

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

FILED

FEB 01 2019

In the Matter of the Accusation of:

GRANT STEVEN ALVERNAZ,

Respondent.

) DRE No. H-12255 SF

) OAH No. 2018080187

DEPARTMENT OF REAL ESTATE

By X. Krueger

DECISION

The Proposed Decision dated January 4, 2019, 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.

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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.

FEB 22 2019

This Decision shall become effective at 12 o'clock noon on _____.

IT IS SO ORDERED January 29, 2019

DANIEL SANDRI
ACTING REAL ESTATE COMMISSIONER

Daniel J. Sandri

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

GRANT STEVEN ALVERNAZ,

Respondent.

Case No. H-12255 SF

OAH No. 2018080187

PROPOSED DECISION

Administrative Law Judge Michael C. Starkey, State of California, Office of Administrative Hearings, heard this matter on December 11, 2018, in Oakland, California.

Counsel Kyle T. Jones represented complainant Robin S. Tanner, Supervising Special Investigator of the Department of Real Estate.¹

Mary E. Work, Attorney at Law, represented respondent Grant Steven Alvernaz, who was present.

The record closed and the matter was submitted on December 11, 2018.

FACTUAL FINDINGS

1. Respondent Grant Steven Alvernaz is licensed and/or has licensing rights under the Real Estate Law (Bus. & Prof. Code, § 10000 et seq.²) as a real estate broker.
2. On July 5, 2018, complainant Robin S. Tanner, acting in her official capacity as a Supervising Special Investigator for the Department of Real Estate, filed an accusation against respondent. Complainant alleges that respondent has been convicted of crimes substantially related to the qualifications, functions, or duties of a real estate licensee, and that such convictions establish cause to discipline his real estate license. Respondent filed a notice of defense and this hearing followed.

¹ The Bureau of Real Estate became the Department of Real Estate on July 1, 2018.

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

3. On December 15, 2017, respondent was convicted in the United States District Court, Northern District of California, upon his plea of guilty, of two counts of violating section 1 of title 15 of the United States Code (bid rigging), felonies. Respondent was sentenced to probation for a term of three years on numerous conditions, including that he serve three months of home detention and pay a \$63,272 fine, a \$200 special assessment, and \$6,350 in restitution to JPMorgan Chase Bank N.A.

4. The facts and circumstances leading to this conviction are that, between February 2009 and December 2010, respondent participated in bid rigging conspiracies. In connection with real property foreclosure auctions in Alameda and Contra Costa counties, respondent conspired with others to suppress and restrain competition in order to purchase selected properties at non-competitive prices, which resulted in monetary losses to lienholders. To carry out their conspiracy, respondent and his co-conspirators designated which conspirator would win selected properties at the public auctions, and refrained from or stopped bidding on them. Often the co-conspirators conducted secondary auctions of the selected properties and divided the resulting profits among themselves. The volume of commerce involved was \$6,327,259.

5. Respondent is 35 years old. He was born and raised in Turlock, California. In 2004, during college, he received a salesperson license and began working for a large real estate company. He earned a bachelor of science degree in agricultural business from California Polytechnic State University at San Luis Obispo in 2006. Shortly thereafter, he received a broker's license. He started a small business with Benjamin Bazar, a close friend, with financing from Bazar's grandfather. They purchased properties at trustee sales in Stanislaus County for rehabilitation and resale.

6. In 2007 respondent moved to Walnut Creek and became a broker-associate for Alain Pinel, a real estate company. He purchased properties at trustee sales in Alameda and Contra Costa counties on behalf of businesses that he partially owned. After rehabilitation of the properties, he then brokered resales of the properties through Alain Pinel.

7. In June 2011 respondent was charged with bid rigging and mail fraud. He cooperated with the FBI's investigation of the bid rigging conspiracies and also in connection with unrelated fraud he observed related to short sales. He pled guilty pursuant to a plea agreement with the federal prosecutors, who promised to advise the court of his cooperation.

8. Respondent served three months of home detention and promptly paid his fine, special assessment, and restitution. He has complied with all his probation conditions to date. He electronically reports to his parole officer monthly and to request permission to travel outside the Northern District. He is scheduled to remain on probation until December 2020.

9. Respondent remains in the business of buying properties at foreclosure sales, rehabilitating them, and reselling them. According to respondent, he continues to associate with one bid rigging co-conspirator, a former business partner with whom he remains a co-investor. Respondent maintains that he has "never crossed the line" in any real estate transaction since December 2010.

10. In addition to completing continuing education required to renew his real estate license, respondent attends online real estate seminars and investment courses.

11. Respondent has been an active volunteer for the Make-a-Wish Foundation since 2014. That participation was corroborated by a letter dated February 15, 2018, from Daniel Marlay, Volunteer Manager for Make-a-Wish Greater Bay Area.

12. At hearing, respondent testified that he felt ashamed and disappointed in himself and that his participation in the bid rigging conspiracy was the worst decision in his life. He maintains that his crimes were inconsistent with his upbringing. He did not communicate insight into the harm he caused to lienholders.

13. Respondent's father, Steve Alvernaz; his girlfriend, Kyla Hammer; and his employee, Daniel Alexander; testified and wrote letters on his behalf. Respondent also presented letters from his mother, Julie Alvernaz, and his friend and former partner, Bazar. These friends and family members offer various explanations for respondent's crimes: ignorance; his youth; an honest mistake; the influence of older co-conspirators; and the national financial crisis during the period that respondent committed the crimes. They assert that respondent is a person of honor and integrity. However, respondent participated in a multi-year conspiracy to defraud lienholders. He was approximately 25 years old when he joined the conspiracy, but he had also been licensed for more than four years at that point. The testimony of his friends and family does not provide significant evidence of mitigation. Nor did they describe any significant change in respondent's attitude since he committed the crimes.

14. Respondent also submitted a letter from Joseph Cutrufelli, his former supervisor at Alain Pinel. Cutrufelli reports that respondent resigned from Alain Pinel "so not to have his actions reflected on the company as news leaked out." Cutrufelli states that in his tenure with Alain Pinel, respondent "was one of the hardest working, ethical individuals I had ever met." As with respondent's other references, Cutrufelli fails to reconcile that opinion with respondent's years of bid rigging during the same period.

Costs

15. In connection with the investigation and enforcement of this matter, the department requests an award of costs in the total amount of \$1,424.66, comprised of \$1,166.56 in investigative costs and \$258.10 in enforcement costs. That request is supported by declarations that comply with the requirements of California Code of Regulations, title 1,

section 1042. In the absence of any argument or evidence to the contrary those costs are found to be reasonable.

LEGAL CONCLUSIONS

Standard of Proof

1. Complainant is required to prove cause for discipline of a professional license by "clear and convincing proof to a reasonable certainty." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) The Factual Findings reflect that standard.

Cause for Discipline

2. The department may suspend or revoke the license of a real estate licensee who has been convicted of a crime substantially related to the qualifications, functions, or duties of a real estate licensee. (§§ 490, subd. (a), 10177, subd. (b).) The criteria of substantial relationship are set forth in California Code of Regulations, title 10, section 2910. Respondent's bid rigging convictions are substantially related because they involve: "the fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person" (subd. (a)(1)); "bribery, fraud, deceit, falsehood or misrepresentation to achieve an end" (subd. (a)(4)); "any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator" (subd. (a)(8)); and "a pattern of repeated and willful disregard of law" (subd. (a)(10)). (Factual Findings 3 & 4.) Cause exists to suspend or revoke respondent's real estate license under sections 490, subd. (a), and 10177, subd. (b).

3. The department may suspend or revoke the license of a real estate licensee who has engaged in conduct "that constitutes fraud or dishonest dealing." (§ 10177, subd. (j).) Respondent's bid rigging conduct constitutes fraud and dishonest dealing and establishes cause to suspend or revoke his license under section 10177, subd. (j). (Factual Finding 4.)

Determination of Discipline

4. Cause for discipline having been established, the remaining issue is what level of discipline is required to protect the public. (§ 10050.1 ["protection of the public shall be paramount"].) The more serious the crimes, the stronger the showing of rehabilitation must be. (Cal. Code Regs., tit. 10, § 2912, subd. (a)(2).) Respondent participated in bid rigging conspiracies over a period of almost two years, involving \$6,327,259 in commerce. Respondent's fraudulent acts were directly related to his work as a real estate licensee and harmed real property lienholders. Accordingly, his burden to show rehabilitation is heavy.

The criteria used by the department to evaluate a licensee's rehabilitation are set forth in California Code of Regulations, title 10, section 2912. Respondent criminal actions

occurred more than seven years ago. He served the three months of home detention, promptly paid his fine, special assessment, and restitution, and appears to be in full compliance with the terms of his probation. Since committing his crimes respondent has performed volunteer work for the Make-a-Wish foundation and completed continuing education courses. He has the support of friends, family, a former supervisor, and a current employee.

Nevertheless, respondent's rehabilitation evidence falls short. The passage of time with good behavior is important measure of rehabilitation. Respondent's good behavior since June 2011 is accorded little weight because he was facing formal charges from June 2011 through his December 2017 conviction and will remain on probation until December 2020. He failed to demonstrate a significant change in attitude since committing his crimes. He admitted that he continues to associate with one of his co-conspirators. Further, respondent does not appear to fully appreciate the wrongfulness of his actions. (See *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) He did not communicate insight into the harm he caused to lienholders. Respondent has not shown sufficient rehabilitation from his bid rigging crimes. Accordingly, it would be against the public interest to allow respondent to retain his license, even on a restricted basis.

Costs

5. A licensee who is found to have committed a violation of the Real Estate Law may be ordered to pay a sum not to exceed the reasonable costs of investigation and enforcement. (§ 10106, subd. (a).) Cause exists to order respondent to pay the department its reasonable costs of investigation and enforcement in the amount of \$1,424.66. (Factual Finding 15 & Legal Conclusions 2 & 3.)

6. Cost awards must not deter licensees with potentially meritorious claims from exercising their right to an administrative hearing. (*Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.) Cost awards must be reduced where a licensee has been successful at hearing in getting the charges dismissed or reduced; a licensee is unable to pay; or where the scope of the investigation was disproportionate to the alleged misconduct. (*Ibid.*) The agency must also consider whether the licensee has raised a colorable challenge to the proposed discipline, and a licensee's good faith belief in the merits of his or her position. (*Ibid.*) Here, no reduction is warranted.

ORDER

1. All licenses and licensing rights of respondent Grant Steven Alvernaz under the Real Estate Law are revoked.

2. Respondent shall pay \$1,424.66 in costs to the Department of Real Estate.

DATED: January 4, 2019

DocuSigned by:

Michael C. Starkey

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MICHAEL C. STARKEY
Administrative Law Judge
Office of Administrative Hearings

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Department of Real Estate

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