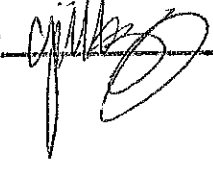


FILED

MAR 22 2016

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of	)	CalBRE No. H-39993 LA
JAMES GREGORY MORRIS,	)	OAH No. 2015110256
Respondent.	)	

DECISION

The Proposed Decision dated February 17, 2016, 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.

Pursuant to Section 11517(c)(2) of the Government Code, the following corrections are made to the Proposed Decision.

Factual Findings, Page 2, Paragraph No. 1, Line 2, "H-399993 LA," is amended to read "H-39993 LA,".

Factual Findings, Page 2, Paragraph No. 2, Line 1, "B-01061090" is amended to read "01061090".

Legal Conclusions, Page 11, Paragraph No. 2, Line 1, "real estate salesperson" is amended to read "real estate broker".

The Decision suspends or revokes one or more real estate licenses, but the right to a restricted broker license is granted to Respondent.

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Pursuant to Government Code section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. 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. 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 11 2016.

IT IS SO ORDERED

3/16/2016

REAL ESTATE COMMISSIONER


WAYNE S. BELL

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

JAMES GREGORY MORRIS,

Respondent.

Case No. H-39993 LA

OAH No. 2015110256

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, on January 21, 2016, in Los Angeles. Complainant was represented by Judith Vasan, Counsel for the Bureau of Real Estate. Respondent James Gregory Morris was present and represented himself.

Complainant presented documentary evidence (Complainant's Exhibits 1 – 4). Respondent testified and presented documentary evidence (Respondent's Exhibits 1 and 2).¹ Respondent's Brief was marked as Exhibit 21.

At the commencement of the hearing, complainant's counsel moved to strike from page two of the Accusation the allegation contained in Paragraph 4 and the reference therein to Business and Professions Code section 10177, subdivision (j), as a separate ground for discipline. Respondent did not object to the motion, which was granted. While Business and Professions Code section 10177, subdivision (j), was stricken as a separate basis for discipline, the substance of the Accusation is that respondent's real estate broker license should be disciplined under Business and Professions Code section 10177, subdivision (f), in conjunction with section 10177, subdivision (j), for having another state license disciplined for dishonest acts which would be grounds for discipline of a real estate license.

Oral and documentary evidence having been received and the matter submitted for decision, the Administrative Law Judge finds that the following facts were established by clear and convincing weight evidence:

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¹ Respondent withdrew his Exhibits 3 – 20.

FACTUAL FINDINGS

1. The Administrative Law Judge takes official notice that, on September 28, 2015, the Accusation, Case Number H-399993 LA, was made and filed by Maria Suarez in her official capacity as a Supervising Special Investigator of the State of California.

2. On January 30, 1990, real estate broker license number B-01061090 and licensing rights were originally issued to James Gregory Morris (respondent). On January 29, 1994, respondent's broker license expired. On April 25, 2007, the broker license was reissued to respondent through examination. Respondent's broker license will now expire on April 24, 2019, unless renewed. At all times relevant herein, respondent has held a real estate license and licensing rights under the Real Estate Law as a real estate broker.

3. On December 13, 1983, respondent was licensed to practice law in California. He has been a member of the State Bar of California and has held a license to practice law since that date. Created by the legislature in 1927, the State Bar of California is a public corporation within the judicial branch of state government. The structure, responsibilities, and powers of the State Bar of California are set forth in the State Bar Act (Bus. & Prof. Code, §§ 6000 et seq.), the Rules of the State Bar of California, and the California Rules of Court. As the administrative arm of the California Supreme Court, the State Bar of California is responsible for managing the admission of lawyers to the practice of law in California, investigating complaints of professional misconduct, and prescribing appropriate discipline of attorneys. The State Bar of California is an agency of the State of California within the meaning of Business and Professions Code section 10177; subdivision (f).

4. (A) Respondent has been disciplined by the State Bar Court. On or about March 26, 2014, in a Decision and Order *In re JAMES GREGORY MORRIS on Discipline*, State Bar Court Number 11-O-13518, and following an independent review of the record and issuance of an Opinion by the Review Department of the State Bar Court (Review Department), the California Supreme Court found that respondent had violated Business and Professions Code section 6106. The Supreme Court of California ordered the suspension of respondent from the practice of law in this state for two years, stayed the execution of the suspension, and placed respondent on probation for two years subject to certain conditions.

(B) The California Supreme Court ordered respondent to comply with the conditions of probation recommended by the Review Department in its Opinion. Conditions of probation imposed upon respondent included the suspension from practice for the first year of probation, a requirement that he take and pass a professional responsibility examination within one year, attendance at the Ethics School of the State Bar of California and passage of the test given at the end of the session, and payment of costs to the State Bar of California. The California Supreme

Court ordered that, if respondent complied with all of the conditions of probation by the expiration of the two-year period of probation, his two-year period of suspension would be deemed satisfied and terminated.

5. The facts and circumstances of the discipline of respondent's license to practice law were established by clear and convincing evidence to a reasonable certainty by respondent's testimony at the hearing, the Decision of the California Supreme Court and Opinion of the Review Department of the State Bar Court of California (Bureau's Exh. 3), the Decision and Order of the State Bar Court (Respondent's Exh. 1), and the Tentative Statement of Decision on Court Trial (Respondent's Exh. 2).

6. (A) From about June 2005 through April 2006, respondent was the attorney for Micromark International, Inc. (Micromark). He represented Micromark in a lawsuit for damages and loss of use of business that was filed in the Superior Court by B Five Corporation (B Five). Micromark was a California corporation whose sole shareholder, officer, and director was Ha-Chun Ying Cheung (Cheung) and whose only asset was a commercial building on Foothill Boulevard in Sylmar (Foothill property). Micromark had leased portions of the Foothill property to B Five, which operated a restaurant and a laundromat on the premises. On August 5, 2004, a fire destroyed a substantial portion of the commercial building. B Five and Micromark then became embroiled in litigation involving issues of insurance, repairs, rent, and habitability of the Foothill property.

(B) In March 2006, Micromark replaced respondent as its attorney of record with an attorney who could communicate with Cheung in her native language. That second attorney was then replaced with a third attorney. The third attorney died in January 2007 while B Five's lawsuit was pending. In October 2007, Micromark rehired respondent to represent the company in all of its legal matters, including the B Five lawsuit. Respondent discovered from the on-line court docket that Micromark was in default of the lawsuit because the third attorney had failed to appear at court hearings. Respondent did not contact the counsel representing B Five or take immediate action to set aside the default against his client. On December 14, 2007, the Superior Court entered judgment in favor of B Five and against Micromark for approximately \$2.4 million as a result of the default.

(C) In December 2007, respondent learned about the default judgment. Before taking any legal action on behalf of Micromark, respondent wanted the company to pay for his past legal services. Micromark still owed respondent almost \$45,000 in attorney's fees for services that he performed for the company before he was replaced. Respondent was aware that Micromark was unable to pay its bills as they became due and that Micromark's only asset was the Sylmar property in which Micromark had approximately \$400,000 in equity. In order to ensure that Micromark would pay him for his past and future attorney's fees, respondent entered into an agreement with Cheung wherein Micromark gave him a promissory note to ensure

payment of both his past legal services and future legal bills. Even though the amount of his unpaid attorney's fees had increased to approximately \$53,000, respondent prepared the promissory note for \$500,000. He also prepared a deed of trust on the Sylmar property to secure the promissory note. On December 31, 2007, Cheung executed the promissory note and deed of trust on behalf of Micromark.

7. (A) On December 31, 2007, when she came to respondent's office to execute the \$500,000 promissory note, Cheung told respondent that she was owed over \$203,000 for loans that she had made to her company and that she also wanted a promissory note from Micromark to secure payment of her loans. Cheung did not provide any documentation of her loans. Respondent agreed to prepare a promissory note and deed of trust for Cheung, but he told her that she would have to provide proof of her loans before he recorded the deed. On December 31, 2007, respondent prepared a \$203,000 promissory note from Micromark payable to Cheung and a deed of trust on the Foothill property to secure the \$203,000 promissory note. Thereafter, Cheung provided respondent with tax returns and receipts reflecting amounts that she claimed were loans to Micromark, but she did not provide any formal documentation of her purported loans. Respondent did not conduct an independent investigation to find out whether the loans were valid or whether Micromark had ever repaid Cheung for the purported loans.

(B) On January 8, 2008, respondent recorded his deed of trust to secure the \$500,000 promissory note for payment of his attorney's fees. On January 15, 2008, respondent filed a motion to set aside the default against Micromark in the B Five lawsuit. He then recorded Cheung's deed of trust. He recorded his deed of trust first so that his claims for attorney's fees would have priority over Cheung's alleged loans to Micromark. On February 6, 2008, B Five recorded its \$2.4 million abstract of judgment. On February 22, 2008, the Superior Court denied the motion to set aside the default against Micromark.

8. (A) On February 18, 2008, B Five, as a judgment creditor, filed a lawsuit against Micromark, respondent, and Cheung, asserting that the deeds of trust were fraudulent conveyances under the United Fraudulent Transfers Act (Civ. Code, § 3439.04) (UFTA), and were created to prevent B Five's collection of its \$2.4 million judgment. More specifically, B Five contended that Micromark's transfers of the Foothill property, the company's sole asset, by giving deeds of trust to its attorney and to its sole shareholder, were made with intent to hinder, delay, or defraud a judgment creditor, and, alternatively, that the transfers were made without receiving reasonably equivalent value in exchange, under Civil Code section 3439.04, subdivision (a)(1) and (2). In the fraudulent conveyance lawsuit, B Five sought to have Micromark's promissory notes and deeds of trust, which had been issued to respondent and Cheung, set aside or voided as transfers in fraud of a judgment creditor. B Five sought damages as well.

(B) On July 23, 2009, following a court trial at which both respondent and Cheung testified, the Superior Court of California, County of Los Angeles, issued a tentative decision in the fraudulent conveyance lawsuit. The tentative decision became a final decision a month later. The Superior Court determined that Micromark's promissory notes and deeds of trust to respondent and Cheung were transfers in fraud of the company's judgment creditor, B Five, under the UFTA. The Superior Court's determination that Micromark's promissory notes and deeds of trust were fraudulent transfers was based, in part, on its finding that Micromark executed the promissory notes and deeds of trust with the actual intent to defraud its creditor, B Five. The Superior Court found that Cheung actually intended to hinder and delay B Five from collecting on its judgment by recording the two deeds of trust and making transfers to respondent and to herself. Cheung had testified that she knew B Five's prayer for relief in the lawsuit was for one million dollars and that she understood that B Five wanted the Foothill property. She admitted that she authorized the promissory notes and deeds on behalf of Micromark because she wanted to prevent B Five from getting the Foothill property. The Superior Court found that Cheung was not a good faith creditor of Micromark and did not take her transfer in the Foothill property in good faith.

(C) With respect to respondent, the Superior Court concluded that all of the facts and circumstances put respondent on notice that Cheung's intent in authorizing the transfers was to prevent Micromark from paying the \$2.4 million judgment and, instead, to pay respondent as the company's attorney, and to pay her as the company's sole shareholder. The Superior Court found that respondent knew that Micromark was unable to pay its bills and was presumed insolvent; he knew that Micromark was in default and that B Five had a judgment against Micromark before he recorded the deeds of trusts; he knew that the Foothill property was Micromark's only source of income; he asked for a promissory note in order to ensure that he got paid for all of the legal services that he rendered; he knew that Cheung wanted a lien on the Foothill property to keep the only asset of Micromark; he failed to investigate or audit whether Micromark had repaid Cheung for her loans or expenditures in prior years; and, because he asked Cheung to provide proof of her loans to Micromark, he was on inquiry notice that the transfer to Cheung was questionable and could be a fraudulent conveyance although he believed it could qualify as a legitimate preference to creditors. The Superior concluded that respondent's knowledge of the facts and circumstances was sufficient to put him on inquiry notice and to preclude a finding that he acted and took his transfer in the Foothill property in good faith.

(D) The Superior Court also found that respondent and Cheung failed to show that their liens or obligations on the Foothill property were for reasonably equivalent value. The court found that Cheung failed to present documentation that she had made loans totaling \$203,000 to Micromark. There were no promissory notes evidencing any loans, no payment of principal or interest, and no accounting of amounts purportedly loaned to Micromark. The Superior Court questioned whether Cheung was a legitimate and good faith creditor of Micromark inasmuch as she acted

as the company's alter ego, disregarded the corporate entity, and treated Micromark as her "personal pocketbook." The Superior Court determined that "only \$98,763 in 'loans' to Micromark by [Cheung] were reasonably verifiable" and that she had not proven she had made valid loans to Micromark that were reasonably equivalent in value to her \$203,000 promissory note.

(E) With respect to respondent's \$500,000 promissory note, the Superior Court noted that the promissory note was vastly in excess of, or nearly ten times, the value of the legal services (\$52,922) that respondent had rendered to Micromark at the time that he took the note. The Superior Court rejected respondent's arguments that his promissory note was intended as a line of credit for future legal fees and was not a transfer, finding instead that the promissory note clouded title of the Foothill property for \$500,000 and prevented the satisfaction of other claims. In addition, respondent drafted his promissory note and deed of trust so that the lien on the property would remain in place until he completed all legal services and he released the note, thereby encumbering the Foothill property for an indefinite period of time and hindering and delaying other creditors. The Superior Court concluded that respondent's promissory note was not reasonably equivalent to the actual value of his legal services. Because Cheung and respondent failed to show good faith and reasonably equivalent value for the transfers, the Superior Court concluded that the conveyances to Cheung and respondent were null and void.

9. (A) On September 11, 2009, the Superior Court entered a judgment in the fraudulent conveyance case in accordance with its final decision, declaring the promissory notes and deeds of trust held by respondent and Cheung were fraudulent transfers under the UFTA and were created to encumber the Foothill property so as to hinder and delay the collection of the default judgment against Micromark. The Superior Court ordered the promissory notes and deeds of trust null and void and they were cancelled.

(B) On November 20, 2009, respondent filed a notice of appeal on his own behalf, appealing the Superior Court's decision that his promissory note and deed of trust was a fraudulent transfer. On March 7, 2011, the California Court of Appeal for the Second Appellate District affirmed the judgment of the Superior Court against respondent. The appellate court rejected respondent's contention that his promissory note and deed of trust were merely devices to finance payment of his attorney's fees and described respondent as "part and parcel, if not the mastermind, behind two fraudulent conveyances." The Court of Appeal also observed that the case presented "the paradigm illustration of a fraudulent conveyance." (Exh. 3.)

State Bar Court Disciplinary Proceeding

10. (A) On June 12, 2012, the Office of the Chief Trial Counsel of the State Bar of California filed a notice of disciplinary charges against respondent, alleging

that respondent had committed acts involving moral turpitude for his involvement in a scheme to defraud creditors, in violation of Business and Professions Code section 6106, and had failed to report to the State Bar the entry of an adverse judgment in a civil action for fraud committed in a professional capacity, in violation of Business and Professions Code section 6068, subdivision (o)(2).

(B) Following a two-day trial in the *Matter of James Gregory Morris, Member Number 110955, A Member of the State Bar*, Case No. 11-O-13518-RAP, in which respondent was represented by counsel, a Judge of the State Bar Court issued a Decision and Order of Dismissal with Prejudice dismissing the two charges filed against respondent. The State Bar Court Judge found that respondent honestly believed that the promissory notes and deeds of trust were proper and, even if his belief was erroneous and unreasonable, his honest belief precluded a finding of moral turpitude. The State Bar Court Judge also decided that the decision in the Superior Court in the fraudulent transfer action was not a judgment against respondent in a civil action for fraud committed in a professional capacity. The State Bar Court Judge also ruled that respondent was not required to report the judgment in the fraudulent transfer action because no intent to defraud was found in the Superior Court fraudulent conveyance case.

11. (A) The State Bar sought review of the Decision and Order of the State Bar Court Judge before the Review Department of the State Bar Court. The Review Department conducted an independent review of the record. On December 4, 2013, the Review Department issued an Opinion in the *Matter of James Gregory Morris, A Member of the State Bar, Number 110955*, Case Number 11-O-13518, in which it overruled the State Bar Court Judge's dismissal of the charge that respondent had committed acts of moral turpitude. The Review Department found that respondent had committed acts involving moral turpitude by abusing the legal system to assist his client, Cheung, in hindering and delaying a creditor from collecting on its judgment. The Review Department, on the other hand, affirmed the dismissal of the charge that respondent had allegedly failed to report a judgment in a civil action for fraud, finding that no fraud cause of action had been brought against respondent in the Superior Court fraudulent conveyance action.

(B) As set forth in its Opinion, the Review Department conducted an independent review of the record in respondent's disciplinary case before the State Bar Court. The Review Department determined that the findings from the Superior Court's Decision in the fraudulent conveyance action were supported by substantial evidence and were entitled to a strong presumption of validity in the State Bar Court disciplinary proceeding. Consequently, the Review Department adopted the findings contained in the Decision of the Superior Court. The Review Department indicated that the Superior Court Decision laid out "a very cogent and convincing case" that respondent, like his client, participated in the transfer of the Foothill property with the actual intent to hinder, delay, or defraud. The Review Department made findings of fact, which are reflected, in part, in Findings 5 – 9 above.

(C) In making its conclusions of law, the Review Department determined, in part, that the evidence established that respondent violated his ethical duties as an attorney by creating the promissory notes and recording the deeds of trust to assist Cheung in hindering and delaying B Five's collection of its judgment. The Review Department concluded that, by his conduct, respondent exhibited bad faith and dishonesty, in violation of Business and Professions Code section 6106. More specifically, the Review Department determined that respondent created obligations for Micromark and secured them with deeds of trust totaling \$703,000 when he knew that Micromark was insolvent and its only asset was the Foothill property. He recorded the deeds shortly after learning that B Five had obtained a default judgment. He knew that the obligations and encumbrances ran the risk of being fraudulent conveyances because his promissory note was out of proportion to the legal fees owed him, Cheung's promissory note was not supported by sufficient documentation of loans, and the promissory notes and deeds of trust were not taken for reasonably equivalent value.

(D) Based on the evidence surrounding these transfers, the Review Department concluded that there was clear and convincing proof that respondent's acts were designed to prevent B Five from collecting on its judgment and were "shrouded in bad faith and dishonesty", in violation of Business and Professions Code section 6106. The Review Department found that respondent's misconduct was serious, significantly harmed his client's creditor, and was directly related to his practice of law.

12. On May 26, 2014, the California Supreme Court, sitting *en banc* issued an Order adopting the Opinion of the Review Department of the State Bar Court, including the findings of fact and conclusions of law. The California Supreme Court ordered that respondent be suspended from the practice of law and placed on probation for two years, as further described in Finding 4 above. Respondent was disciplined by the State Bar of California for having committed acts involving moral turpitude and dishonesty, in violation of Business and Professions Code section 6106.

13. (A) Based on Findings 3 – 12 above, respondent had his license to practice law, which was issued by the State Bar of California, a state agency, suspended for committing or engaging in acts involving moral turpitude and dishonesty.

(B) Based on Findings 3 – 12 and 13(A) above, respondent's law license was suspended because he engaged in conduct constituting dishonest dealing. Respondent engaged in acts constituting dishonest dealing when he prepared promissory notes and deeds of trust on real property for himself and his client, which were fraudulent conveyances, and then filed the deeds of trust, thereby preventing his client's creditor from collecting on its judgment.

(C) Based on Findings 3 – 12 and 13(A) – (B) above, respondent's law license was suspended for dishonest acts that, if done by a real estate licensee, would be grounds for the discipline of his real estate license within the meaning of Business and Professions Code section 10177, subdivision (f), in conjunction with section 10177, subdivision (j).

(D) The disciplinary action ordered by the California Supreme Court and administered by the State Bar of California was taken only after respondent was given fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act and only upon an express finding that respondent had violated the State Bar Act. Respondent did not contend that he had not been provided with due process protections in the disciplinary proceeding before the State Bar Court.

Mitigation or Rehabilitation

14. Pursuant to the Decision of the California Supreme Court, respondent's license to practice law was suspended for one year beginning June 13, 2014. He served his one-year suspension which ended on June 13, 2015. He successfully passed the professional responsibility and the Ethics School's examinations. He paid \$20,000 in costs to the State Bar of California. His term of probation will terminate on June 14, 2016, if he has complied with the terms of his probation.

15. Respondent did not present any evidence of mitigation or rehabilitation. However, as set forth in its Opinion, the Review Department of the State Bar Court found evidence of mitigation in the record. As of December 2013, respondent had practiced law for 25 years and did not have any record of prior discipline. In the State Bar Court proceeding, respondent cooperated with the State Bar by stipulating to certain facts and the admission of documents before the trial. Respondent presented four character witnesses who attested to his trustworthiness and high moral standards as well as declarations. Over many years, respondent has provided meaningful service to the community. From 1986 to the present, he has provided pro bono legal services to seniors through the San Fernando Valley Bar Association. He is a founding member of the Board of Economic Alliance of the San Fernando Valley, where he was in charge of workforce preparedness and organized a labor program. Respondent has maintained a scholarship program for boys without fathers at a high school. He is a founding member and prior board member of the Pacoima Federal Credit Union, which offers bank services to low-income members. Since 2001, respondent has served as director and officer of the San Fernando Valley Small Business Financial Development Corporation, a non-profit organization which assists low to moderate-income persons to develop businesses, obtain loans, and receive workplace training. Respondent has been a volunteer settlement officer in the Van Nuys probate court. He is a leader of a Cub Scout group in Sherman Oaks and a football and baseball coach for children at the Van Nuys or Sherman Oaks Park.

16. The Review Department found one aggravating factor in respondent's violation of the State Bar Act. He caused significant harm to B Five, the plaintiff in the fraudulent conveyance case. B Five had to retain counsel to file the fraudulent conveyance action and to respond to respondent's appeal of the Superior Court decision and judgment. As a result, B Five incurred \$114,011 in attorney's fees. The Review Department also noted that, while he pursued his appeal, respondent continued to encumber the Foothill property for almost two years, during which time he knew that Cheung's intent was to prevent creditor B Five from collecting on its judgment and he no longer represented Micromark. Respondent had no legitimate basis for maintaining the encumbrances on the Foothill property, yet he maintained them while pursuing an appeal.

17. (A) In this proceeding before the Bureau of Real Estate, respondent contends that he should not be disciplined because he was not dishonest and did not engage in any dishonest dealing when he prepared the promissory notes and deeds of trust encumbering the Foothill property of his law client. Respondent acknowledges that he prepared the promissory notes and deeds of trust but asserts that he made the two liens for a legitimate purpose, to wit: to secure payment of his legal services and repayment of the loans made by his client to her company. Respondent asserts that, in the fraudulent conveyance lawsuit before the Superior Court, he made a legal argument or took a legal position which he honestly believed was supported by case law and justified his filing of the deeds of trust or liens. Respondent acknowledges that the Superior Court did not accept his argument but asserts that, just because he lost his legal argument or may have been mistaken in the exercise of his legal judgment, it does not mean that he was dishonest or guilty of dishonest dealing. Respondent contends that the State Bar Court disciplined him for "asserting a legal position." Respondent made the same argument before the appellate court, State Bar Court, and Review Department of the State Bar Court.

(B) Respondent's contention is not supported by the evidence and is untenable. In adopting the Opinion of the Review Department, the California Supreme Court suspended respondent from the practice of law, but it did not do so for asserting a legal position in the fraudulent conveyance lawsuit in the Superior Court or in the disciplinary proceeding before State Bar Court. Rather, the California Supreme Court disciplined respondent for his conduct in creating fraudulent conveyances to secure payment of his legal fees and the purported loans of his client. The California Supreme Court found that respondent's conduct in creating these false conveyances involved moral turpitude and dishonesty because he acted in bad faith, misused the legal system to assist his client, and knew that his client intended to hinder and delay a creditor from collecting on its judgment.

18. Respondent has been continuously licensed as a real estate broker for approximately nine years. His main office and mailing address for his real estate license is his law firm in Burbank. Respondent does not have any disciplinary history

against his real estate license. He uses his real estate broker license on occasion for real estate transactions and investments for himself and his family.

19. The Bureau's costs of investigation and enforcement in this matter total \$675.70, as established by the Certified Statement of Investigation Costs and the Certified Statement of Costs (Exhibit 4). Respondent did not object to these costs or challenge the reasonableness of these costs. This amount of the Bureau's costs of investigation and enforcement is reasonable.

20. No evidence was presented on respondent's financial ability or inability to pay the Bureau's costs.

* * * * *

Based on the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Complainant bears the burden of proof. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99; *Pipkin v. Bd. of Supervisors* (1978) 82 Cal.App.3d 652.) The standard of proof is clear and convincing evidence to a reasonable certainty. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) Clear and convincing evidence means evidence "so clear as to leave no substantial doubt" and "sufficiently strong to command the unhesitating assent of every reasonable mind." (*Mathieu v. Norrell Corp.* (2004) 115 Cal.App.4th 1174, 1190 (citing *Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 332-333).) Through the documentary evidence, complainant met her burden of proving that respondent is subject to disciplinary action.

2. Grounds exist to revoke or suspend respondent's real estate salesperson license under Business and Professions Code section 10177, subdivision (f), in conjunction with section 10177, subdivision (j), for having had a license issued by another agency of this state suspended for acts that, if done by a real estate licensee, would constitute grounds for the suspension or revocation of a California real estate, based on Findings 1 – 18 above.

3. Grounds exist to direct respondent to pay the Bureau for its reasonable costs of investigation and enforcement pursuant to Business and Professions Code section 10106, in that respondent committed a violation of the Real Estate Law, as set forth in Conclusions of Law 1 above. The reasonable costs of investigation and enforcement in this matter total \$675.70, based on Findings 19 – 20 above.

4. The Bureau has developed criteria for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding has been initiated on account of a crime committed by the licensee. (Cal. Code Regs., tit. 10, § 2912.) Pertinent criteria of rehabilitation include successful completion or discharge from probation; completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement; and significant and conscientious involvement in community, church, or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

5. Discussion—Respondent's real estate broker license is subject to discipline based on the State Bar's suspension of his license to practice law. The California Supreme Court determined that respondent committed acts of moral turpitude and dishonesty in violation of the State Bar Act when he created promissory notes and filed deeds of trust that encumbered a client's property and prevented the client's creditor from collecting on its default judgment. The promissory notes and deeds of trust were fraudulent conveyances based on the judgment and decision of the Superior Court. Under Business and Professions Code section 10177, subdivision (f), in conjunction with section 10177, subdivision (j), the suspension of respondent's State Bar license constitutes a basis to discipline his real estate broker license. The issue in this matter is the appropriate discipline to be meted out to respondent.

Respondent cannot be considered to be fully rehabilitated from his violation of the State Bar Act which led to the suspension of his license to practice law. He has not completed probation for his violation although his probation will soon terminate on June 14, 2016, if he is in compliance with his probationary terms. On the other hand, respondent has served the one-year suspension of his State Bar license, completed the professional responsibility and ethics examinations, and paid \$20,000 in costs to the State Bar. In the State Bar Court proceeding, respondent presented significant evidence of his good moral character and community involvement. He has performed pro bono legal services for the elderly, served as a settlement officer in court, organized and served a work program and small business development organization, helped found a credit union that serves low-income individuals, funded a scholarship, and acted as a scouting leader and youth sports coach. Furthermore, respondent has no disciplinary history against his real estate broker license and it is noteworthy that he did not commit his violation while using his real estate license or acting as a real estate broker.

While respondent's violation of the State Bar Act was certainly serious inasmuch as the California Supreme Court ordered that his law license be suspended for one year, the evidence of respondent's compliance with the terms of probation to the State Bar Court, the evidence of his community involvement, the absence of any disciplinary history against his real estate license, and the fact that his violation did

not occur while acting as a real estate broker weigh in favor of a minimal level of discipline in this proceeding.

In this matter, the issuance of a restricted real estate license with the additional requirements that respondent complete a course in ethics and serve a short period of suspension will be adequate to protect the public interest and welfare. Discipline is being imposed to impress upon respondent that, because he holds both a law license and a real estate license, any violation arising in connection with his legal or real estate transactions, whether or not performed in his capacity as an attorney or real estate licensee, could have serious repercussions. Respondent must be cognizant that his conduct may reflect adversely upon the integrity of the real estate profession and must ensure that his actions always comply with the Real Estate Law.

* * * * *

Wherefore, the following Order is hereby made:

ORDER

All licenses and licensing rights previously issued to respondent James Gregory Morris under the Real Estate Law are revoked, based on Conclusions of Law 1, 2, and 4, jointly and for all; provided, however, a restricted real estate broker license will 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 and Order. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions, and restrictions imposed under the authority of Business and Professions Code sections 10156.6 and 10153.4:

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 attached 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 (2) years have elapsed from the effective date of this Decision.

4. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent 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 respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

5. Within six months from the effective date of this Decision, respondent shall take and pass the Professional Responsibility Examination administered by the Bureau, including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order the suspension of respondent's license until he passes the examination.

6. Any restricted real estate license issued to respondent pursuant to this Decision shall be suspended for thirty (30) days effective immediately on issuance of the restricted license.

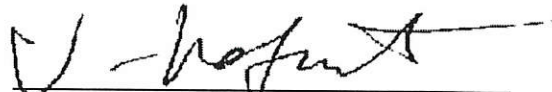
7. Respondent shall report in writing to the Bureau of Real Estate as the Real Estate Commissioner shall direct by the Decision herein, or by separate written order issued while the restricted license is in effect, such information concerning respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

Such report may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of respondent and periodic summaries of salient information concerning each real estate transaction in which respondent engaged during the period covered by the report.

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8. Respondent shall pay the Bureau for the reasonable costs of investigation and enforcement in this matter in the sum of \$675.70. Respondent may apply to the Bureau for payment of these costs in monthly or installment payments as long as respondent completes making payment of the full costs at least six months prior to the end of the term of the restricted license.

Dated: February 17, 2016



Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings