

FILED

BEFORE THE BUREAU OF REAL ESTATE

MAR 13 2018

STATE OF CALIFORNIA

BUREAU OF REAL ESTATE
By B. Nicholas

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In the Matter of the Accusation of)	CalBRE No. H-12072 SF
)	
ANDREW MICHAEL OLDHAM,)	OAH No. 2017051170
)	
Respondent.)	

DECISION

The Proposed Decision dated January 26, 2018, 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 broker license is granted to Respondent.

Pursuant to Government Code Section 11521, the Bureau of Real Estate 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 Bureau'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 APR 03 2018.

IT IS SO ORDERED 3/9/18

WAYNE S. BELL
REAL ESTATE COMMISSIONER



By: DANIEL J. SANDRI
Chief Deputy Commissioner

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

ANDREW MICHAEL OLDHAM,

Respondent.

Case No. H-12072 SF

OAH No. 2017051170

PROPOSED DECISION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter on January 25, 2018, in Oakland, California.

Kyle T. Jones, Counsel for the Bureau of Real Estate, represented complainant, Robin S. Tanner, a Supervising Special Investigator for the Bureau of Real Estate of the State of California.

Andrew Michael Oldham represented himself and was present throughout the administrative hearing.

The matter was submitted on January 25, 2018.

FACTUAL FINDINGS

1. Robin S. Tanner made the accusation in her official capacity as a Supervising Special Investigator for the Bureau of Real Estate of the State of California.
2. Andrew Michael Oldham (respondent) has been licensed under the Real Estate Law as a real estate broker since March 19, 1996. Respondent's license (no. B/01207289) will expire on March 18, 2020, unless renewed.
3. Respondent has been licensed as an attorney in California since December 11, 1989. On June 26, 2016, The Supreme Court of California issued an order pursuant to a stipulation with the State Bar of California in which his law license was disciplined. As a result of the stipulation and order, respondent's license to practice law was suspended for a period of one year, execution of which was stayed, and his license placed on probation for two years on conditions that included an actual suspension from the practice of law for 60 days, submitting quarterly reports to the State Bar, and passing the Multistate Professional Responsibility Examination and paying restitution.

The discipline imposed on respondent's license to practice law was based on the following stipulation: 1. Respondent charged and collected \$2,500 for loan modification services for which the clients hired him in violation of Civil Code section 2944.7, subdivision (a), and thereby violated Civil Code section 6106.3; and 2. Respondent failed to promptly refund, upon termination of his employment, the \$2,500 collected from the client, thereby violating Rules of Professional Conduct, rule 3-700, subdivision (D)(2).

4. The facts underlying the violations of the Rules of Professional Conduct arose in 2013 and 2014, when John and Stephanie Gonzalez paid respondent to file bankruptcy and provide loan modification services. Wells Fargo denied the loan modification application. The bankruptcy was refiled without a loan modification. Respondent had not completed the mortgage loan modification work at the time he collected and received the \$2,500.

5. Although the clients requested a refund of \$2,500 in February 2015, respondent waited until after the State Bar notified him that it intended to file disciplinary charges, to return the money to the clients. Respondent has made full restitution.

6. In assessing discipline, the State Bar found one matter in aggravation: Respondent had a previous private reproof effective January 6, 2012 for charging and collecting loan modification fees in four matters, in violation of Business and Professions code section 6106.3. The State Bar found one matter in mitigation: Respondent recognized his wrongdoing by entering into a pre-filing stipulation.

7. Respondent has paid the State Bar the costs of prosecution and has taken and passed the multistate professional responsibility examination. Respondent has submitted the quarterly reports to the State Bar as ordered. The period of actual suspension has passed, but his law license remains on a probationary status until July 2018.

8. At hearing, respondent testified that he takes this matter very seriously. He reported this matter to the Bureau of Real Estate himself. He has taken responsibility for his actions.

9. Respondent has his own law practice. He is also a broker for Keller Williams Bay Area Estates. He values his broker's license. He has over 20 years in the real estate profession. This is his first complaint by the Bureau of Real Estate.

10. The Bureau incurred costs of investigation and prosecution of this case in the amount of \$976.20. That amount is reasonable.

LEGAL CONCLUSIONS

1. Business and Professions Code section 10177, subdivision (f), authorizes the suspension or revocation of a real estate license when discipline is imposed by another agency for acts done which would constitute grounds for discipline on the real estate license.

In the State Bar Court proceedings, respondent stipulated that he failed to promptly return client funds, and charged and collected loan modification fees prior to completing loan modification services. This conduct would be grounds for discipline if done by a real estate licensee. (Findings 3 through 5.) Cause for discipline therefore exists pursuant to section 10177, subdivision (f).

2. In determining the appropriate discipline, the central question is whether respondent is substantially rehabilitated from his misconduct. Respondent bears the burden of demonstrating his rehabilitation. The criteria used by the Bureau of Real Estate in evaluating a licensee's rehabilitation are set forth in California Code of Regulations, title 10, section 2912. The following relevant factors have been considered: the misconduct occurred more than four years ago, and this was the first incident of discipline in over 20 years of real estate practice (subd. (a)); restitution has been paid (subd. (b)); respondent has paid the prosecution costs to the State Bar (subd. (g)); and, respondent has taken and passed the multistate professional responsibility examination ordered by the State Bar (subd. k)). On the other hand, respondent's misconduct involved real estate dealings.

The paramount concern is whether a licensee is rehabilitated to the extent that he can be trusted to discharge his duties as a real estate broker in a manner consistent with public safety. Based upon the matters set forth in Factual Findings 6 through 9, it is determined that respondent has established sufficient rehabilitation that it would not be contrary to the public interest to allow him to retain his broker license on a restricted basis.

3. Cost recovery is allowed in the amount of \$976.20 pursuant to Business and Professions Code section 10106.

ORDER

1. All licenses and licensing rights of respondent Andrew Michael Oldham under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to Business and Professions Code section 10156.5 if respondent makes application therefor and pays to the Bureau 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:

- a. 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.
- b. 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.
- c. 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 suffered further discipline against his State Bar license for acts that, if done by a real estate licensee, would be grounds for discipline of his real estate license.
- d. 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 three years have elapsed from the effective date of this Decision.
- e. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that he 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.
- f. Respondent shall pay cost recovery in the amount of \$976.20 to the Bureau within 60 days of the effective date of this decision.

DATED: January 26, 2018

DocuSigned by:

Ruth S. Astle

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RUTH S. ASTLE

Administrative Law Judge

Office of Administrative Hearings