

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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In the Matter of the Accusation of:

SCOTTLYNN J. HUBBARD,

Respondent.

) DRE No. H-7202 SAC

) OAH No. 2023100835

FILED

MAY 20 2024

DEPARTMENT OF REAL ESTATE
By J. Taggart

DECISION

The Proposed Decision dated April 16, 2024, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The Decision suspends or revokes one or more real estate licenses, but the right to a restricted salesperson license is granted to Respondent.

Pursuant to Government Code Section 11521, the Department of Real Estate (the Department) may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Department's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first.

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The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on JUN 10 2024.

IT IS SO ORDERED

5/17/2024
Chika Sunquist
REAL ESTATE COMMISSIONER


By: Marcus L. McCarther
Chief Deputy Real Estate Commissioner

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

FILED
MAY 16 2024
DEPARTMENT OF REAL ESTATE
By J. Leggett

In the Matter of the First Amended Accusation Against:

SCOTTLYNN J. HUBBARD, Respondent

Agency Case No. H-7202 SAC

OAH Case No. 2023100835

PROPOSED DECISION

Wim van Rooyen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on March 28, 2024, by videoconference and telephone from Sacramento, California.

Adriana Z. Badilas, Counsel, represented Tricia Parkhurst (complainant), Supervising Special Investigator, Department of Real Estate (Department), State of California.

Susan M. Hearne, Attorney at Law, represented Scottlynn J. Hubbard (respondent), who was present.

Evidence was received, the record closed, and the matter submitted for decision on March 28, 2024.

FACTUAL FINDINGS

Jurisdiction

1. On July 10, 2006, the Department issued respondent Real Estate Broker License No. B/01743834 (broker license). The broker license will expire on October 7, 2026, unless renewed.

2. On March 18, 2024, complainant, in her official capacity, signed and later filed a First Amended Accusation in Case No. H-7202 SAC (FAA) against respondent. In the FAA, complainant asserts cause to discipline respondent's broker license based on respondent's discipline by the California State Bar for acts that, if done by a real estate licensee, would be grounds to discipline a California real estate license. Additionally, as a matter in aggravation, complainant alleges that the Hawaii State Bar issued reciprocal discipline of respondent's Hawaii law license. Complainant seeks revocation of respondent's broker license, as well as recovery of reasonable investigation and enforcement costs.¹

3. Respondent timely filed a Notice of Defense. Thereafter, the matter was set for an evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

¹ The parties stipulated on the record at hearing to amend the FAA on page two, line 13, to substitute "(2) Four counts of violating Section 6068(d)" for "(2) Three counts of violating Section 6068(d)."

Discipline by California State Bar

4. Respondent first became licensed as an attorney in California in 2001. On May 13, 2020, after a hearing at which respondent presented evidence and argument, the State Bar Court of California found respondent culpable on three counts of violating Business and Professions Code section 6106 (moral turpitude – misrepresentation); four counts of violating Business and Professions Code section 6068, subdivision (d) (seeking to mislead a judge); and three counts of violating Business and Professions Code section 6068, subdivision (b) (failure to maintain respect due to courts and judicial officers). It was recommended that respondent be suspended from the practice of law in California for two years, execution of the two-year suspension be stayed, and respondent be placed on probation for two years. Probation terms were to include an actual suspension for a minimum of the first year of probation, completion of the State Bar Ethics School course, retaking and passing the Multistate Professional Responsibility Examination (MPRE), and paying costs.

The disciplinary charges were based on misleading statements respondent made as an attorney in two separate appeal proceedings. He made such statements in the course of representing his father, who had also been an attorney, before the Ninth Circuit Court of Appeals and the United States Supreme Court. The misleading statements included a statement that his father never committed professional misconduct when in fact his father had previously been disciplined by courts and found culpable of professional misconduct by a State Bar Court hearing judge.

5. On October 27, 2020, the California Supreme Court denied respondent's petition for review. It adopted and implemented the discipline recommended by the State Bar Court of California.

Discipline by Hawaii State Bar

6. On January 15, 2021, the Hawaii State Bar issued a reciprocal suspension of respondent's Hawaii law license based on the California State Bar's disciplinary action. The Hawaii State Bar suspended respondent from practicing law in Hawaii for one year. As a condition of reinstatement of his Hawaii law license, respondent was required to show proof of reinstatement and good standing from the California State Bar.

Respondent's Evidence

7. Respondent testified at hearing. He successfully practiced law in Chico, California for almost 20 years, primarily representing plaintiffs in Americans with Disabilities Act (ADA) cases. His legal career was unblemished until his 2020 discipline by the California State Bar. Respondent admits he made misrepresentations to the Ninth Circuit Court of Appeals and the United States Supreme Court regarding the nature and extent of his father's professional discipline. He appreciates the gravity of his misconduct and accepts responsibility for it. He now understands "there are good reasons surgeons don't operate on family members; it's hard to maintain objectivity when your own flesh and blood is in jeopardy." He believes he will never make that mistake again.

8. Respondent has complied with all probation conditions set by the California State Bar. He completed the State Bar Ethics School course, passed the MPRE, completed 100 hours of continuing legal education (over 24 hours of which related to ethics), and paid all required costs (\$24,168.60). Although the two-year probation period has passed, respondent is not yet eligible to practice law in California. That is because he must first file a petition for reinstatement. Respondent

has not yet done this because he was uncertain whether he wanted to practice law again. However, he recently decided to pursue reinstatement because the attorney who assumed his prior clients is experiencing health issues. Respondent now desires to restore his California law license so he can serve his former clients again. Because his California law license has not yet been restored, his Hawaii law license also remains suspended.

9. Since respondent's 2020 discipline by the California State Bar, he has engaged in significant community service. He performs approximately 12 hours of community service a week by feeding the homeless daily, volunteering with disabled convicts weekly, and coordinating with the mayor of Chico to construct longer-term housing for the homeless in the area.

10. Respondent has held a broker license since 2006. To date, he has primarily used it to purchase properties for his family in the name of created business entities. That license has never been disciplined. Respondent promptly disclosed his California State Bar discipline to the Department, provided all related documentation, and cooperated with the Department's inquiries.

11. Respondent strongly desires to retain his broker license to support his family, especially until he reinstates his California law license. He is married with three children, ages 20, 17, and 14.

12. Respondent offered letters of support by numerous individuals, including former attorney colleagues and opposing counsel, former clients, friends, and the mayor of Chico. All laud respondent's competence, professionalism, remorse for his prior misconduct, compassion, and community service.

Costs

13. In prosecuting this matter, the Department incurred \$1,582.75 in investigation costs, supported by a Certified Statement of Investigation Costs, and \$1,036.20 in enforcement costs, supported by a Certified Statement of Costs by Ms. Badilas. The total costs sought are \$2,618.95. 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.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant bears the burden of proving by clear and convincing evidence that respondent's license should be disciplined. (*Ettinger v. Bd. 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. The Commissioner may discipline the license of a real estate licensee if the licensee:

(f) [H]ad a license issued by another agency of this state . . . suspended . . . for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a

California real estate license, if the action of . . . suspension . . . by the other agency or entity was taken only after giving the licensee . . . fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and only upon an express finding of a violation of law by the agency or entity.

(Bus. & Prof. Code, § 10177, subd. (f).)

3. Here, respondent's license issued by another state agency was suspended. Specifically, the California State Bar suspended respondent's California law license.

4. Additionally, respondent's California law license was suspended for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license. Specifically, respondent made misleading statements regarding the nature and extent of his father's prior professional discipline while representing his father before two separate courts. Such conduct by a real estate licensee would be grounds for discipline of a real estate license. (See Bus. & Prof. Code, §§ 10176, subds. (a) (making a substantial misrepresentation), (b) (making any false promises of a character likely to influence, persuade, or induce), (c) (a continued and flagrant course of misrepresentation), and (i) (conduct that includes fraud and/or dishonest dealing), and 10177, subds. (d) (willful disregard of real estate law), (g) (negligence or incompetence), and (j) (fraud or dishonest dealing).)

5. Finally, respondent's California law license was suspended only after fair notice of the charges, an opportunity for a hearing, and other due process protections. Indeed, respondent presented evidence and argument at a hearing conducted in the California State Bar Court, with review by the California Supreme Court. Respondent was expressly found to have violated Business and Professions Code sections 6106 (moral turpitude – misrepresentation); 6068, subdivision (d) (seeking to mislead a judge); and 6068, subdivision (b) (failure to maintain respect due to courts and judicial officers).

6. Thus, complainant demonstrated by clear and convincing evidence that cause for discipline exists pursuant to Business and Professions Code section 10177, subdivision (f). The only remaining question is the appropriate degree of discipline.

Appropriate Discipline

7. Respondent's misconduct underlying the California State Bar discipline was serious. Respondent made misleading statements that amounted to fraud on the courts. Such misconduct is substantially related to licensed real estate work, which requires the discharge of fiduciary duties with honesty and integrity. (*Harrington v. Dept. of Real Estate* (1989) 214 Cal.App.3d 394, 402 ["Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee."].)

8. To his credit, respondent accepted responsibility for his prior misconduct. (*Seide v. Com. of Bar Examiners of the State Bar of Cal.* (1989) 49 Cal.3d 933, 940 ["Fully acknowledging the wrongfulness of [one's] actions is an essential step towards rehabilitation."].) Although his California law license has not yet been reinstated, he has fully complied with all probation conditions and is eligible to pursue

reinstatement. He has no history of prior discipline involving his broker license. His consistent and extensive community service is also admirable. Finally, respondent's support letters laud his competence, professionalism, remorse for his prior misconduct, and compassion.

9. Licensing proceedings are not intended to punish an individual but to protect the public, maintain the integrity and high standards of the profession, and preserve public confidence in licensure. (*Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.) Considering the record as a whole, issuance of a restricted real estate salesperson license is more appropriate than outright license revocation. Monitoring respondent on a restricted real estate salesperson license for a period of two years, with oversight by a licensed broker, will be sufficient to assuage any lingering concerns regarding respondent's integrity and protect the public interest.

Costs

10. The Department may recover its reasonable investigation and enforcement costs of a case. (Bus. & Prof. Code, § 10106.) Here, the Department incurred a total of \$2,618.95 in investigation and enforcement costs. Such costs are reasonable given the issues in this case.

11. 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 or reduced 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 their 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.

12. Here, the scope of the investigation was appropriate to the alleged misconduct. Respondent was not successful in getting charges dismissed or reduced. Although he raised a colorable challenge to the proposed discipline of revocation, he did not present any evidence of financial inability to pay the relatively low amount of costs. After considering the record as a whole, no cost recovery reduction is warranted.

ORDER

All licenses and licensing rights of respondent Scottlynn J. Hubbard under the Real Estate Law are REVOKED; provided, however, a restricted real estate salesperson 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.

The restricted license issued to respondent shall be subject to all 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 notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner. The letter shall set forth the date of respondent's arrest, the crime for which respondent was arrested, and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

3. With the application for license, or with the application for transfer to a new employing broker, respondent shall submit a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify as follows: (a) that the employing broker has read the Decision which is the basis for the issuance of the restricted license; and (b) that the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

4. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate salesperson or broker license, nor the removal of any of the conditions, limitations, or restrictions attaching to the restricted license, until two years have elapsed from the date of issuance of the restricted license to respondent.

5. Pursuant to Business and Professions Code section 10106, respondent shall pay the Commissioner reasonable investigation and enforcement costs in the

sum of \$2,618.95. The Commissioner may, in its sole discretion, order respondent to make payments pursuant to an approved payment plan during his probation.

6. The Commissioner may suspend respondent's license 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: April 16, 2024

Wim vanRooyen

WIM VAN ROOYEN

Administrative Law Judge

Office of Administrative Hearings