

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 26 2021.

IT IS SO ORDERED 3.19.21

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

Douglas R. McCauley

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

In the Matter of the Accusation Against:

JUSTIN DRAYTON GRAHAM, Respondent

Agency Case No. H-41673 LA

OAH No. 2020060846

PROPOSED DECISION

Thomas Heller, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on December 3, 2020.

Julie L. To, Counsel, Department of Real Estate (Department), represented complainant Maria Suarez, a Supervising Special Investigator of the Department.

Respondent Justin Drayton Graham represented himself.

Oral and documentary evidence was received, and the matter was submitted for decision on December 3, 2020. On January 4, 2021, the administrative law judge issued a notice and order of intent to take official notice of the date and disposition in *Graham on Discipline*, Supreme Court of California Case No. S244973, absent an objection from either party by January 11, 2021. Neither party objected, and those matters are officially noticed under Government Code section 11515.

The record was closed and the matter was resubmitted for decision on January 11, 2021.

FACTUAL FINDINGS

Background and Procedural History

1. Respondent is licensed under the Real Estate Law, Business and Professions Code, division 4, part 1 (§ 10000 et seq.)¹ as a real estate broker, license number 01403858. He was first licensed as a broker on November 20, 2003. Respondent has two DBA's under his license – "Cornerwest" and "Suburban Landmarks" – which he added in April 2019. Since November 2019, respondent has also been the designated broker of record for real estate corporation JG1811, Inc., license number 02103254. In addition, respondent holds a mortgage loan originator (MLO) endorsement, Nationwide Multistate Licensing System (NMLS) ID number 838682.
2. Respondent's real estate broker license is set to expire on April 17, 2024, unless renewed. He has no prior disciplinary record with the Department.
3. On May 18, 2020, complainant filed an Accusation in her official capacity requesting that the Real Estate Commissioner (Commissioner) take disciplinary action against respondent's license and licensing rights. As grounds for the request, complainant alleged that respondent had been suspended from the practice of law for

¹ Undesignated statutory references are to the Business and Professions Code.

acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license.

4. Respondent submitted a Notice of Defense on Accusation dated May 22, 2020.

State Bar of California Discipline in January 2018

5. Respondent is an attorney who was admitted to the State Bar of California in June 2002. On January 8, 2018, the Supreme Court of California suspended respondent from the practice of law for two years, stayed execution of the suspension, and placed respondent on probation for two years subject to conditions that included a 90-day actual suspension, attendance at State Bar Ethics School, passing the Multistate Professional Responsibility Examination, and payment of \$3,215 in costs, among others. (Supreme Court of California Case No. S244973 [State Bar Court Case No. 16-O-11526-YDR].)

6. The disciplinary action arose from respondent's violations of Business and Professions Code section 6104 (appearing as an attorney for a party without authority); section 6068, subdivision (c) (failure to maintain a legal or just action); and section 6068, subdivision (d) (misleading the court). Respondent stipulated with the State Bar of California to the violations, underlying facts, and probationary conditions imposed. In the stipulation, respondent admitted he filed a voluntary Chapter 13 bankruptcy petition without a debtor's authorization. Respondent filed the bankruptcy petition to stop or delay a trustee sale of the debtor's real property, but the debtor never examined the petition, signed any documents in connection with the petition, or consented to be represented by respondent. Nonetheless, respondent electronically signed and filed the petition based on a representation of a potential buyer of the

property that the debtor had authorized the filing. Respondent also admitted that the filing contained multiple false statements, including that the debtor had examined the petition; the debtor had participated in credit counseling; respondent had informed the debtor about eligibility to proceed under different chapters of the Bankruptcy Code; and respondent explained to the debtor the relief available under each chapter for which the debtor was eligible.

7. Respondent's stipulation with the State Bar of California included findings of mitigating and aggravating circumstances. In mitigation, respondent had no prior disciplinary history and entered into a pre-filing stipulation. In aggravation, respondent committed multiple acts of misconduct, caused significant harm to the debtor, and displayed indifference and a failure to acknowledge his wrongdoing. The State Bar Court approved the stipulation and recommended the agreed-upon discipline to the Supreme Court of California, which accepted the recommendation.

Complainant's Case

8. Complainant argues that the State Bar of California discipline against respondent in January 2018 warrants the Commissioner taking disciplinary action against respondent's real estate license. Complainant presented documentary evidence of the State Bar of California disciplinary action, and of a second State Bar of California disciplinary action in May 2018. In the second disciplinary action, the Supreme Court of California suspended respondent from the practice of law for one year, stayed execution of the suspension, and placed him on probation for one year for stipulated violations of Rules of Professional Conduct, rule 3-110(A) (failure to perform legal services with competence); Rules of Professional Conduct, rule 4-100(A) (failure to maintain the balance of funds received for the benefit of a client) (two counts); Business and Professions Code, section 6106 (acts of moral turpitude, dishonesty or

corruption); and Rules of Professional Conduct, rule 3-310(C)(1) (accepting representation of more than one client in a matter in which the interests of the clients potentially conflicted without obtaining informed written consent from each client). (Supreme Court of California Case No. S247432 [State Bar Court Case Nos. 16-O-13178, 16-O-18173].) The second disciplinary action involved different facts and clients than the first, and complainant alleges it is a matter in aggravation for the Commissioner to consider, although not cause for discipline itself. Complainant also presented a certification stating that the Department has incurred \$1,157 in investigative costs in connection with the Accusation.

Respondent's Case

9. Respondent does not challenge the veracity of the documents concerning the State Bar of California disciplinary actions. But respondent asserts that the stipulated facts and violations are biased towards the State Bar of California Office of Trial Counsel's view of the contested cases. Respondent testified he acted in good faith, although he may have done some things incorrectly. Respondent explained he did not have a good attorney in the State Bar of California actions, and he settled for personal and economic reasons.

10. With respect to the unauthorized bankruptcy petition, respondent admitted he made a mistake by not speaking to the debtor directly or getting written approval to file it. But respondent thought he was authorized to file the petition based on what the potential buyer of the debtor's property told him. Respondent knew and trusted the potential buyer, who stated that the debtor's real estate broker had conveyed the debtor's approval to file the petition.

11. Respondent has completed his State Bar of California probations, and his license to practice law is now in good standing. He argued he has already paid the price for his mistakes, which did not involve his real estate license.

LEGAL CONCLUSIONS

Legal Standards

1. The Commissioner may suspend or revoke the license of a real estate licensee who has "had a license issued by another agency of this state, another state, or the federal government revoked, surrendered, or suspended 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, or suspension 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." (§ 10177, subd. (f).)

2. Complainant has the burden of proving the alleged grounds for license discipline by clear and convincing evidence to a reasonable certainty. (*The Grubb Co., Inc. v. Department of Real Estate* (2011) 194 Cal.App.4th 1494, 1505; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457; see also *Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212.) Clear and convincing evidence "requires a finding of high probability" and has been described as "requiring that the evidence be "so clear as to

leave no substantial doubt'; 'sufficiently strong to command the unhesitating assent of every reasonable mind.'" [Citation.]" (*In re Angelia P.* (1981) 28 Cal.3d 908, 919.)

Analysis

CAUSE FOR DISCIPLINE

3. Complainant proved respondent had a license issued by another state agency suspended for acts that, if done by a real estate licensee, would be grounds to suspend or revoke a real estate license. In January 2018, the Supreme Court of California suspended respondent's license to practice law for 90 days for violations of Business and Professions Code section 6104 (appearing as an attorney for a party without authority); section 6068, subdivisions (c) (failure to maintain a legal or just action); and section 6068, subdivision (d) (misleading the court). (Factual Findings 5-7.) The acts underlying the violations included signing a bankruptcy petition without authorization and making false statements in the petition. (*Ibid.*) If done by a real estate licensee, these acts would be grounds for the Commissioner to suspend or revoke a real estate license for "making . . . substantial misrepresentation[s]" and "conduct . . . which constitutes fraud or dishonest dealing." (§§ 10176, subds. (a), (i), 10177, subd. (j).) Further, respondent filed the bankruptcy petition in order to stop or delay a trustee sale of the debtor's real property. (Factual Finding 6.) Therefore, his misconduct was substantially related to a real estate transaction.

4. The disciplinary action against respondent for these acts was taken after giving him fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act. The Rules of Procedure of the State Bar of California include detailed notice and hearing procedures that provide comparable due process protections. Furthermore, the

disciplinary action was taken upon express findings of violations of law by the State Bar Court, which the Supreme Court of California approved. (Factual Finding 7.) Therefore, the Commissioner may suspend or revoke respondent's real estate licensing rights on account of the disciplinary action. (§ 10177, subd. (f).)

5. Respondent claims that the stipulated facts and violations in the disciplinary action and in the second disciplinary action against him in May 2018 are biased towards the State Bar of California Office of Trial Counsel's view of the cases. But respondent's stipulations in those actions are admissions of the facts and violations for purposes of this proceeding. (*Nungaray v. Pleasant Valley Lima Bean Growers & Warehouse Assn.* (1956) 142 Cal.App.2d 653, 667-668.) Considering those admissions and the requirements of section 10177, subdivision (f), complainant presented clear and convincing evidence of cause to suspend or revoke respondent's real estate license.

LEVEL OF DISCIPLINE

6. The primary purpose of administrative license proceedings is to protect the public, and the object of discipline is not to punish the licensee. (*Norman v. Department of Real Estate* (1979) 93 Cal.App.3d 768, 778; *Borror v. Department of Investment* (1971) 15 Cal.App.3d 531, 540.) Public protection merits disciplinary action in this case. The violations underlying respondent's State Bar of California discipline in January 2018 involved false statements and the filing of a bankruptcy petition without a debtor's authority, which caused significant harm. (Factual Findings 5-7.) Just over three years have elapsed since that disciplinary action, and respondent was on probation with the State Bar of California for two years until January 2020. (See Factual Finding 5.) Respondent was also disciplined for additional violations of law in another State Bar of California case in May 2018. (Factual Finding 8.) While complainant does

not allege the second disciplinary action is cause for discipline in this case, the second action proves respondent's discipline in January 2018 was not an isolated event. In mitigation, respondent has no prior disciplinary record with the Department, and he has successfully completed probation in the State Bar of California cases. Further, the actual suspension of respondent's license to practice law in January 2018 was limited to 90 days.

7. Considering these facts, a level of discipline similar to respondent's State Bar of California discipline in January 2018 is appropriate. Issuance of a restricted broker license with a 90-day suspension and professional responsibility and continuing education requirements will protect the public and further respondent's rehabilitation.

COSTS

8. Complainant requests \$1,157 in investigative costs in connection with the Accusation. "Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before the department, the commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case." (§ 10106, subd. (a).) In evaluating a request for costs, the administrative law judge must consider whether complainant's investigation was "disproportionately large" compared to the violation, and whether the licensee: (1) committed some misconduct but "used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed;" (2) had a "subjective good faith belief in the merits of his or her position;" (3) raised a "colorable challenge" to the proposed discipline; and (4) "will be financially able to make later payments." (*Zuckerman v. State Board of Chiropractic Examiners* (2002) 29

Cal.4th 32, 45 [quoting *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 342, 345].)

9. Complainant presented a certification of the Department's costs, which is prima facie evidence that the costs are reasonable. (§ 10106, subd. (c) ["A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the commissioner or the commissioner's designated representative, shall be prima facie evidence of reasonable costs of investigation and prosecution of the case."].) Respondent presented no evidence that they are not. Respondent used the hearing process to obtain a reduction in the severity of the discipline imposed, but the reduction is not so great as to justify a reduced award of costs. Respondent did not assert a colorable challenge to discipline, and the Department's investigation was not disproportionately large compared to the violations. Respondent also did not argue that he will be financially unable to pay the costs. Therefore, it is reasonable to require respondent to pay them.

ORDER

All licenses and licensing rights of respondent Justin Drayton Graham under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions, and restrictions imposed under authority of Section 10156.6 of that Code:

1. Any restricted real estate license issued to respondent pursuant to this Decision shall be suspended for 90 days from the date of issuance of said restricted license.
2. 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.
3. 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 attaching to the restricted license.
4. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations, or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.
5. 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 the respondent presents such evidence. The

Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

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

7. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his 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 reports 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 the Respondent engaged during the period covered by the report.

8. Respondent shall pay the Department \$1,157 in costs within 30 days of the effective date of this Decision.

DATE: Feb 9, 2021

TL Heller
Thomas Heller (Feb 9, 2021 09:55 PST)

THOMAS HELLER

Administrative Law Judge

Office of Administrative Hearings