

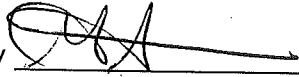
FILED

BEFORE THE
DEPARTMENT OF REAL ESTATE

March 8, 2013

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By 

In the Matter of the Accusation of)
)
 DAVID CHARLES RYAN,)
)
 Respondent.)
_____)

CASE NO. H-11441 SF

OAH NO. 2012090186

DECISION

The Proposed Decision dated February 19, 2013, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter with the following corrections:

On Page 2, paragraph 6 of the Proposed Decision, Office of the Attorney General should be changed to Department of Real Estate.

On Page 2, paragraph 6 of the Proposed Decision, Deputy Attorney General should be changed to Special Investigator.

On Page 7, paragraph 7 of the Proposed Decision, omit the words "investigation and".

The Decision suspends or revokes the real estate license and/or license rights; however, the right to a restricted real estate license is granted to Respondent.

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 Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on MAR 29 2013

IT IS SO ORDERED

3/6/2013

REAL ESTATE COMMISSIONER


WAYNE S. BELL

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

DAVID CHARLES RYAN,

Respondent.

Case No. H-11441 SF

OAH No. 2012090186

PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on January 14, 2013, in Oakland, California.

Stephanie Sese, Counsel, and Richard K. Uno, Counsel, represented complainant Robin S. Tanner, a Deputy Real Estate Commissioner of the State of California.

Respondent David Charles Ryan represented himself and was present throughout the administrative hearing.

The record was held open until January 25, 2013, for respondent to submit documentary evidence of rehabilitation, and until February 11, 2013, for any response by complainant. Documentary evidence was timely received from respondent, marked as Exhibit A, and received in evidence as administrative hearsay. No response was received from complainant and the matter was deemed submitted for decision on February 11, 2013.

FACTUAL FINDINGS

1. Complainant Robin S. Tanner made the accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California.
2. David Charles Ryan (respondent) was originally issued a real estate salesperson license by the Department of Real Estate (Department) on February 16, 1989. The license is scheduled to expire on June 5, 2015.

Cause for Discipline

3. On May 25, 2012, in the Superior Court of California, County of Mendocino, respondent was convicted of violating Penal Code sections 484/488 (petty theft), a

misdemeanor. Imposition of sentence was suspended and respondent was placed on summary probation for 12 months on conditions that included serving one day in the county jail, and paying restitution and various fines and fees.

The facts and circumstances underlying the conviction are that in September 2010, respondent wrote three checks to a lumber yard totaling \$2,630.10. The checks were returned for insufficient funds. Respondent had paid restitution in full to the victim by the date of sentencing.

4. On August 10, 2011, in the Superior Court of California, County of Mendocino, respondent was convicted of violating Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol), a misdemeanor. Imposition of sentence was suspended and respondent was placed on summary probation for 60 months on conditions that included serving 20 days in county jail, completing the multiple offender drinking driver program and paying various fines and fees. After respondent failed to surrender as ordered to county jail, he was found in violation of his probation, and ordered to serve a total of 40 days in county jail.

The facts and circumstances underlying the conviction are that on May 29, 2011, respondent was pulled over for crossing the double yellow lines while driving and for an expired trailer registration. When the officer spoke with respondent, he observed the objective signs of alcohol intoxication. Respondent was unable to competently perform the field sobriety tests and his blood alcohol content measured 0.15 percent on the preliminary alcohol screening device. Respondent was arrested and a blood test later confirmed that his blood alcohol content was above the legal limit.

5. On April 26, 2010, in the Superior Court of California, County of Mendocino, respondent was convicted of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol content above the legal limit). Imposition was suspended and respondent was placed on summary probation for a period of 60 months on conditions that included serving 48 hours in county jail, completing the first offender drinking driver program, and paying various fines and fees.

The facts and circumstances underlying the conviction are that on March 12, 2010, respondent was driving with a blood alcohol content of 0.14 percent.

Costs of Investigation and Enforcement

6. The Department has requested reimbursement of its costs of investigation and prosecution in the amount of \$1,896.30. The costs include \$917.30 in investigative costs and \$979 in enforcement costs from the Office of the Attorney General. The costs of enforcement are supported by a declaration dated January 11, 2013, by the Deputy Attorney General assigned to this case in which he describes the general tasks performed, the time spent on each task and the method of calculating his costs. The agency costs are submitted in an uncertified statement made by complainant that describes the costs and the method of

calculation, with an attachment describing the tasks performed, and the time spent on each task.

Respondent's Evidence

7. Respondent has been licensed for 24 years. He has worked for his father, Leslie Ryan, as a manager of his family's Century 21 Real Estate business for most of his career. Respondent's wife was also employed by respondent's father. The family sold the business in 2010 to Selzer Realty, where respondent worked part-time until 2012. Since 2010, respondent has been working full-time as a beekeeper. He and his wife are also working on starting a "bed and breakfast" inn.

8. Respondent reports that he has never had a client complain about his work as a realtor. Respondent's license has not been disciplined previously.

9. Respondent reports that when the real estate market collapsed, the family's income fell significantly. Respondent had overleveraged some properties he owned and was behind on the payments. He was approximately \$1,000,000 in debt, including loans secured by real estate. Most of the debts were cleared through foreclosure proceedings. In March 2010, respondent filed for Chapter 13 bankruptcy protection in order to reorganize his debts. The reorganization case was ultimately dismissed. Following the reorganization, he was approximately \$125,000 in debt to tax authorities and for court fines. Respondent pays \$200 to \$300 monthly on his court fines, and makes payments through a wage garnishment to the Internal Revenue Service. Respondent estimates he still owes \$60,000 to \$70,000 for back taxes.

10. Respondent acknowledges that he is an alcoholic. He has benefited from the multiple offender drinking driver program mandated by the court. He has completed approximately 14 months of the 18 month program and has paid all of the program fees. He is in compliance with all program activities and attends monthly group and weekly Alcoholics Anonymous meetings. Respondent reports that he began to drink to excess following his mother's death. He has learned to handle his grief appropriately through the drinking driver program. Respondent has been sober since August 25, 2012.

11. Respondent reports having made great strides emotionally and financially in the past year and pledges to continue on the right path in the future.

LEGAL CONCLUSIONS

1. Business and Professions Code section 490, subdivision (a), authorizes the suspension or revocation of a license if the licensee has been convicted of a crime that is substantially related to the qualifications, functions or duties of the licensed business or profession. Business and Professions Code section 10177, subdivision (b), which is specific to real estate licensees, authorizes the suspension or revocation of a license if the licensee has

been convicted of a crime that is substantially related to the qualifications, functions and duties of a licensee of the Department of Real Estate.

2. California Code of Regulations, title 10, section 2910, sets forth criteria for determining whether a crime is substantially related to the qualifications, functions or duties of a real estate licensee. Section 2910, subdivision (a)(1), provides that a crime is deemed to be substantially related if it involves the fraudulent taking, obtaining, appropriating or retaining of funds belonging to another person. Subdivision (a)(8) deems the doing of an unlawful act with the intent of conferring an economic benefit upon the perpetrator to be substantially related to the qualifications, functions or duties of a real estate licensee.

3. Pursuant to the facts set forth in Factual Finding 3, respondent's conviction for petty theft is substantially related to the qualifications, functions or duties of a real estate licensee because it involved the fraudulent retaining of funds belonging to another, and constituted an unlawful act performed with the intent to confer an economic benefit on him. Respondent's petty theft conviction therefore constitutes cause to discipline his license pursuant to Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b).

4. California Code of Regulations, title 10, section 2910, subdivision (a)(11), provides that two or more convictions involving the consumption of alcohol, when at least one involves driving and the use of alcohol, are substantially related to the qualifications, functions and duties of a real estate licensee. Because respondent was convicted of two offenses involving driving and the consumption of alcohol, these convictions are substantially related to the qualifications, functions and duties of a licensee. (Factual Findings 4 and 5.) Cause therefore exists to discipline respondent's license as a result of these convictions as well.

5. In California Code of Regulations, title 10, section 2912, the Department has established criteria to be used in evaluating the rehabilitation of a licensee who has committed a criminal offense. These criteria include: 1) the passage of not less than two years; 2) the payment of restitution; 3) expungement of the convictions at issue; 4) successful completion of probation; 5) abstinence from the use of alcohol for not less than two years; 6) the payment of fines imposed in connection with the criminal convictions; 7) stability of family life; and 8) a change in attitude as evidence by the respondent's testimony or evidence from family, friends or others.

Respondent's convictions are relatively recent. Indeed, he remains on probation in all three cases. However, he has paid full restitution on the petty theft conviction, has paid his drinking driver program fees and he is making monthly payments on the court fines. He has a stable family life and is working to repay his debts following the downturn in the economy. Respondent has not suffered prior discipline on his license over the course of 24 years, and there is no evidence of complaints with respondent's work as a real estate salesperson. He has acknowledged his alcoholism, is compliant with his drinking driver treatment program and is taking steps to correct his behavior. In light of his many years as a successful real

estate salesperson and his acceptance of responsibility for his misconduct, it would not be contrary to the public interest to allow respondent to retain his license under the heightened scrutiny of a restricted license, with the additional requirement that he provide proof of regular attendance at 12-step meetings during the period of restriction.

Costs

6. Complainant requests reimbursement of the costs of investigation and enforcement pursuant to Business and Professions Code section 10106. Section 10106 provides that in any order issued in resolution of a disciplinary proceeding, the commissioner may ask the administrative law judge to direct a licensee found to have committed a violation to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. Section 10106 states that a certified copy of the actual costs, signed by the commissioner or the commissioner's designated representative shall be prima facie evidence of reasonable costs of investigation and enforcement.

California Code of Regulations, title 1, section 1042, describes the procedures for submitting a request for reimbursement of the costs of investigation and enforcement. Section 1042 requires that except as otherwise provided by law, costs are to be supported by a declaration containing specific facts to support findings regarding actual costs incurred and the reasonableness of the costs. A declaration is defined as a statement under penalty of perjury. (Cal. Code Regs., tit. 1, § 1002, subd. (a)(4).)

The costs of enforcement in the amount of \$979 are supported by a declaration, and are reasonable. The costs of investigation are not certified, nor are they supported by a declaration, and thus they do not meet the requirements of either Business and Professions Code section 10106, or California Code of Regulations, title 1, section 1042. As a result, the investigative costs will not be allowed.

ORDER

All licenses and licensing rights of respondent David C. Ryan under the Real Estate Law are revoked by reason of Legal Conclusions 1 through 4; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code section 10156.5 if respondent makes application therefore 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 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 or for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.
4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:
 - a. That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
 - b. That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.
5. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. 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.
6. Every six months, respondent shall provide to the Real Estate Commissioner proof of weekly attendance at a 12-step program such as Alcoholics Anonymous or Narcotics Anonymous. Attendance may be excused at the discretion of the Commissioner for reasons including, but not limited to, illness, family emergencies, or business travel. If respondent fails to satisfy this condition, the Commissioner may order suspension of respondent's license until respondent provides such proof.

7. Respondent shall pay to the Department of Real Estate costs associated with its investigation and enforcement pursuant to Business and Professions Code section 10106 in the amount of \$979. Respondent shall be permitted to pay these costs in a payment plan approved by the Department, with payments to be completed no later than three months prior to the end of the restriction on his license.

DATED:

2/19/13



JILL SCHLICHTMANN
Administrative Law Judge
Office of Administrative Hearings