

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of:

RAYMOND ALFRED GRINSELL,

Respondent.

) DRE No. H-12305 SF

) OAH No. 2018110409

FILED

MAY 17 2019

DEPARTMENT OF REAL ESTATE

By B. Nicholas

DECISION

The Proposed Decision dated April 15, 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.

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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 07 2019.

IT IS SO ORDERED May 16, 2019

DANIEL J. SANDRI
ACTING REAL ESTATE COMMISSIONER



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DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

RAYMOND ALFRED GRINSELL,

Respondent.

Case No. H-12305 SF

OAH No. 2018110409

PROPOSED DECISION

Administrative Law Judge David Benjamin, State of California, Office of Administrative Hearings, heard this matter on March 19, 2019, in Oakland, California.

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

Louis P. Feuchtbaum, Attorney at Law, represented respondent Raymond Alfred Grinsell, who was present.

The record closed and the matter was submitted on March 19, 2019.

FACTUAL FINDINGS

1. Respondent Raymond Alfred Grinsell is licensed and/or has license rights under the Real Estate Law (Bus. & Prof. Code, § 10000 et seq.) as a real estate broker.
2. Complainant Robin S. Tanner, acting in her official capacity as Supervising Special Investigator for the Department of Real Estate, issued an accusation against respondent. The accusation alleges that respondent has been convicted of crimes substantially related to the qualifications, functions or duties of a real estate licensee, and that he engaged in fraud or dishonest dealing.¹
3. On May 8, 2018, in the United States District Court, Northern District of California, Case No. CR-14-00534-002 CRB, respondent was convicted on his pleas of guilty of two violations of 15 U.S.C. § 1 (bid rigging), both felonies. Respondent was

¹ The accusation also alleged, in paragraphs 3 and 5, that respondent failed to notify the Department of his convictions, but complainant withdrew those allegations at hearing.

sentenced to a term of three years' probation on each count, to be served concurrently. The terms of probation require that respondent live at a halfway house for 10 months, that he perform 600 hours of community service, and that he pay restitution in the amount of \$156,146.79, and a fine in the amount of \$1,433,045. Respondent's obligation to reside at the halfway house is scheduled to end in July 2019. To date, he has performed 130 hours of community service. He paid his restitution obligation, and his fine, in lump sums on May 18, 2018. His probation is scheduled to end in May 2021.

4. The facts and circumstances leading to these convictions are that, from August 2008 to January 11, 2011, respondent conspired with others to rig bids at public auctions of real property in San Mateo County and San Francisco County. The primary purpose of the conspiracies was to purchase selected properties at non-competitive prices. To carry out the conspiracies, respondent and his co-conspirators agreed not to compete to purchase the selected properties, designated which conspirator would win the selected properties at the public auctions for the group of conspirators, and refrained from or stopped bidding on the selected properties at public auctions. Mortgage holders were entitled to receive the proceeds from the public foreclosure auctions that were the subject of the bid rigging conspiracies; respondent's restitution obligation was based on losses suffered by 26 mortgage holders.

5. Respondent's convictions are substantially related to the qualifications, functions or duties of a real estate licensee under California Code of Regulations, title 10, section 2910, as they involve "[t]he employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end" (subd. (a)(4)); "[d]oing of an unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another" (subd. (a)(8)); and "[c]onduct which demonstrates a pattern of repeated and willful disregard of law" (subd. (a)(10)).

Respondent's evidence

6. Respondent is 76 years old. He is married. Respondent and his wife have a son and daughter-in-law, and a grandchild. Respondent has health concerns; he states that it was because of his health issues that he was sentenced to 10 months in a halfway house instead of prison.

7. Respondent was first licensed by the Department in 1971. In 1976, he started Founders Realty in San Francisco. Over the years, Founders Realty has had many employees and contractors who depend on the business for their livelihood. Respondent has no history of prior license discipline.

8. Respondent states that he participated in public auctions of real properties from 1999 to 2008 and, during that time, steadfastly refused to participate in bid rigging even though he was pressured by others to do so. He knew that bid rigging was wrong and urged others not to do it. According to respondent, the bid rigging participants retaliated against

him by calling him names, frustrating his bids, refusing to share information with him about the properties, and bidding against him. He estimates that his refusal to participate in bid rigging cost him \$300,000 to \$400,000 over the years. In 2008 respondent joined in bid rigging with other co-conspirators. Respondent feels that he did so to gain the approval of the individual he describes as the leader of the conspiracy, JG, a person respondent looked up to and whom he describes as a "big brother" to him. In respondent's words, he was "enthralled" with JG; respondent feels JG gave him the recognition he did not receive from his parents when he was growing up. Respondent testified that if JG had not been involved, he himself would not have become involved. Respondent believes that, of the co-conspirators, he is the least culpable. On January 11, 2011, FBI agents came to his office and told him that he was the subject of a criminal investigation. After that, respondent states, he stopped buying property with others so that he could not be perceived or accused of participating in bid rigging.

9. Respondent seems to argue that his crimes are mitigated by the emotional factors which, he feels, led him to participate in the conspiracies. If that is his argument, it is unconvincing. Respondent was a mature real estate broker with over 35 years' experience when he joined the conspiracies. He knew it was wrong; by his own account, he refused to participate for nine years, yet he joined the conspiracies and continued to participate in the conspiracies until he learned that he was being investigated by the FBI, a period of over two years. Moreover, the argument does not account for the element of personal financial gain. Respondent's acknowledgment that JG's financial resources gave respondent access to more properties, respondent's estimate of how much he lost over the years by not participating in bid rigging, and the amount of respondent's restitution obligation, reveal that financial gain was a factor in his decision to join the conspiracies.

10. Before respondent was sentenced in May 2018, many of his friends, family members and business associates submitted character references to the federal court urging a lenient sentence for respondent; 27 of those letters were introduced into evidence in this proceeding. Uniformly, the letters praise respondent as generous, honest, trustworthy and hardworking, and describe him as a kind and supportive parent, spouse, family member, friend, and employer. All of the letters ask the court not to impose a prison sentence on respondent in light of his age, his health, and the effect that his imprisonment would have on his family. Several letters state that respondent has expressed remorse for his misconduct and that he is ashamed of it. Primarily, however, the authors describe respondent's character as they saw it before his convictions. They do not address what rehabilitative efforts respondent has undertaken since he committed the offenses to restore his reputation for honesty. As evidence of rehabilitation, respondent's character references are weak.

Costs

11. Complainant has incurred costs of \$1,837.75 in connection with its investigation and enforcement of this case. Of that amount, \$1,504 represents investigative costs of the Department of Real Estate, and \$333.75 represents the cost of legal services provided by the Department's legal counsel. These costs are supported by statements that

satisfy the requirements of Business and Professions Code section 10106, subdivision (c). In the absence of any evidence or argument to the contrary, these costs are found to be reasonable.

LEGAL CONCLUSIONS

1. The standard of evidence applied in making the factual findings set forth above is clear and convincing evidence to a reasonable certainty.

2. Business and Professions Code sections 490 and 10177, subdivision (b), provide that a real estate license may be revoked or suspended if the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of a licensee. Business and Professions Code section 10177, subdivision (i), provides that a real estate license may be revoked if the licensee has engaged in fraud or dishonest dealing. Cause exists under each of these statutory provisions to revoke or suspend all licenses and licensing rights of respondent under the Real Estate Law, by reason of the matters set forth in Findings 3 through 5.

3. Cause to take disciplinary action against respondent's broker license having been established, the issue is the degree of discipline to impose. It is respondent's burden to demonstrate that he is sufficiently rehabilitated from his crimes so that it would not be contrary to the public interest to allow him to remain licensed. The Department has enacted regulations to guide the evaluation of a licensee's rehabilitation. (Cal. Code Regs., tit. 10, § 2912.) Those regulations have been considered.

There is some evidence of mitigation and rehabilitation. Respondent has no history of prior license discipline, and he enjoyed a good reputation among local real estate practitioners before his bid rigging activities came to light. It has been eight years since respondent last participated in a bid rigging conspiracy. He has paid his court-ordered restitution and fine. Respondent has expressed remorse for his crimes.

Evidence of rehabilitation, however, must be measured against the seriousness of the offense: the more serious the crime, the stronger the evidence of rehabilitation must be. Respondent conspired to purchase real properties at public auction for non-competitive prices, to his own personal advantage and to the detriment of mortgage holders; he participated in the conspiracies for over two years, stopping only when he learned he was under federal investigation. As a fundamental purpose of the real estate licensing law is to insure that brokers are "honest, truthful and of good reputation," respondent's convictions could not be more closely related to a broker's qualifications, and could not be more serious. (See *Arneson v. Fox* (1980) 28 Cal.3d 440, 451.) A compelling showing of rehabilitation is required.

Respondent has not made such a showing. That respondent feels remorse for his crimes is not questioned. But the seriousness of respondent's crimes demands a substantial

period of exemplary conduct to demonstrate that he can now be trusted to conduct real estate transactions with honesty and integrity. Although it has been eight years since respondent last participated in bid rigging, his conduct has been subject to oversight since that time; he learned he was under federal investigation in January 2011, and since May 2018 he has been on probation. Respondent is still on probation, and will remain so until 2021. As evidence of rehabilitation, little weight is given to respondent's good conduct since 2011. That he is now performing community service is also given little weight, as he is required to do so by the terms of his probation. Respondent's character references provide weak evidence of rehabilitation. And respondent's explanation for joining the conspiracies – that he was enthralled with JG – suggests that he has not fully accepted responsibility for his crimes. A forthright acknowledgment of personal responsibility is one of the hallmarks of rehabilitation, and that acknowledgment is missing here.

It would be contrary to the public interest to allow respondent to remain licensed by the Department, even on a restricted basis.

4. A licensee 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 the investigation and enforcement of the case. (Bus. & Prof. Code, § 10106, subd. (a).) As set forth in Finding 11, the reasonable costs of investigation and enforcement in this case are \$1,837.75. By reason of the matters set forth in Legal Conclusion 2, cause exists to order respondent to pay to the Department the sum of \$1,837.75.

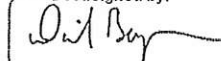
ORDER

1. All licenses and licensing rights under the Real Estate Law of respondent Raymond Alfred Grinsell are revoked.

2. Respondent Raymond Alfred Grinsell shall pay to the Department of Real Estate its costs of investigation and enforcement in the sum of \$1,837.75.

DATED: April 15, 2019

DocuSigned by:



DAVID BENJAMIN

Administrative Law Judge

Office of Administrative Hearings