government seeks to recover from criminal defendants the cost of their state-provided legal representation [Citation], the Board must determine that the . . . [licensee] will be financially able to make later payments. Finally, the Board may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation to prove that a . . . [licensee] engaged in relatively innocuous misconduct.

6. As set forth in Finding 12, the Department reasonably incurred investigation and prosecution costs in amounts totaling \$2,484, in connection with the investigation and prosecution of this matter. Complainant prevailed on all of the alleged causes for discipline. Thus, consideration of an apportionment of costs is unnecessary.

7. Under *Zuckerman, supra*, a determination must be made regarding respondents' financial ability to make future cost award payments. Respondent submitted no evidence that he lacks the financial ability to pay costs. Under these

circumstances, respondent shall pay complainant's costs of investigation and prosecution in an amount totaling \$2,484.

ORDER

All licenses and licensing rights of respondent Steven Marcus 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 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.

Respondent's mortgage loan originator endorsement is REVOKED; however, pursuant to Business and Professions code section 10166.051, subdivision (c)(3), the revocation is stayed, and respondent shall be subject to the terms and conditions set forth below regarding respondent's restricted broker license.

The restricted 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 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, including the removal of the conditions, limitations or restrictions imposed upon his mortgage loan originator endorsement, until three 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.

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

6. Pursuant to sections 10106 and 10148 of the Business and Professions Code, respondent shall pay the Commissioner's reasonable costs for investigation of the case and audit which led to the disciplinary action in the sum of \$2,484. The Department may, in its sole discretion, order respondent to make quarterly payments during his probation.

7. The Commissioner may suspend the license of respondent pending a hearing held in accordance with section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between respondent and the Commissioner. The suspension shall remain in effect until payment is made in full or until respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

DATE: December 24, 2019

DocuSigned by:
John DeCure
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JOHN E. DeCURE

Administrative Law Judge

Office of Administrative Hearings

Flag

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JUN 21 2021

DEPARTMENT OF REAL ESTATE

By L. Knapp

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) DRE No. H-6823 SAC
STEVEN MARCUS,)
Respondent.) OAH No. 2019070965.1

NOTICE

TO: STEVEN MARCUS, Respondent, and KAREN M. GOODMAN, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated May 12, 2021, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated May 12, 2021, 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 Monday, April 26, 2021, 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 Monday, April 26, 2021, at the Sacramento

///

1 office of the Department of Real Estate unless an extension of the time is granted for good cause
2 shown.

3 Written argument of complainant to be considered by me must be submitted within
4 15 days after receipt of the argument of respondent at the Sacramento Office of the Department of
5 Real Estate unless an extension of the time is granted for good cause shown.

6 DATED: June 14, 2021.

7 DOUGLAS R. McCAULEY
8 REAL ESTATE COMMISSIONER

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10 Douglas R. McCauley
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**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

STEVEN MARCUS, Respondent

Agency Case No. H-6823 SAC

OAH Case No. 2019070965.1

PROPOSED DECISION ON REMAND

On April 26, 2021, Wim van Rooyen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on remand by videoconference from Sacramento, California.

Richard K. Uno, Legal Counsel, represented Tricia D. Parkhurst (complainant), Supervising Special Investigator, Department of Real Estate (Department), State of California.

Eric G. Fernandez, Attorney at Law, Goodman Law Corporation, represented Steven Marcus (respondent), who was present.

Evidence was received, the record closed, and the matter submitted for decision on April 26, 2021.

FACTUAL FINDINGS

Procedural History

1. On October 24, 1975, the Department issued respondent real estate salesperson license no. S/00541715. On June 27, 1978, the Department issued respondent a real estate broker license (broker license) as an officer of The Marcus Company Inc. Respondent is presently licensed as a real estate broker and the designated officer of Northern California Realty, Inc. (NCRI), which in turn is presently licensed as a corporate real estate broker.¹ Respondent also holds a mortgage loan originator (MLO) endorsement in California.

2. On May 8, 2019, complainant filed the Accusation in her official capacity, seeking to discipline respondent's broker license and MLO endorsement based on his 2018 felony conviction for conspiring to manufacture or grow marijuana. Respondent timely filed a Notice of Defense. On November 25, 2019, ALJ John DeCure heard the matter.

3. On December 24, 2019, Judge DeCure issued a Proposed Decision. Judge DeCure found cause to discipline respondent's broker license given his conviction of a crime substantially related to the qualifications, functions, or duties of a real estate

¹ Respondent's broker license history since 1978 includes variations in affiliations not listed here.

licensee, based on Business and Professions Code² sections 490 and 10177, subdivision (b)(1), and California Code of Regulations, title 10, section 2910, subdivision (a)(8) (deeming as substantially related the "[d]oing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator . . ."). Additionally, Judge DeCure found cause to discipline respondent's MLO endorsement given his determination that respondent was convicted of a felony involving dishonesty, pursuant to sections 10166.05, subdivision (b)(1), and 10166.051, subdivision (a). Judge DeCure reasoned that an "agreement to commit a crime is inherently dishonest."

After considering rehabilitation evidence, Judge DeCure revoked respondent's broker license and MLO endorsement, directed issuance of a restricted broker license, stayed revocation of the MLO endorsement and subjected it to the same conditions as the restricted broker license, and ordered respondent to pay the Department's reasonable investigation and enforcement costs.

4. In a Notice filed February 5, 2020, the Department rejected the Proposed Decision. After entertaining written argument from complainant and respondent, the Department issued a Decision After Rejection (DAR). The DAR rejected Judge DeCure's proposal to stay revocation of respondent's MLO endorsement, but otherwise adopted Judge DeCure's findings of fact and conclusions of law.

5. Thereafter, respondent petitioned in the Sacramento County Superior Court for an administrative writ of mandate setting aside the DAR, pursuant to Code of

² All further statutory references are to the Business and Professions Code, unless otherwise specified.

Civil Procedure section 1094.5. In a judgment filed December 16, 2020, Judge James P. Arguelles granted the petition.

Judge Arguelles affirmed the Department's determination that respondent's felony conviction was substantially related to the qualifications, functions, or duties of a real estate licensee. Citing California Code of Regulations, title 10, section 2910, subdivision (a)(8), Judge Arguelles found: "The weight of the evidence establishes that Marcus participated in the conspiracy to manufacture marijuana primarily if not exclusively to benefit himself financially." In a footnote, he continued: "That the \$5,000 payments went to Marcus' company, rather than to himself personally, does not alter the court's conclusion that Marcus participated in the conspiracy with the intent to benefit himself personally. Whether he may have intended to benefit others as well is beside the point."

However, Judge Arguelles found that the Department erred by treating respondent's conviction as a felony involving dishonesty, reasoning that although a conspiracy to violate federal law "might reflect a willingness to do evil . . . it does not indicate dishonesty." Judge Arguelles observed that, because the error affected the Department's rehabilitation analysis, it also potentially affected the discipline of respondent's broker license. Additionally, the error was "the key finding leading to the revocation of Marcus' MLO Endorsement." Thus, "penalties predicated wholly or partly on [the error] must be set aside." The matter was remanded "for imposition of any new discipline, or for other proceedings, consistent with this ruling."

Respondent's 2018 Conviction

6. On March 27, 2018, in the United States District Court, Eastern District of California, Case No. 2:15 cr-00234-JAM-4, respondent was convicted on a guilty plea

of one count of violating United States Code, title 21, sections 841, subdivision (a)(1), and 846 (conspiracy to manufacture or grow marijuana), a felony.³ The court sentenced respondent to credit for time served, supervised release for a term of 24 months with various terms and conditions, and payment of a \$6,000 fine and \$100 special assessment. A standard drug testing condition was suspended, based on the court's determination that respondent "posed a low risk of future substance abuse." On November 4, 2019, the court terminated respondent's supervised release early.

7. The facts and circumstances underlying the conviction involved a conspiracy among respondent and four co-defendants to manufacture or grow marijuana⁴ plants between approximately January and June 2011, in violation of federal law. Respondent described his actions in a presentence report submitted to the federal court as follows:

I fully accept responsibility for my actions that led to my plea of guilty. At all times I was aware that federal law prohibited the cultivation [*sic*] and distribution of marijuana. I made the sad mistake of not seeking competent counsel to advise me as to reliance on the

³ Although the Accusation alleges respondent committed "felonies" (plural), and the violation encompassed two United States Code sections, the court's official judgment and sentencing order deemed the offense a single felony for conspiracy to manufacture marijuana.

⁴ Marijuana is a Schedule I controlled substance.

existing medical marijuana law in California.⁵ The medical marijuana industry in California based on existing California law seemed like a good business venture because I was led to believe that the structure of the marijuana grows was approved by expert lawyers and based on the grows growing marijuana for medical use and there existed medical recommendations for ultimate users. I made a terrible error in judgment. Finding out the legal advice came from someone who was not really an expert and indeed, became a criminal defendant. So that it is clear, I accept responsibility for my criminal acts and I and [*sic*] deeply remorseful.

When I introduced the owners of the grow to an investor, I believed that the arrangement was based on expert legal advice. I hoped for compensation but never received compensation. I looked at this as a legitimate business venture – oh boy was I stupid. Obviously, obtaining compensation was my hope and I believe today that medical marijuana serves a valid and useful purpose for people with different medical conditions. But . . . (it) doesn't

⁵ In 1996, California voters passed Proposition 215, the "Compassionate Use Act of 1996," which legalized medical marijuana. In 2003, Senate Bill 420 was enacted, recognizing the right of patients and defined caregivers to associate collectively and cooperatively to cultivate medical marijuana under specified parameters.

matter because it was illegal at least as to federal law. My venture turned out to be a disaster for me and my family. I never wanted to be on the wrong side of the law again!

The stress of all this has led to a separation from my wife, who I love dearly, and we are attempting to keep our marriage together. If I am able to keep out of jail and keep my license, I will be on the right track. I am going to be 75 years old in December. I have COPD and peripheral artery disease in both my legs which cause swelling and constant discomfort. I have made many mistakes in my life, but the biggest mistake was doing something that has jeopardized my marriage to a great lady.

(Punctuation in original.)

Respondent's Evidence

RESPONDENT'S TESTIMONY

8. Respondent testified at hearing. He explained his criminal history, the events and circumstances that gave rise to the 2018 conviction, his compliance with the resulting sentence, and his present activities and lifestyle.

Prior Criminal History

9. Respondent disclosed a prior history of criminal convictions, including: 1970 convictions for larceny and conspiracy to commit larceny, and carrying a prohibited weapon; a 1973 conviction for counterfeiting; a 1994 conviction for getting into a fight and making noise; and a 2000 conviction for vandalism. His past crimes

resulted from a time when he was young and "ran with the wrong crowd." However, he subsequently reformed himself and was never in trouble with the law until the events in 2011 giving rise to his 2018 conviction.

2018 Criminal Conviction

10. In early 2011, respondent and his wife, Leslie Marcus, were operating NCRI. Yan Ebyam, the owner of a marijuana grow near Sacramento, approached respondent to: (1) recruit interested investors in the marijuana cultivation enterprise; and (2) search for a lease on a suitable location for another grow site. Respondent knew that marijuana cultivation was illegal under federal law, but understood that the federal government had a general policy of declining to prosecute if cultivation was in compliance with state law. Ebyam and his attorney, Nathan Hoffman, falsely assured respondent that everything was "100% legal" and complied with California law. At the time, he relied on their assurances.

11. As for recruitment of investors, respondent introduced Ebyam to Michael McCrady, who ultimately agreed to invest in Ebyam's marijuana cultivation enterprise, but only if respondent was part of the deal and received 10 percent of McCrady's profit. At McCrady's insistence, respondent agreed. Subsequently, the federal government seized the marijuana plants while they were still in the ground, and respondent never actually received any money from the deal. Other than introducing McCrady to Ebyam, respondent had no involvement in the enterprise; he did not personally contribute any money, nor was he involved in planting or otherwise handling the marijuana.

12. As for finding another grow site, respondent looked for suitable properties for three months. Ebyam paid NCRI \$5,000 a month for those three months.

Respondent's efforts were unsuccessful, because he always disclosed to owners the purpose for leasing the property, and owners consistently turned him down once they learned that marijuana would be cultivated. Ebyam encouraged respondent to conceal the purpose of the lease, but respondent refused, because he believed he had to be honest with owners.

13. In June 2011, respondent was arrested and charged for his role in the conspiracy, and later released on his own recognizance. He remained out of trouble, fully cooperated with federal prosecutors, agreed to plead guilty, and even agreed to testify against his co-conspirators, as specifically recognized in the federal prosecutors' sentencing memorandum. However, through no fault of respondent, the criminal case remained pending for several years until respondent's conviction and sentence were finalized in March 2018.

Sentence Compliance

14. Respondent successfully complied with all requirements of his sentence for the March 2018 conviction. Based on that successful compliance, the federal court terminated his term of supervised release approximately five months early. He was never required to pay any restitution, because he did not cause financial loss or harm to any innocent third party.

Present Activities and Lifestyle

15. Respondent accepts full responsibility for his prior misconduct. Back in 2011, he believed Ebyam's grow operation was properly permitted and legal under California law. Had he known it was an illegal operation, he would have had nothing to do with it. Nevertheless, he admits and strongly regrets his prior ignorance and failure

to properly educate himself on the legal requirements. In his own words, "regardless of whom I relied on, I made the decision and it was my dumb decision."

16. Respondent has never personally consumed marijuana; he "never did any drugs and never will." For that reason, the federal court did not require him to undergo drug testing as part of his sentence for the 2018 conviction. Since 2011, respondent has had no criminal convictions or negative interactions with law enforcement, other than the 2018 conviction and a single warning for failure to wear a seatbelt while driving.

17. Since 2011, respondent has also had no further business or professional interaction with the marijuana industry. Although he has had opportunities, he stays "far away" from any real estate listing or loans involving marijuana. Indeed, he has made it NCRI's policy to prohibit agents or employees from doing any work with the marijuana industry.

18. Respondent has worked in real estate for well over 40 years and finds the work satisfying, because he enjoys helping clients realize their goals. He has never been the subject of any consumer complaints, Department investigations, or license discipline, apart from the instant matter.

19. Respondent strongly desires to keep his broker license and MLO endorsement, because they are the sole source of income for him and his wife. He is currently 78 years old; suffers from several chronic health issues, including chronic obstructive pulmonary disorder (COPD), peripheral artery disease, high blood pressure, and high cholesterol; and he lost all his personal and business properties in the 2018 Camp Fire. After that catastrophic event, he relocated NCRI from Paradise to Red Bluff

and tried to rebuild his business. A large portion of respondent's business is loan origination.

20. Respondent devotes a substantial amount of his spare time to community service. He performs investigations of local complaints submitted to the American Society for the Prevention of Cruelty to Animals (ASPCA) and regularly donates money to the ASPCA, the Humane Society, and Habitat for Horses. Additionally, he is an ordained minister for the Universal Life Church, and provides spiritual and pastoral counseling for individuals in need. Other than his volunteer efforts, respondent enjoys and prioritizes spending more time with his wife and extended family.

CHARACTER WITNESS TESTIMONY

21. Respondent's wife, Leslie Marcus, and his two adult stepsons, Dwayne Austin and Jonathan Austin, testified at hearing. They uniformly attested to respondent's remorse for the 2011 misconduct and confirmed that he has had no subsequent involvement with the marijuana industry. Since his conviction, he has completely changed his lifestyle; he is no longer a workaholic, is humbler and less selfish, and devotes significantly more time to his family. His stepsons look up to him as a smart and knowledgeable "father figure," and they frequently consult him for advice.

22. Lana Bunch and Dr. Francesco "Frank" Ricci III, real estate agents affiliated with NCRI, testified at hearing. Both are aware of respondent's conviction and were surprised when they initially learned of it, because respondent usually meticulously follows the rules and does everything "by the book." Both also enjoy working with respondent, noting that he is very knowledgeable and always willing to assist. They

confirmed NCRI's strict policy against performing any work associated with the marijuana industry, which was instituted by respondent.

23. Quay Samons also testified at hearing. Mr. Samons has been a personal friend of respondent for approximately five years. During that time, respondent has provided Mr. Samons with frequent advice and encouragement concerning the drug addiction of Mr. Samons' son. He never charged Mr. Samons for the advice, and Mr. Samons only later learned that respondent was an ordained minister. Mr. Samons describes respondent as wise, non-judgmental, and an "all around good guy." He was unaware of respondent's criminal history prior to the hearing, because it "never came up." However, it does not change his opinion of respondent, because "we all make mistakes."

Analysis

CAUSE FOR DISCIPLINE

Broker License

24. Respondent admits his 2018 conviction and related misconduct. Nevertheless, on remand he challenges cause for discipline of his broker license based on that conviction under sections 490 and 10177, subdivision (b)(1). More specifically, respondent contends that his 2018 conviction is not substantially related to the qualifications, functions, or duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivision (a)(8), because: (1) he never intended to profit from introducing McCrady to Ebyam, and only agreed to receive compensation at McCrady's insistence; and (2) the charging documents for the 2018 conviction never referenced respondent's efforts to find real property for a new grow site, and searching for real property is not in itself an unlawful act.

25. Respondent's arguments are unavailing for two reasons:

First, they are beyond the scope of the remand. The Superior Court specifically affirmed the Department's finding that respondent's 2018 conviction was substantially related to the qualifications, functions, or duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivision (a)(8). Although the Superior Court directed the Department to reconsider the degree of discipline, if any, to be imposed as to respondent's broker license, the remand did not include reconsideration of whether *cause for discipline exists*.

26. Second, even if this court could revisit the prior cause for discipline determination, respondent previously conceded in his statements to the federal court that he "hoped for compensation" when he introduced McCrady to Ebyam. The fact that he never actually received compensation is irrelevant.

27. In sum, cause exists to discipline respondent's broker license pursuant to sections 490 and 10177, subdivision (b)(1). The only remaining question is the appropriate degree of discipline, if any.

MLO Endorsement

28. The Superior Court determined that respondent's 2018 conviction was not a felony involving dishonesty. Thus, no cause for discipline exists on that basis.

29. However, the Accusation also pled, and the evidence establishes, different grounds for discipline. An MLO endorsement shall not be issued to an applicant who has been "convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application for licensing, or at any time preceding the date of application, if the

felony involved an act of fraud, dishonesty, a breach of trust, or money laundering." (§ 10166.05, subd. (b)(1).) Additionally, the Department may revoke an MLO endorsement for a "violation of this article, or any rules or regulations adopted hereunder" or if the holder "fails at any time to meet the requirements of Section 10166.05" (§ 10166.051, subds. (a) & (b).)

30. Here, respondent was convicted of a felony within the past seven years. Section 10166.05, subdivision (b)(1), as it interacts with section 10166.051, does not require that the conviction involve dishonesty if the conviction was within the past seven years. Thus, cause for discipline exists pursuant to sections 10166.05, subdivision (b)(1), and 10166.051.

APPROPRIATE DISCIPLINE

Broker License

31. The Department has adopted criteria to consider the rehabilitation of a licensee convicted of a crime. Relevant criteria include: (1) the time that has elapsed since commission of the crime, with the passage of less than two years after the most recent criminal conviction or act deemed inadequate to demonstrate rehabilitation; (2) successful completion or early discharge from probation or parole; (3) payment of fines; (4) correction of business practices; (5) new and different social and business relationships from those which existed at the time of the commission of the crime; (6) stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction; (7) significant and conscientious involvement in community, church, or privately-sponsored programs designed to provide social benefits or to ameliorate social problems; and (8) change in attitude from that which existed at the time of the commission of the crime. (Cal. Code Regs., tit. 10, § 2912.)

32. Here, respondent's felony conviction was serious, even though there were mitigating circumstances and he ultimately only received a sentence of fines and 24 months on supervised release. Despite his prior interactions with law enforcement and extensive criminal history, he chose to violate federal law and also failed to appropriately educate himself about the legal requirements for marijuana cultivation in California. Respondent's actions are concerning, because real estate practitioners must act as fiduciaries and be able to adhere to complex legal regulations involving disclosure, documentation, and the handling and maintenance of client funds.

33. That said, respondent offered compelling and persuasive evidence of rehabilitation. He accepts full responsibility and demonstrated genuine remorse for his 2018 conviction and related misconduct. Although the conviction itself occurred just over three years ago, the underlying misconduct took place approximately 10 years ago, and respondent bears no responsibility for his delayed conviction date. During those 10 years, he has not sustained any other convictions, nor had any other negative interactions with law enforcement. He complied with his criminal sentence, paid all fines, and his supervised release was terminated five months early due to his successful compliance. He has no problems with substance abuse.

34. Additionally, since 2011, respondent has continued a successful practice as a real estate broker and mortgage loan originator, with no client complaints, Department investigations, or license discipline other than the instant matter. He instituted a strict policy at NCRI against doing any work involving the marijuana industry, and has avoided all such work despite being presented with several opportunities. By all accounts, respondent has also made meaningful changes in his personal life; he is a more devoted husband and father, spends more time with his

family, and performs significant community service involving animal charities and in his capacity as an ordained minister.

35. Given the foregoing, outright revocation of respondent's broker license is unnecessary to protect the public interest. Instead, a shorter, two-year period of monitoring through a restricted license is sufficient to address any lingering concerns about the nature of respondent's conviction and his prior criminal history.⁶

MLO Endorsement

36. Given the above rehabilitation evidence, it is also appropriate to subject respondent's MLO endorsement to the same conditions of the restricted license for a two-year period. Respondent's 2018 conviction has not been expunged or pardoned, nor has a certificate of rehabilitation been issued. Based thereon, complainant argues the MLO endorsement must be revoked outright, because the applicable statutory framework does not permit consideration of respondent's rehabilitation evidence and instead mandates revocation. Complainant is mistaken.

37. Complainant relies on section 10166.05 and California Code of Regulations, title 10, sections 2911 and 2945.3. Section 10166.05, subdivision (b)(1), provides that the Department shall not issue an MLO endorsement to an *applicant* who has been "convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application for licensing" In turn, California Code of Regulations, title 10,

⁶ Complainant's hearing brief also does not request outright revocation of respondent's broker license, but consistently recommends respondent be granted the right to apply for a restricted license with a two-year term.

section 2911, which sets forth rehabilitation criteria for license *applicants*, contains the following provision:

The SAFE Act, commencing with section 10166.01 of the Business and Professions Code, imposes specific conditions that apply to *applications* for a mortgage loan originator license endorsement. Each of the above criteria notwithstanding, no mortgage loan originator license endorsement shall be issued to an *applicant* for such license endorsement where the *applicant*: (1) Has been convicted of any felony during the seven year period preceding the date of his or her application for a license endorsement. This ban is not subject to mitigation or rehabilitation unless the felony conviction has been expunged or pardoned, or unless the real estate licensee has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(Cal. Code Regs., tit. 10, § 2911, subd. (b)(1) (emphasis added).) Additionally, California Code of Regulations, title 10, section 2945.3, captioned "Effect of Prior Felony Conviction on Mortgage Loan Originator License Endorsement *Application*," states:

A conviction for any felony within seven (7) years of a real estate licensee's *application* for a mortgage loan originator license endorsement is cause for denial of the *application* . . . These restrictions constitute a ban on the real estate licensee's *ability to apply for a license endorsement*. These restrictions are not subject to mitigation or rehabilitation.

(emphasis added).

38. The mandatory language of the above statute and regulations plainly precludes issuance of an MLO endorsement to an *applicant* who has a felony conviction in the seven years preceding the application, absent evidence of an expungement, pardon, or certificate of rehabilitation. Thus, for such MLO endorsement applicants, application denial is mandated, regardless of any rehabilitation evidence.

39. However, the Legislature notably chose non-mandatory, permissive language pertaining to *current holders* of an MLO endorsement. Specifically, the Department "*may* . . . after appropriate notice and opportunity for hearing" revoke an MLO endorsement for a "violation of this article, or any rules or regulations adopted hereunder" or if the holder "fails at any time to meet the requirements of Section 10166.05" (§ 10166.051, subds. (a) & (b).) The plain meaning of the statute suggests that the Department may, but is not required to, revoke an MLO endorsement based on the record in a particular case. (*See Lee v. Hanley* (2015) 61 Cal.4th 1225, 1232-1233 ["We give the language its usual and ordinary meaning, and if there is no ambiguity, then we presume the lawmakers meant what they said, and the plain meaning of the language governs."]; *People v. Bautista* (2008) 163 Cal.App.4th 762, 777 ["Under the standard rules of statutory construction, we will not read into the statute a limitation that is not there."].)

40. Beyond applying the plain meaning of the statutory text, it is also reasonable for the Legislature to treat applicants and current MLO endorsement holders differently. That is because applicants, unlike current holders, do not have a vested interest in the MLO endorsement.

41. At hearing, complainant was unable to cite any case law or other authority that supports a contrary interpretation. Complainant merely emphasized that it was the Department's internal policy to require outright revocation of an MLO endorsement based on a felony conviction if the holder would have been ineligible to apply for an MLO endorsement in the first instance. However, neither this court, nor the Department, has authority to disregard an applicable statute or re-write it to conform to desired policy. In the case of section 10166.051, the Legislature permitted, but specifically did not mandate, revocation. Instead, it provided entitlement to a hearing with consideration of appropriate rehabilitation evidence.

42. For the reasons discussed above, the record in this case demonstrates that outright revocation of respondent's MLO endorsement is unwarranted. Instead, it should be subjected to the same conditions as his restricted license for a period of two years. Such discipline and monitoring are sufficient to protect the public interest.

COSTS

43. Complainant may recover its reasonable investigation and enforcement costs of a case. (§ 10106.) Here, complainant incurred \$979 in investigation costs, supported by a Certified Statement of Investigation Costs by complainant; and \$471.70 in enforcement costs, supported by a Certified Statement of Costs by Richard Uno; for a total of \$1,450.70. The certified statements are accompanied by documents describing the general tasks performed, the time spent on each task, and the method of calculating the costs. Given the issues in this case, the requested costs are reasonable.

44. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth guidelines for determining whether the

costs should be assessed in the particular circumstances of each case. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his position, whether the licensee has raised a colorable challenge to the proposed discipline, the licensee's financial ability to pay, and whether the scope of the investigation was appropriate to the alleged misconduct.

45. Here, the scope of complainant's investigation was appropriate and there is cause to discipline respondent's broker license and MLO endorsement. Additionally, respondent has not offered evidence suggesting an inability to pay the relatively low amount of investigation and enforcement costs in this case. Thus, the full amount of costs is awarded.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant bears the burden of proving by clear and convincing evidence that respondent's broker license and MLO endorsement should be disciplined. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856; *Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212.) "Clear and convincing evidence requires a finding of high probability. The evidence must be so clear as to leave no substantial doubt. It must be sufficiently strong to command the unhesitating assent of every reasonable mind." (*In re David C.* (1984) 152 Cal.App.3d 1189, 1208.)

Cause for Discipline

2. Based on the Factual Findings as a whole, and specifically, Factual Findings 24 through 27, cause exists to discipline respondent's broker license pursuant to sections 490 and 10177, subdivision (b)(1).

3. Based on the Factual Findings as a whole, and specifically, Factual Findings 28 through 30, cause exists to discipline respondent's MLO endorsement pursuant to sections 10166.05, subdivision (b)(1), and 10166.051.

Appropriate Discipline

4. The Department has adopted criteria to consider the rehabilitation of a licensee convicted of a crime. (Cal. Code Regs., tit. 10, § 2912.) Based on the Factual Findings as a whole, and specifically Factual Findings 31 through 42, monitoring of respondent through a restricted license for a period of two years is sufficient to protect the public interest. Additionally, it is appropriate to subject respondent's MLO endorsement to the same conditions of the restricted license during that two-year period.

Costs

5. Complainant may recover its reasonable investigation and enforcement costs of a case. (§ 10106.) Based on Factual Findings 43 through 45, reasonable investigation and enforcement costs in the amount of \$1,450.70 are awarded.

ORDER

All licenses and licensing rights of respondent Steven Marcus 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 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.

Respondent's mortgage loan originator endorsement is REVOKED; however, the revocation is stayed, and respondent shall be subject to the terms and conditions set forth below regarding respondent's restricted broker license.

The restricted 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 restricted license issued to respondent and his mortgage loan originator endorsement 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 and his mortgage loan originator endorsement 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, including the removal of the conditions, limitations, or restrictions imposed upon his mortgage loan originator endorsement, 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 and mortgage loan originator endorsement 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.

5. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order the suspension of respondent's real estate broker license and mortgage loan originator endorsement until respondent passes the examination.

6. Pursuant to Business and Professions Code sections 10106 and 10148, respondent shall pay the Commissioner's reasonable investigation and enforcement costs in the sum of \$1,450.70. The Department may, in its sole discretion, order respondent to make payments pursuant to a Department-approved payment plan during his probation.

7. The Commissioner may suspend respondent's license and mortgage loan originator endorsement pending a hearing held in accordance with section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between respondent and the Commissioner. The suspension shall remain in effect until payment is made in full or until respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

DATE: May 12, 2021

Wim vanRooyen

WIM VAN ROOYEN

Administrative Law Judge

Office of Administrative Hearings