

FILED

MAR 20 2023

DEPT. OF REAL ESTATE

By

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:) DRE No. H-41626 LA
JOHN OLAF HALVORSON,) OAH No. 2021060307
Respondent.)
_____)

ORDER DENYING RECONSIDERATION

On February 13, 2023, a Decision was rendered in the above-entitled matter. The Decision was to become effective on February 16, 2023, and was stayed by separate Order to March 20, 2023.

On March 6, 2023, Respondent petitioned for reconsideration of the Decision of February 13, 2023.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of February 13, 2023, and reconsideration is hereby denied.

IT IS SO ORDERED 3/20/23.

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

For Doug McCauley

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

FILED

FEB 14 2023

DEPT. OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:) DRE NO. H-41626 LA
JOHN OLAF HALVORSON,) OAH NO. 2021060307
Respondent.)

ORDER STAYING EFFECTIVE DATE

On January 19, 2023, a Decision was rendered in the above-entitled matter to become effective February 16, 2023.

IT IS HEREBY ORDERED that the effective date of February 16, 2023, is stayed for a period of 30 days to allow Respondent JOHN OLAF HALVORSON to file a petition for reconsideration.

The Decision of January 19, 2023, shall become effective at 12 o' clock noon on March 20, 2023.

DATED: 2/13/23.

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER



for Doug McCauley

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

JAN 25 2023

DEPT. OF REAL ESTATE

In the Matter of the Accusation of:

JOHN OLAF HALVORSON,

Respondent.

) DRE No. H-41626 LA

) OAH No. 2021060307

DECISION

The Proposed Decision dated December 9, 2022, 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 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 FEB 16 2023

IT IS SO ORDERED 1.19.23

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

Douglas R. McCauley

**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Second Amended Accusation Against:

JOHN OLAF HALVORSON, Respondent.

Agency Case No. H-41626 LA

OAH No. 2021060307

PROPOSED DECISION

Thomas Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on November 8, 2022.

Judith Vasan, Staff Counsel, represented complainant Veronica Kilpatrick in her official capacity as a Supervising Special Investigator of the State of California, Department of Real Estate (Department or DRE), State of California. John Olaf Halvorson, respondent, represented himself.

Documents and testimony were received in evidence. The record closed and the matter was submitted for decision on November 8, 2022.

Moving after the submission of evidence for dismissal, respondent argued: the Department did not meet its burden to show by clear and convincing evidence that respondent perpetrated harm; the Department called no witnesses and presented no

testimony in support of its allegations; and documents, including Exhibits 5 and 6, are inadmissible under the one final judgment rule.

The motion for dismissal was taken under submission and is now denied, for reasons set out in the Analysis below. For the reasons there stated, respondent's objections to Exhibits 5 and 6, which were also taken under submission, are overruled, and the exhibits are admitted into evidence.

On November 10, 2022, respondent filed a letter, entitled "Motion on Continuance of OAH hearing," with attachments of documents not presented before the record was closed. The letter and documents are marked collectively as Exhibit A. Respondent requested reconsideration of Presiding Administrative Law Judge Matthew Goldsby's previous denial of a pre-hearing continuance motion and dismissal of the action based on events occurring during the November 8, 2022 hearing. Attachments to the letter include a copy of respondent's November 10, 2022 email indicating he served the letter on counsel for complainant. Exhibit A is excluded from evidence and has not been considered.

STATEMENT OF THE CASE

In August 2017, an Oregon trial court adjudged respondent guilty of felony: identity theft, two counts, and forgery committed in the course of litigation concerning real property in Oregon. An Oregon appellate court affirmed respondent's guilt in October 2021. In February 2022, the Oregon Supreme Court issued an order allowing review. Oral argument was heard in June 2022, but there has issued no disposition yet. In proceedings to discipline respondent's real estate broker license, respondent appealed an August 2015 final order of revocation of the Oregon Real Estate Agency.

Following remand, the agency revoked the license in an April 2019 Final Order on Remand. DRE alleges two causes for discipline of respondent's California licenses and licensing rights: revocation of respondent's Oregon license and his felony conviction. Respondent claims that DRE must not act until his case is decided by the Oregon Supreme Court.

ISSUES

Whether there is sufficient cause to discipline respondent's licenses and licensing rights based on one or both: (i) respondent's August 2017 felony criminal conviction, despite that respondent's appeal of the conviction is not yet finally decided, and (ii) discipline by Oregon authorities of respondent's real estate broker license; alternatively, whether respondent is rehabilitated from wrongdoing so that license discipline is not warranted or should be tempered.

FINDINGS OF FACT

Jurisdictional and Procedural History

1. The Department's February 19, 2020 Accusation alleged three causes for license discipline: the first based on an August 5, 2015 order of the Real Estate Agency for the State of Oregon, which revoked respondent's broker license; the second based on respondent's failure to report the revocation; the third based on respondent's felony conviction in Oregon.

2. On a date not specified in the record, respondent timely sought a hearing in response to the Department's February 19, 2020 Accusation.

3. On November 3, 2020, the Department served a First Amended Accusation alleging only one cause for discipline: that following an appeal and remand from the appellate court, the Oregon Real Estate Agency had revoked respondent's broker license based on his felony conviction.

4. On November 3, 2021, the Department served the operative pleading, the Second Amended Accusation, with two causes for discipline, the first based on revocation of respondent's Oregon license, the second on respondent's felony conviction in Oregon.

California License History

5. On December 27, 1993, the Department issued respondent broker license number B/01172187. The license expired on December 26, 2021. Under Business and Professions Code section 10103: "The lapsing . . . of a license by operation of law . . . shall not deprive the department of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against such licensee, or to render a decision suspending or revoking such license."

6. On May 1, 2015, the Department licensed respondent as Officer of Commercial Income Advisors, Inc. The company holds license number C/01978339, which expires on April 30, 2023.

7. There is no record of previous disciplinary proceedings in California against respondent's licenses.

Litigation in the Oregon Circuit Court

8. In 2013, respondent was a party to multiple lawsuits. He made claims against his ex-wife, her brother, and limited liability companies controlled by them,

and they in turn made claims against respondent. Among respondent's claims was that the other parties owed him monies, including a commission on real estate transactions. All of the claims were resolved in the Consolidated Case, number 1309-12855 in the Circuit Court of the State of Oregon for the County of Multnomah.

9. During discovery in the Consolidated Case, respondent provided the parties a document purporting to grant him a community interest in real properties under a 2008 amendment to a pre-nuptial agreement with his ex-wife. In his deposition, respondent swore to the document's validity. In noting errata in the deposition transcript, however, respondent admitted he forged the document and acknowledged his testimony regarding the document was false.

10. In a June 25, 2014 Opinion and Order in the Consolidated Case, the court found: 1) beyond a reasonable doubt respondent acted in bad faith; 2) respondent sought unfair advantage against the other parties by forging a document; 3) the document was prejudicial to the other parties; 4) respondent damaged the truth seeking process; and 5) respondent undermined the administration of justice.

11. In a February 9, 2015 General Judgment of Contempt in the Consolidated Case, the court found: 1) Beyond a reasonable doubt, respondent willfully and maliciously disobeyed the court's authority or processes in contempt of the court by deliberately falsifying evidence in discovery and repeatedly committing perjury, doing so for personal gain and to deceive the other parties and the court; 2) Respondent's misconduct was a fraud upon the court and the other parties; 3) Respondent's contempt of and fraud upon the court inflicted serious damage to the truth seeking process and severely prejudiced and injured the other parties and the administration of justice; and 4) At the time respondent falsified evidence and committed perjury, he

knew that his misconduct was wrongful, without cause, and would prejudice and injure the other parties and the administration of justice.

12. The court sanctioned respondent in two ways: dismissing with prejudice all respondent's claims in the Consolidated Case, and ordering respondent to pay all reasonable attorney fees the other parties incurred by reason of respondent's misconduct.

Respondent's Criminal Conviction and Appeal

13. Respondent is the defendant in a criminal case prosecuted in the Circuit Court of the State of Oregon, for the County of Multnomah, case number 16CR27788. Following a bench trial July 31, 2017 through August 4, 2017, the court found respondent guilty of: 1) aggravated identity theft, in violation of ORS 165.803, Oregon Revised Statutes section 165.803, a Class B felony; 2) identity theft, in violation of ORS 165.800, a Class C felony; and 3) forgery in the first degree, in violation of ORS 165.013, a Class C felony. In an August 4, 2017 order, the court set an October 13, 2017 sentencing and restitution hearing.

14. Respondent appealed. On October 13, 2021, the Court of Appeal of the State of Oregon, in appellate court case number A169687, *State of Oregon v. John Olaf Halvorson*, filed its decision affirming the guilty verdicts against respondent. The court also ordered that respondent pay opposing litigants \$279,825.25 in restitution.

15. The appellate court's October 13, 2021 decision, Exhibit 6, page A205, stated:

As his marriage dissolved, defendant [respondent] became embroiled in three civil cases about the extent of

defendant's ownership interests in the business belonging to the family of his ex-wife, G. To gain strategic advantage in that litigation, defendant faked a prenuptial agreement indicating that he owned some of the property in dispute and then forged the signatures of his ex-wife and a purported witness to the prenuptial agreement. Then, in pursuit of that strategy, he lied about the fake agreement in a deposition when confronted about the forgery. No one was fooled, and the ruse fell apart.

That, in turn, led to contempt proceedings in the civil cases. It also prompted this criminal case, in which defendant was convicted of two counts of identity theft and one count of first-degree forgery.

The appellate court describes the four ways in which, as respondent asserted, the trial court erred. As set out in Exhibit 6, page A205, the appellate court describes the asserted errors and concludes:

On appeal, [respondent] contends that the trial court erred (1) by not dismissing the case on double-jeopardy grounds; (2) by denying his motion for judgment of acquittal on one of the two counts of identity theft; (3) by failing to merge each guilty verdict on the identify-theft counts with the guilty verdict on the forgery count; and (4) by . . . awarding restitution to his ex-wife and her brother for various attorneys fees incurred as a result of [respondent's] criminal conduct. Seeing no error, we affirm.

16. Respondent, as petitioner, appealed to the Oregon Supreme Court, which on February 3, 2022, issued an Order Allowing Review in case number SC S069142. In his Brief on the Merits, Exhibit 1, page A10, respondent as petitioner states that at issue is “whether the criminal restitution statute authorizes restitution for costs incurred by a victim who hires a civil attorney to represent the victim during the state’s prosecution of a defendant in a criminal trial.” Similarly, Petitioner’s Brief on the Merits, Exhibit 1, page A11, states only one “Question Presented [¶] Does the criminal restitution statute authorize restitution for costs incurred by a victim who hires a civil attorney to represent the victim during the state’s prosecution of a defendant in a criminal trial?”

17. The Oregon Supreme Court heard oral argument on June 8, 2022. The court has not issued a decision, opinion, or otherwise ruled.

Revocation of Respondent’s Oregon Broker License

18. An August 8, 2015 Final Order of the Real Estate Agency of the State of Oregon revoked respondent’s real estate broker license, adopting a Proposed Order that an Administrative Law Judge, ALJ Alison Greene Webster, of the Oregon OAH, the Office of Administrative Hearings, had issued on July 15, 2015 in Agency Case number 2013-90, Oregon OAH number 1403962.

19. ALJ Webster’s July 15, 2015 Proposed Order and the August 8, 2015 Final Order of the Real Estate Agency were based on the findings of respondent’s misconduct in civil case number 1309-12855 in the Oregon Circuit Court.

20. Respondent appealed the Final Order of the Real Estate Agency. On March 14, 2018, the Oregon Court of Appeals issued its decision in appellate court case number A160475, *Halvorson v. Real Estate Agency* (2018) 290 Or.App. 756,

reversing the Real Estate Agency's August 8, 2015 Final Order and remanding the matter to the Real Estate Agency.

21. The Real Estate Agency referred the hearing on remand in Agency Case number 2013-90 to ALJ Webster. An April 16, 2019 Final Order on Remand of the Real Estate Agency revoked respondent's real estate broker license, adopting the Proposed Order that ALJ Webster had issued on March 20, 2019 in Oregon OAH case number 2018-ABC-02052.

22. ALJ Webster's March 29, 2019 Proposed Order and the Real Estate Agency's April 16, 2019 Final Order on Remand were based on the findings of misconduct in case number 1309-12855 in the Oregon Circuit Court, the same findings on which were based the ALJ's July 15, 2015 Proposed Order and the Real Estate Agency's August 8, 2015 Final Order.

23. There is no evidence respondent appealed the Real Estate Agency's April 16, 2019 Final Order on Remand.

Respondent's Evidence

24. Respondent's evidence was limited to a description of his volunteer activity in support of the community. Questioned about other facts, including all those alleged in the Second Amended Accusation, respondent invoked the Fifth Amendment of the United States Constitution and declined to answer on grounds the answers might incriminate him. No inferences for or against either party have been made based on the Fifth Amendment's invocation.

///

///

25. Since 2018 or 2019, two to four weekends per month, "on and off" for the past three to four years, for a total of perhaps 80 volunteer hours, respondent has cleaned up trash at the beach in Newport Beach.

26. For several years respondent has taken part in charity events and a mentorship program associated with the University of Arizona and alumni of the Sigma Chi fraternity. He acts as mentor to others regarding commercial real estate matters.

Costs

27. Complainant incurred reasonable costs totaling \$5,078.42: investigative costs of \$4,279.70 and enforcement costs of \$798.72.

PRINCIPLES OF LAW

1. Complainant bears the burden of proof. The standard of proof is the same as stated in *Ettinger v. Medical Board of Quality Assurance* (1982) 135 Cal.App.3d 853, 855, proof that is "clear and convincing . . . to a reasonable certainty."

2. In support of his motion to dismiss, respondent cited *C3 Entertainment v. Arthur J. Gallagher & Co.* (2005) 125 Cal.App.4th 1022, 1025, which states:

The one final judgment rule is a "fundamental principle of appellate practice that prohibits review of intermediate rulings by appeal until final resolution of the case." (*Griset v. Fair Political Practices Com.*, supra, 25 Cal.4th at p. 697.)

"[A]n appeal cannot be taken from a judgment that fails to complete the disposition of all . . . causes of action between

the parties. . . ." (*Morehart v. County of Santa Barbara* (1994)
7 Cal.4th 725, 743 [29 Cal.Rptr.2d 804, 872 P.2d 143].)

California Statutes and Regulations

3. Business and Professions Code sections 490 and 10177, subdivision (b), provide that discipline of respondent's license is appropriate if he has been convicted of a crime substantially related to the qualifications, functions, or duties of a licensee.

4. Business and Professions Code section 10177 provides for license discipline if a licensee has:

(b) (1) . . . been convicted of . . . a felony . . . and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw that licensee's plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

[1] . . . [1]

(f) Acted or conducted themselves in a manner that would have warranted the denial of their application for a real estate license, either had a license denied or had a license issued by another agency of this state, another state, or the federal government revoked, surrendered, or suspended, or received an order of debarment, for acts that, if done by a

real estate licensee, would be grounds for the suspension or revocation of a California real estate license, if the action of denial, revocation, surrender, suspension, or debarment by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and only upon an express finding of a violation of law by the agency or entity.

5. Criteria for finding substantial relationship are set out in regulations promulgated by the Real Estate Commissioner. Regulations cited here are sections of title 10 of the California Code of Regulations. Regulation 2910 sets out the following circumstances that show a substantial relationship between a crime and licensure:

Under subdivision (a)(8): "Doing of any unlawful act . . . with the intent or threat of doing substantial injury to the person or property of another."

Under subdivision (c): "If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or acts were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the . . . licensee."

6. Criteria for evaluating rehabilitation are set out in Regulation 2912:

(a) The time that has elapsed since commission of the act(s) or offense(s):

(1) The passage of less than two years after the most recent criminal conviction or act of the licensee that is a cause of action in the Bureau's Accusation against the licensee is inadequate to demonstrate rehabilitation.

(2) Notwithstanding subdivision (a)(1), above, the two year period may be increased based upon consideration of the following:

(A) The nature and severity of the crime(s) and/or act(s) committed by the licensee.

(B) The licensee's. history of criminal convictions and/or license discipline that are "substantially related" to the qualifications, functions, or duties of a real estate licensee.

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee, or escheat to the State of these monies or other properties if the victim(s) cannot be located.

(c) Expungement of the conviction(s) which culminated in the administrative proceeding to take disciplinary action.

(d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.

(e) Successful completion or early discharge from probation or parole.

(f) Abstinence from the use of controlled substances and/or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance and/or alcohol.

(g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.

(h) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.

(i) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.

(j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.

(k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

///

(l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by any or all of the following:

(1) Testimony and/or other evidence of rehabilitation submitted by the licensee.

(2) Evidence from family members, friends and/or other persons familiar with the licensee's previous conduct and with subsequent attitudes and/or behavioral patterns.

(3) Evidence from probation or parole officers and/or law enforcement officials competent to testify as to licensee's social adjustments.

(4) Evidence from psychiatrists, clinical psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

(5) Absence of subsequent felony convictions, misdemeanor convictions, or other conduct that provides grounds to discipline a real estate licensee, which reflect an inability to conform to societal rules when considered in light of the conduct in question.

///

7. Code of Civil Procedure section 1049 provides: "An action is deemed to be pending from the time of its commencement until its final determination upon appeal, or until the time for appeal has passed, unless the judgment is sooner satisfied."

8. Evidence Code section 1300 provides: "Evidence of a final judgment adjudging a person guilty of a crime punishable as a felony is not made inadmissible by the hearsay rule when offered in a civil action to prove any fact essential to the judgment whether or not the judgment was based on a plea of nolo contendere."

9. The Department may be awarded reimbursement of its reasonable costs for investigation and enforcement under Business and Professions Code section 10166.

Pertinent Oregon Law

10. ORS 696.301 provides in pertinent part:

[T]he Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any real estate licensee or deny the issuance or renewal of a license to an applicant who has: [1] . . . [1]

(14) Committed an act of fraud or engaged in dishonest conduct substantially related to the fitness of the applicant or real estate licensee to conduct professional real estate activity, without regard to whether the act or conduct occurred in the course of professional real estate activity.

11. The Oregon Rules of Appellate Procedure apply in both the appellate courts and the Oregon Supreme Court. Rule 9.20 (2) states:

If the Supreme Court allows a petition for review, the court may limit the questions on review. If review is not so limited, the questions before the Supreme Court include all questions properly before the Court of Appeals that the petition or the response claims were erroneously decided by that court. The Supreme Court's opinion need not address each such question. The court may consider other issues that were before the Court of Appeals.

ANALYSIS

1. The pending appeal of respondent's felony conviction does not require dismissal of these administrative proceedings. Business and Professions Code section 10177, subdivision (b), explicitly allows license discipline to proceed when, as here, "the judgment of conviction has been confirmed on appeal"

Motion to Dismiss Denied

2. Respondent seeks dismissal of this case, urging: the Department did not show by clear and convincing evidence that respondent perpetrated harm; the Department called no witnesses and presented no testimony in support of its allegations; and documents, including Exhibits 5 and 6, are inadmissible under the one final judgment rule.

3. The Department has met its burden of proving cause for discipline as addressed further below, and it was not required to provide witness testimony to prove its case by clear and convincing evidence. Official notice is taken of Exhibits 5

and 6 as official records of Oregon courts. (Gov. Code, § 11515; Evid. Code, § 452, 452.5.)

4. In seeking dismissal through exclusion of Exhibits 5 and 6, respondent is essentially arguing that his criminal matter is not final because it remains on appeal with the Oregon Supreme Court.

5. Business and Professions Code section 10177, subdivision (b), does not specifically address an appeal, such as respondent's, from an appellate court decision. The statute's principle is unmistakable, however. A judgment affirmed on appeal, as respondent's was, is consequential, even if there are further proceedings in the matter. Respondent's conviction, being a judgment affirmed on appeal, is properly the basis for disciplinary consequences to respondent's license forthwith.

6. Respondent's criminal conviction is admissible evidence. The court noted in *Principal Life Ins. v. Peterson* (2007) 156 Cal.App.4th 676, 689, that in the past a criminal conviction was inadmissible hearsay, but the law was changed with the adoption of Evidence Code section 1300:

The change, however, is desirable, for the evidence involved is peculiarly reliable. The seriousness of the charge assures that the facts will be thoroughly litigated, and the fact that the judgment must be based upon a determination that there was no reasonable doubt concerning the defendant's guilt assures that the question of guilt will be thoroughly considered." (Cal. Law Revision Com. com., reprinted at 29B pt. 4 West's Ann. Evid. Code (1995 ed.) foil. § 1300, p. 397.)

///

The rationale supporting admissibility of a felony conviction in a civil matter under Evidence Code section 1300 is likewise a rationale in support of disciplinary proceedings under Business and Professions Code section 10177, subdivision (b), based upon an appellate court affirmance of a felony conviction.

7. Disciplinary proceedings in this matter should not be dismissed. Respondent has argued, apparently correctly, that under appellate rules, particularly Rule 9.20 (2) of the Oregon Rules of Appellate Procedure, the Oregon Supreme Court could consider and decide all aspects of his felony conviction. But it is not clear that the court would go beyond consideration of respondent's lone question presented, concerning restitution, or, if it did, that that would matter here.

8. As already set out above, not only does California law permit disciplinary proceedings at this procedural juncture, whatever the Oregon Supreme Court decides, but also it supplies a rationale for deeming past procedures, including the Oregon trial court's finding of guilt and its affirmance on appeal, proper evidence to support license discipline.

Substantial Relationship

9. Respondent's misconduct has a substantial relationship to the qualifications, functions, or duties of a California real estate licensee under Regulation 2910, subdivision (a)(8). As both the Circuit Court and appellate court in Oregon found, respondent did unlawful acts with the intent or threat of doing substantial injury to the person or property of another.

10. Under Regulation 2910, subdivision (c), respondent's substantially related misdeeds should in context be accorded heavy weight. Respondent's fraud and falsification of evidence to gain advantage in litigation are antithetical to the honesty

and integrity expected of a real estate licensee. Respondent was guilty in the civil court of contempt of and fraud upon the court and deceiving other parties in litigation. His crimes were forgery and identity theft. All his misdeeds were of a serious nature and caused significant injury to others and the administration of justice.

Causes for Discipline

11. Cause exists to discipline respondent's licenses and licensing rights under Business and Professions Code section 10177, subdivision (f), based on license discipline by another agency, as set out in Findings of Fact 18 through 22.

12. Cause exists to discipline respondent's licenses and licensing rights under Business and Professions Code sections 490 and 10177, subdivision (b), based on respondent's felony conviction in Oregon, as set out in Findings of Fact 13, 14, and 15.

Mitigation, Aggravation, and Rehabilitation

13. In mitigation of respondent's misconduct, he admitted his forgery to the Oregon court. Such an acknowledgement is a first step toward rehabilitation, as the court stated in *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.

14. This mitigation is slight. As the Oregon appellate court found, respondent's forgery was a ruse that the other parties to the Consolidated Case discovered. Respondent had little choice but to acknowledge his deception.

15. The court in the Consolidated Case enumerated factors aggravating respondent's misconduct, including that he injured other persons and the system of justice.

///

16. Respondent's evidence of rehabilitation is meager. It is commendable, and notable under Regulation 2912, subdivision (j), that respondent has concern for the beach environment by cleaning up trash and that he gives of his time to help others concerned with issues in real estate. These good deeds demonstrate some concern for community well-being.

17. Respondent failed to express any regret or remorse for his misconduct. He also failed to demonstrate his understanding of the harm to his ex-wife, her family, and her family businesses. Consequently, respondent has failed to establish, under Regulation 2912, subdivision (m), that his attitude has changed since his misconduct.

18. Over seven years has elapsed since commission of respondent's misdeeds, a consideration under Regulation 2912, subdivision (a). As the court noted in *Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070, the evidentiary significance of misconduct is greatly diminished by the passage of time and absence of similar, more recent misconduct. Also noteworthy is respondent has no history of more recent misconduct or of license discipline in California.

19. Respondent continues in his attempts to deprive his ex-wife and other litigants restitution in the form of attorney fees. Respondent did wrong, does not repent of it and is striving to deny his ex-wife and those related to her monies to restore her after injury.

20. The passage of time is inadequate to demonstrate rehabilitation in this case.

21. Respondent has failed to pay any restitution to date, weighing heavily against a finding of rehabilitation under Regulation 2912, subdivision (b).

22. Given the nature and severity of respondent's misdeeds, a consideration under Regulation 2912, subdivision (a)(2)(A), and all pertinent circumstances set out in Regulation 2912 with respect to rehabilitation, the evidence failed to establish that respondent is sufficiently rehabilitated from his wrongdoing and crimes.

23. Respondent's misconduct was severe, and there is insufficient assurance he has changed and, if faced with similar business dealings, would not again engage in fraud and deception. For the safety of the public, revocation of respondent's license and licensing rights is warranted.

Costs

24. There was no evidence to suggest that any cost award to complainant should be reduced or eliminated under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32.

LEGAL CONCLUSIONS

There is sufficient cause to discipline respondent's license based on his August 2017 felony criminal conviction, notwithstanding that there is no final decision from appeal of the decision to the Oregon Supreme Court. Additional and sufficient cause for license discipline is the discipline of respondent's license by Oregon authorities. Respondent did not demonstrate that he is rehabilitated from wrongdoing.

ORDER

1. All licenses and licensing rights of respondent, John Olaf Halvorson, under the Real Estate Law are revoked.

2. Reimbursement costs are awarded to the Department of Real Estate. Respondent shall pay the Department therefor \$5,078.42 within 30 days of the effective date of this decision.

DATE: 12/09/2022

Thomas Lucero

THOMAS LUCERO

Administrative Law Judge

Office of Administrative Hearings