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DEPARTMENT OF REAL ESTATE
By *K. Kropp*

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:)	DRE No. H-12211 SF
)	
THOMAS ANDREW LEGAULT,)	OAH No. 2018041025
)	
Respondent.)	
)	

ORDER DENYING RECONSIDERATION

On October 5, 2018, a Decision was rendered in the above-entitled matter. The Decision was to become effective on October 29, 2018, and was stayed by separate Order to November 28, 2018.

On October 25, 2018, Respondent petitioned for reconsideration of the Decision of October 5, 2018.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of October 5, 2018, and reconsideration is hereby denied.

IT IS SO ORDERED *November 16, 2018*.

DANIEL SANDRI
ACTING REAL ESTATE COMMISSIONER

Daniel J. Sandri

Flag.

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OCT 26 2018

DEPARTMENT OF REAL ESTATE
By B. Nicholas

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:)	DRE NO. H-12211 SF
THOMAS ANDREW LEGAULT,)	OAH NO. 2018041025
Respondent.)	

ORDER STAYING EFFECTIVE DATE

On October 5, 2018, a Decision was rendered in the above-entitled matter to become effective October 29, 2018.

IT IS HEREBY ORDERED that the effective date of October 29, 2018, is stayed for a period of 30 days to allow Respondent THOMAS ANDREW LEGAULT to file a petition for reconsideration or consider Respondent's petition for reconsideration.

The Decision of October 5, 2018, shall become effective at 12 o' clock noon on November 28, 2018.

DATED: October 26, 2018

DANIEL J. SANDRI
ACTING REAL ESTATE COMMISSIONER

Daniel J. Sandri

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

FILED

OCT 08 2018

In the Matter of the Accusation of:
THOMAS ANDREW LEGAULT,
Respondent.

) DRE No. H-12211 SF
)
) OAH No. 2018041025
)

DEPARTMENT OF REAL ESTATE

By K. Krapp

DECISION

The Proposed Decision dated September 17, 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.

Pursuant to Government Code Section 11521, the Department 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 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.

///

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 OCT 29 2018.

IT IS SO ORDERED October 5, 2018

DANIEL SANDRI
ACTING REAL ESTATE COMMISSIONER



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

THOMAS ANDREW LEGAULT,

Respondent.

Case No. H-12211 SF

OAH No. 2018041025

PROPOSED DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on September 12, 2018, in Oakland, California.

Kyle T. Jones, Real Estate Counsel, represented complainant.

Sean Absher, Attorney at Law, represented respondent Thomas Andrew Legault, who was present.

The record closed, and the matter was submitted on September 12, 2018.

FACTUAL FINDINGS

1. Complainant Robin Tanner made the accusation in her official capacity as a Supervising Special Investigator for the Department of Real Estate (Department).
2. Respondent Thomas Andrew Legault is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code, as a real estate broker. Respondent has been a real estate licensee since 1982. There have been no prior disciplinary actions against respondent.
3. On September 20, 2017, respondent was convicted in the United States District Court for the Northern District of California, pursuant to a plea of guilty, of bid rigging, in violation of 15 U.S.C. § 1. Respondent's conviction is a felony that bears a substantial relationship to the qualifications, functions, and duties of a real estate licensee.

Respondent was sentenced to three years' probation and ordered to pay a \$20,000 fine, a \$100 assessment, and \$2,411 in restitution. Respondent has paid the full monetary

penalties and is compliant with probation. Probation is scheduled to end in 2020; however respondent intends to seek early termination of probation in the near future.

4. The facts and circumstances of the offense occurred in 2010. Respondent was engaged in a conspiracy involving trustee sales of foreclosed real estate properties. These sales were done at auctions on the courthouse steps in Contra Costa County. Numerous individuals were involved in the conspiracy. The participants agreed amongst themselves who would bid on a particular parties and the rest of the participants agreed not to bid. The participants subsequently conducted their own private auctions for the foreclosed properties. In participating in this conspiracy, respondent unlawfully paid other potential buyers not to bid on certain properties and also received money from other buyers not to bid on certain properties. As a result of this conspiracy, sales prices were unlawfully suppressed, to the detriment of lenders, property owners, and the public.

Respondent's Evidence

5. Respondent is 57 years old and has lived in Contra Costa County since he was a teenager. He became a real estate licensee at the age of 21. He operated his own firm for about 10 years, from 1984 to 1994. At this time, he and his agents joined the firm of broker James Kropa. Kropa retired in 2017, and respondent took over and continues to operate the Kropa Realty firm in Walnut Creek. Respondent supervises about 14 licensees.

6. Respondent expressed remorse for his misconduct, which he called the biggest mistake of his life. He explained that at the time he committed the offense, he did not realize that what he was doing was illegal. He began attending foreclosure auctions in August or September 2009. He had no prior experience with these auctions and found the environment to be "like the Wild West." He thought the unlawful activities he participated in were "how it's done." Respondent purchased properties at the auctions as personal investments and not on behalf of clients. He is no longer going to foreclosure auctions.

7. Respondent was contacted by FBI agents in January 2011. During this meeting, he learned that the conduct was illegal. He participated fully in the investigation of the conspiracy. The Criminal Information against respondent was filed on June 30, 2011, alleging that respondent committed bid rigging and conspiracy to commit mail fraud. Respondent initially entered into a plea agreement on August 11, 2011, in which he agreed to plead guilty to both counts and to cooperate with the government. It was stipulated that the volume of commerce involved in his criminal acts was \$754,605. In 2016, the parties entered into a new plea agreement in which respondent pleaded guilty only to the bid rigging count and the mail fraud count was dropped.

8. Respondent's cooperation with the government was confirmed by Assistant United States Attorney Jeane Hamilton. In a March 10, 2018 letter to the Department's investigator, Hamilton wrote that respondent was one of the first defendants to take responsibility for his conduct, that he provided documentation and sat for an extensive interview, and that he was a relatively lesser participant in the conspiracy.

9. Respondent was open with his family, colleagues, friends, and clients during the criminal proceedings. He wrote an email to his colleagues and clients at the time the Criminal Information was filed, explaining the circumstances and expressing regret and embarrassment. He also contacted the Department.

10. Respondent described the anxiety he has endured since he was initially contacted by the FBI in 2011. Regret and worry about his actions have kept him awake at night for the past several years. Respondent regrets his involvement in the conspiracy every day.

11. Four witnesses testified at hearing on respondent's behalf.

a. Respondent's son, Andrew Legault, is 20 years old and a student majoring in economics at UC Berkeley. Andrew Legault was 13 years old when the criminal proceedings began. He related that his father was transparent with the family, took responsibility for his actions, and did not blame others. Andrew Legault has been licensed as a real estate salesperson since 2017. Andrew Legault worked at respondent's firm during the summer of 2017. Respondent counseled him not to engage in unethical practices.

b. James Kropa is a retired real estate broker who worked in the profession in Contra Costa County for 47 years. He oversaw respondent's activities for more than 20 years and never saw respondent engage in any dishonesty. Respondent was a productive agent and there were never any complaints from clients. Kropa sold his firm to respondent when he retired, so that the agents working there could stay together. Kropa trusts respondent and holds him in high regard.

Kropa is aware of respondent's conviction for bid rigging. When he first learned that respondent was in trouble for bid rigging, Kropa did not understand why respondent's actions were illegal. Kropa now understands, but still believes that the government's prosecution of respondent and the Department's discipline action are disproportionately harsh.

Kropa added that he admires respondent's long involvement with the Food Bank and regrets not participating more himself.

c. Dave Hansen is a licensed real estate broker. He got to know respondent in 2009, although they had met a few times prior to that date. Hansen went to foreclosure auctions during the time period that respondent engaged in bid rigging. Hansen and respondent developed a friendship during this time. Hansen did not participate in bid rigging but observed that the practice was widespread and the environment at the auctions was chaotic and confusing. Hansen was approached frequently and asked to participate in the conspiracy. Respondent revealed to him that he had participated in the hopes of getting the individuals engaging in the conspiracy to "get off his back."

Despite respondent's conviction, Hansen continues to view him as a man of integrity and would not hesitate to refer clients to him. Agents working under Hansen have been involved in transactions with respondent and have reported that respondent was honest and fair.

d. Mark Cooksey is a licensed real estate broker who has worked at the Kropa firm since 1990. He met respondent when respondent joined the firm in 1993. Respondent has been in charge for almost two years now. Cooksey described respondent as a "stickler" who reviews all transaction files closely. Respondent also makes sure that all agents are up-to-date on regulations. Cooksey described respondent as knowledgeable and respected. Cooksey recalled respondent sending an email in 2011 regarding the bid rigging allegations against him. He was very surprised because such conduct seemed outside respondent's reputation for honesty and integrity. He believes respondent has learned from his experience to the benefit of the agents at the firm.

12. Numerous letters were submitted on respondent's behalf to the District Court in connection to the criminal prosecution and sentencing, from real estate professionals, clients, employees, and others. The letter writers describe respondent as an upstanding citizen, an honest and knowledgeable professional, a kind and generous member of the community, and a devoted husband and father.

13. Since 1989, respondent has actively participated in an annual drive to collect turkeys and financial donations for the Food Bank of Contra Costa and Solano. His involvement was confirmed in a September 5, 2018, letter from Special Events Manager Renee M. Baptiste. She wrote, "each year we know we can depend on [respondent's] passion to help so many in need during the holiday season."

14. Respondent has volunteered with Meals on Wheels since January 2014. He delivers meals to 16 senior citizens every day. He has volunteered with The Elder Care Team, a non-profit organization that helps senior citizens find services. He served on its board of directors for three years.

15. Respondent lives in Clayton with his wife of 25 years. In addition to his son Andrew, respondent has a 24-year-old daughter who graduated from college and is now working. Respondent's elderly parents live nearby; respondent is actively involved in their support and sees them several times each week.

Costs

16. In connection with the investigation and prosecution of this accusation, the Department has incurred expenses of \$1,777.85. These costs reflect \$1,515.30 in investigation costs and \$262.55 for legal services. The costs are supported by certifications by complainant Robin S. Tanner and attorney Kyle T. Jones. These costs are found to be reasonable.

LEGAL CONCLUSIONS

1. Business and Professions Code sections 490 and 10177, subdivision (b), authorize the Real Estate Commissioner to discipline a licensee who has been convicted of a crime that is substantially related to the qualifications, functions or duties of a real estate licensee. Business and Professions Code section 10177, subdivision (j), authorizes the Real Estate Commissioner to discipline a licensee who has engaged in fraud or dishonest dealing. Cause for discipline of respondent's real estate license has been established in light of the matters set forth in Findings 3 and 4.

2. Criteria for assessing rehabilitation of a licensee found to have committed a crime are found at California Code of Regulations, title 10, section 2912. The criteria include the passage of not fewer than two years since the conviction; payment of restitution and fines; completion or early discharge from probation; correction of business practices; development of new and different social and business relationships; stability of family life; completion or enrollment in formal education or vocational training courses; significant and conscientious community involvement; and a change in attitude from that which existed at the time of the commission of the criminal acts in question.

Respondent was convicted of one count of felony bid rigging one year ago. The criminal prosecution was under way for several years before the date of conviction. The evidence established that respondent initially entered into a plea agreement in 2011, in which he accepted responsibility for his actions. The underlying conduct took place in 2010.

Respondent has satisfied many of the rehabilitation criteria. He has a supportive and loving family. He engages in charitable community activities. He is compliant with probation and has paid the required restitution and fines.

Respondent's evidence of rehabilitation must be weighed against the severity of the offense. This conspiracy took place during the financial crisis in 2010. Numerous properties in Contra Costa County were foreclosed during this period. Many of the property owners had been victims of fraudulent lending practices. The bid rigging conspiracy that respondent participated in resulted in these properties selling for noncompetitive prices, thereby diminishing the proceeds of the foreclosure sales. The harm of this practice extended beyond the individuals and financial institutions whose properties were intentionally underbid. Respondent's actions harmed lawful investors who did not participate in the scheme, undermined public confidence, and damaged the reputation of the real estate profession.

Respondent accepted responsibility for his actions, but he expressed little insight into why he engaged in criminal activity or into the harm caused by the conspiracy in which he was involved.

A change in attitude is the most important criterion of rehabilitation. Respondent has not established a change in attitude since the time of the incidents that resulted in his

conviction sufficient to warrant continued licensure. Revocation of respondent's real estate license is necessary for the protection of the public. It would be against the public interest to permit respondent to retain his real estate license at this time.

3. Business and Professions Code section 10106 authorizes the Department to recover in disciplinary proceedings its reasonable costs of investigation and enforcement. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of costs sought pursuant to statutory provisions such as Business and Professions Code section 10106. These factors include: (a) whether the licensee has been successful at hearing in getting charges dismissed or reduced; (b) the licensee's subjective good faith belief in the merits of his position; (c) whether the licensee has raised a colorable challenge to the proposed discipline; (d) the financial ability of the licensee to pay; and (e) whether the scope of the investigation was appropriate in light of the alleged misconduct.

Taking these factors into consideration, no cause to reduce costs has been established. Respondent will be ordered to pay \$1,777.85 in cost recovery, pursuant to Business and Professions Code section 10106.

ORDER

1. All licenses and licensing rights of respondent Thomas Andrew Legault under the Real Estate Law are revoked.

2. Respondent shall pay the Department's costs associated with the investigation and enforcement of this action pursuant to Business and Professions Code section 10106, in the amount of \$1,777.85.

DATED: September 17, 2018

DocuSigned by:

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KAREN REICHMANN
Administrative Law Judge
Office of Administrative Hearings