

FILED

APR 5 2024

DEPT. OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE



STATE OF CALIFORNIA

In the Matter of the Accusation of:)	DRE No. H-42375 LA
)	
ROCKLAND COMMERCIAL INC and)	OAH No. 2023070574
)	
JEFFREY CHRISTOPHER CHANEY,)	
)	
individually and as a designated officer of)	
)	
Rockland Commercial Inc,)	
)	
Respondents.)	

DECISION

The Proposed Decision dated February 6, 2024, 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.

Page 5, paragraph 12, "April 1, 2023...shall be amended to "...April 1, 2021..."

The Decision suspends or revokes one or more real estate licenses.

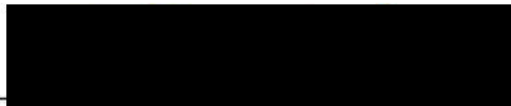
Pursuant to Government Code Section 11521, the Department of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Department's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first.

The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. 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 4/25/2024.

IT IS SO ORDERED 4/2/2024

Chika Sunquist
REAL ESTATE COMMISSIONER


By: Marcus L. McCarther
Chief Deputy Real Estate Commissioner

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

In the Matter of the Accusation Against:

**ROCKLAND COMMERCIAL INC and JEFFREY CHRISTOPHER
CHANEY, individually and as designated officer of
ROCKLAND COMMERCIAL INC,**

Respondents.

Agency No. H-42375 LA

OAH No. 2023070574

PROPOSED DECISION

Cindy F. Forman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this case by videoconference on January 10, 2024.

Steve Chu, Counsel, represented complainant Ruth Corral, Supervising Special Investigator, Department of Real Estate (Department).

Respondent Jeffrey Christopher Chaney (respondent Chaney) appeared at the hearing by videoconference and represented himself and respondent Rockland Commercial Inc (respondent RCI). (Respondents Chaney and RCI are collectively referred to as "respondents.")

The Administrative Law Judge heard testimony and received documentary evidence. The record closed and the matter was submitted on January 10, 2024.

SUMMARY

Complainant seeks to discipline respondents' Department licenses based on respondents' failure as of the hearing date to supply the Department with certain documents from respondent RCI's files since November 2020. Complainant also alleges violations of the Real Estate Law based on irregularities found on respondent RCI's website and respondent Chaney's business card. Complainant proved by clear and convincing evidence respondents failed to turn over requested files, used unlicensed fictitious names, and failed to include respondent Chaney's license information on his business card. Additionally, complainant proved respondent Chaney failed to supervise respondent RCI to ensure compliance with the Real Estate Law. Although several of respondents' violations are technical, respondents' persistent failure to turn over the requested documents without a showing of good cause demonstrates a blatant disregard for the law and undermines the Department's efforts and obligation to protect the public. Revocation of respondents' licenses and licensing rights therefore is warranted.

FACTUAL FINDINGS

Jurisdiction

1. On January 29, 2005, the Department issued corporate broker license number C/01475676 to respondent RCI. Respondent Chaney is respondent RCI's

designated officer. Respondent RCI's corporate license is scheduled to expire on October 3, 2025.

2. The Department issued a restricted conditional salesperson license to respondent Chaney on July 14, 2005. The Department issued real estate broker license B/01423471 to respondent Chaney on October 31, 2008. Respondent Chaney's broker license is scheduled to expire on August 1, 2025.

3. On December 29, 2022, complainant, in her official capacity, signed and thereafter filed the Accusation against respondents. The Accusation alleges cause to discipline respondents' licenses and licensing rights under subdivisions (d), (g), or (h) of Business and Professions Code (Code) section 10177 based on the following: (1) respondent RCI's failure to retain and produce records in violation of Code section 10148; (2) respondents' improper use of unlicensed fictitious names in violation of Code section 10159.5 and California Code of Regulations, title 10 (CCR), section 2731; (3) respondent Chaney's failure to disclose his real estate identification number on solicitation materials in violation of Code section 10140.6 and CCR section 2773; and (4) respondent Chaney's failure to ensure respondent RCI's compliance with the Real Estate Law in violation of Code section 10159.2 and CCR section 2725. Complainant also sought an award of the Board's reasonable investigation and enforcement costs.

4. Respondents timely filed a Notice of Defense, acknowledging receipt of the Accusation and requesting a hearing.

5. All jurisdictional requirements were met.

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Background

6. Respondent Chaney is the president of respondent RCI. Except for a short period when respondent Chaney had an assistant, respondent Chaney has been respondent RCI's sole officer and employee.

7. Respondent RCI is involved in the business of commercial real estate lending, sales, and brokering, primarily to commercial lending outfits. Respondent RCI does not perform property management; nor does the company negotiate, sell, or service trust deeds. Respondents do not have a California Finance Lender or a Residential Mortgage License.

8. Respondent RCI currently does not have any DBA licenses. Respondent RCI added Rockland Realty Services as a DBA on August 4, 2011; however, respondent RCI canceled the DBA on July 29, 2017.

Document Request

9. At a date not made clear in the record but sometime before October 8, 2020, the Department decided to interview respondent Chaney as respondent RCI's designated officer as part of a routine review of RCI's records to ensure compliance with the Real Estate Law. The Department assigned Special Investigator Shannon Boyd (SI Boyd) to the matter. SI Boyd has worked for the Department for 25 years.

10. Between October 8, 2020, and November 4, 2020, SI Boyd made several attempts by email to schedule an interview with respondent Chaney. (Exhibit 6, p. A216–A245.) On November 4, 2020, respondent Chaney agreed to an interview date. (*Id.*, p. A216.) On November 10, 2020, SI Boyd conducted a telephone interview with respondent Chaney, which she memorialized in a declaration admitted in evidence as

Exhibit 5. During the interview, SI Boyd discussed respondents' real estate business practices. To complete her review, SI Boyd requested respondent Chaney provide her with a list or printout of respondent RCI's real estate and loan transactions for the past three years, a copy of one of respondent RCI's recent real estate transaction files, a copy of three of respondent RCI's recent loan files, and a copy of respondent Chaney's business card. Respondent Chaney agreed to SI Boyd's request. SI Boyd did not set a time frame for respondent Chaney's response.

11. As of December 28, 2020, SI Boyd had not received any of the documents promised by respondent Chaney. Consequently, SI Boyd sent respondent Chaney an email stating the requested documents were due on January 8, 2021. (Exhibit 6, p. A213.) Respondent Chaney did not provide the documents on January 8, 2021. Instead, respondent Chaney apologized for his delay and then sought clarification of the documents SI Boyd needed. (*Id.*, p. A209.) On January 12, 2021, SI Boyd emailed respondent Chaney a list of the required documents, which were the same documents SI Boyd had requested during the November 10 interview. (*Id.*, p. 207.)

12. On February 18, 2021, respondent Chaney indicated he would be unable to supply the requested documents because he would be "in a facility for a month that is medically related." (Exhibit 6, p. A204.) SI Boyd responded by email, telling respondent Chaney he could wait until he was able to respond. (*Id.*, p. A201.) When six weeks passed, SI Boyd sent an email on April 1, 2023, to respondent Chaney inquiring about whether the requested documents had been sent, and, if not, directing respondent Chaney to send the documents in the "next few days." (*Id.*, p. A200.) Respondent Chaney did not respond to the email.

13. When SI Boyd did not receive the documents as of May 2021, the Department served a Subpoena Duces Tecum by certified mail on respondents on May

13, 2021, directing respondent RCI to produce the subject documents by mail to SI Boyd no later than June 4, 2021 (Subpoena). The Subpoena stated respondents would be subject to a contempt citation if they disobeyed the Subpoena. (Exhibit 7, p. A247.) Tracking information indicates the Subpoena was delivered to an individual at respondents' address on May 17, 2021. (*Id.*, p. A251.)

14. Respondents did not provide any documents in response to the Subpoena by June 4, 2021. On June 21, 2021, SI Boyd emailed respondent Chaney, reiterating her request for the documents identified in the Subpoena and reciting her efforts since the November 10, 2020 interview to obtain the documents. (Exhibit 6, pp. A198–A199.) Respondent Chaney emailed SI Boyd the same day, again apologizing for the delay and telling her he had “just got back into town” and would respond to her June 21 email by June 23, 2021. (*Id.*, p. A196.)

15. Respondent Chaney then sent emails to SI Boyd on June 23 and 24, 2021, stating he needed more time to respond to SI Boyd's request. (Exhibit 6, pp. A192–A194.) In an email dated June 24, 2021, SI Boyd requested the production of the documents by June 30, 2021. (*Id.*, p. A192.) On July 1, 2021, respondent Chaney wrote SI Boyd, telling her he was consulting with his attorney that day, was having vision issues looking at his computer for long periods, and would need another two weeks to respond to the Subpoena. (*Id.*, p. A189.) In a follow-up email also dated July 1, 2021, respondent Chaney informed SI Boyd his attorney recommended respondents comply with the Subpoena and also reiterated problems with his vision. Respondent Chaney stated SI Boyd would have the files “very soon.” (*Id.*, p. A187.)

16. On July 15, 2021, SI Boyd emailed respondent Chaney that she had yet to receive any documents from respondents. (Exhibit 6, p. A185.) On July 16, 2021, respondent Chaney emailed SI Boyd he would send a digital copy of the requested

files in the "next few days." (*Id.*, p. A182.) When SI Boyd did not receive the requested documents by July 22, 2021, she requested respondent Chaney participate in a follow-up interview to discuss respondents' failure to produce the requested documents. (*Id.*, p. A179.) Respondent Chaney agreed, and on July 23, 2021, SI Boyd interviewed respondent Chaney. (*Id.*, p. A75; Exhibit 8.) Before the interview, respondent Chaney emailed SI Boyd a copy of his business card for respondent RCI. (Exhibit 6, p. A166.)

17. During the July 23, 2021 interview, respondent Chaney explained to SI Boyd he had been unable to provide the requested documents because he had problems accessing some of his older computer files after switching over to a new computer file system. Respondent Chaney also told SI Boyd his escrow officer had been unavailable to assist him until recently and respondent Chaney had been overwhelmed with other business responsibilities. SI Boyd indicated to respondent Chaney she was no longer interested in the older files from respondent RCI because of the time that had now elapsed. She requested respondents provide her with records from respondent RCI's most recent transactions. Respondent Chaney agreed to provide the requested records to SI Boyd. (Exhibit 8.)

18. On August 2, 2021, respondent Chaney sent an email to SI Boyd stating he recently returned to California and was meeting with his assistant to review the requested files and place them on a flash drive. (Exhibit 6, p. A160.) Respondent Chaney's email also indicated he would mail the flash drive to SI Boyd the following day (August 3, 2021). (*Ibid.*) SI Boyd confirmed receipt of respondent Chaney's email the same day it was sent, and she told him she expected to receive the flash drive by the end of the week or the beginning of the next week at the latest. (*Id.*, p. A155.)

19. As of the date of the hearing, SI Boyd had not received a copy of the requested documents.

Respondent RCI's Website

20. Respondent RCI's website is located at www.rocklandcommercial.com. The website refers to respondent RCI as "Rockland Commercial Mortgages," "Rockland Commercial," and "Rockland." (Exhibit 8.) Respondents did not file for DBA licenses to allow respondent RCI to use the fictitious names "Rockland Commercial Mortgages," "Rockland Commercial," or "Rockland."

Respondent Chaney's Business Card

21. Respondent Chaney's business card identifies respondent Chaney as the owner of "Rockland." (Exhibit 6, p. A166.) The business card does not provide either respondent Chaney or respondent RCI's Department license number. "Rockland" is not a licensed DBA of respondent RCI.

Respondents' Evidence

22. Respondent Chaney has a degree in construction management and has been in the real estate business for 20 years. Recently, his work has focused on real estate development. Respondent Chaney has not been involved in any recent real estate sales. He was not aware of any loans brokered or made by respondent RCI in 2019. Respondent Chaney has no history of discipline against his real estate broker's license.

23. During most of his communications with SI Boyd, respondent Chaney was in Mexico for business. He testified the internet was not "great" in Mexico. Additionally, during that time, respondent Chaney suffered a torn retina requiring medical attention and made looking at a computer for long periods difficult.

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24. Respondent Chaney testified he had problems accessing the files on his computer after his vision stabilized. Respondent Chaney asked his assistant to send the requested files because she was able to access them, and respondent Chaney assumed she had sent them. Respondent Chaney since has lost communication with his assistant, and he does not know how to access the old files on his new computer. Respondent Chaney testified he had not tried to access the files from his old computer. He did not describe any efforts to obtain the files from third parties. Nor did Respondent Chaney explain, even in the absence of such files, why he was unable to supply a list identifying the sales and loan transactions over the requested three-year period.

25. Respondent Chaney was unaware of the Department's requirements for the use of fictitious names. He was also unaware he was required to list his real estate number on his business card. He testified he does not give out business cards and the card he sent to SI Boyd was old and not used.

26. Respondent Chaney acknowledged he received the Subpoena and discussed the Subpoena with his attorney, his attorney recommended respondent Chaney comply with the Subpoena, and he had agreed to supply the requested documents. Respondent Chaney did not dispute the Department had not received the documents. He failed to demonstrate how his filing and document management systems have changed to ensure respondent RCI would be able to respond to any future Department document request.

27. Respondent Chaney failed to provide any evidence, including character references or witness testimony, vouching for his trustworthiness as a real estate broker.

Costs of Investigation and Enforcement

28. Complainant incurred costs of investigation and prosecution totaling \$6,458.22, comprised of \$3,938.22 of investigation costs and \$2,520 of enforcement costs. According to the Certified Statement of Investigation Costs, Department Special Investigators spent 48.93 hours on the matter at \$79 per hour, and Department Supervising Special Investigators spent 0.77 hours on the matter at \$97 per hour. Per the Declaration of Enforcement Costs signed by complainant's counsel, complainant's counsel spent 26.25 hours at \$96 per hour reviewing the file, analyzing the case, and preparing for the hearing.

29. Based on respondent Chaney's financial resources, he can afford to pay the requested costs on a payment plan.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant has the burden of proving cause for discipline against respondents 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.) This means the burden rests on complainant to adduce proof that is clear, explicit, and unequivocal--so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487.)

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Applicable Law

2. The Department Commissioner may suspend or revoke the license of any real estate licensee or may revoke the license of a corporation if either the individual licensee or an officer or director of the corporation has: willfully disregarded the Real Estate Law or the Commissioner's rules and regulations; demonstrated negligence or incompetence in performing an act for which the officer, director, or person is required to hold a license; or, as a corporate broker officer, "failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required." (Code, § 10177, subds. (d), (g), & (h).)

3. Code section 10148, subdivision (a), requires licensed real estate brokers to retain for three years copies of "all listings, deposit receipts, canceled checks, trust records, and other documents executed by the broker or obtained by the broker in connection with any transactions for which a real estate broker license is required." After receiving notice from the Department, the broker must make available these books, accounts, and records for examination, inspection, and copying by the Commissioner or the Commissioner's designated representative. The knowing destruction, alteration, concealment, mutilation, or falsification of any of the records the Department requires to be maintained is a cause to suspend or revoke the real estate broker's license. (Code, § 10148, subd. (e).)

4. A Department licensee is prohibited from using a fictitious name in the conduct of any activity for which a license is required under the Real Estate Law unless the licensee is the holder of a license bearing the fictitious name. (Code, § 10159.5; CCR, § 2731, subd. (a).)

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5. When engaged in activities requiring a Department license, a real estate broker is required to disclose his or her eight-digit license identification number on all solicitation materials intended to be the first point of contact with consumers. (Code, § 10140.6, subd. (b); CCR, § 2773, subd. (a).) Solicitation materials intended to be the first contact with consumers include business cards and websites owned, controlled, and/or maintained by the soliciting real estate licensee. (CCR, § 2773.)

6. The officer designated by a corporate broker license is responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the Real Estate Law. (Code, § 10159.2, subd. (a).) The responsible broker must exercise reasonable supervision over the corporation, including reviewing, overseeing, inspecting, and managing documents materially affecting the rights or obligations of a party to the transaction and the filing, storage, and maintenance of such documents. (CCR, § 2725.)

Causes for Discipline

7. Complainant proved by clear and convincing evidence respondent RCI willfully failed to make available for examination, copying, and inspection records requested by the Department in November 2020 in violation of Code section 10148. The records included lists of all real estate transactions and loan transactions for three years, copies of three recent loan transaction files, and a copy of one recent real estate transaction file. Cause therefore exists to discipline respondent RCI's license and licensing rights under Code section 10177, subdivision (d). (Factual Findings 9–19, Legal Conclusions 1–3.)

8. Complainant proved by clear and convincing evidence respondents negligently or incompetently used the unlicensed fictitious business names "Rockland

Commercial Mortgages," "Rockland Commercial," and "Rockland" on their website and business card in violation of Code section 10159.5 and CCR section 2731. It was not established respondents' use of unlicensed fictitious names was willful. Cause therefore exists to discipline respondents' licenses and licensing rights under Code section 10177, subdivision (g). (Factual Finding 20; Legal Conclusions 1, 2, & 4.)

9. Complainant proved by clear and convincing evidence respondent Chaney negligently or incompetently did not disclose his real estate identification number on his business card in violation of Code section 10140.6 and CCR section 2773. Respondent Chaney's business card is a solicitation material intended to be the first point of contact with consumers under CCR section 2773. It was not established respondent Chaney's failure to include his real estate identification number was willful. Cause therefore exists to discipline respondent Chaney's licenses and licensing rights under Code section 10177, subdivision (g). (Factual Finding 21; Legal Conclusions 1, 2 & 5.)

10. Complainant proved by clear and convincing evidence respondent Chaney failed to ensure respondent RCI's compliance with the Real Estate Law in violation of Code section 10159.2 and CCR section 2725. While respondent Chaney was respondent RCI's designated officer, respondent RCI willfully failed to provide records requested by the Department and negligently used unlicensed fictitious names in violation of the Real Estate Law. Cause therefore exists to discipline respondent Chaney's licenses and license rights under Code section 10177, subdivisions (d), (g), and (j). (Factual Findings 9-21; Legal Conclusions 1-6.)

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Disposition

11. The object of an administrative proceeding aimed at revoking a real estate license is to protect the public by disciplining practitioners who are dishonest and unethical, immoral, disreputable, or incompetent. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457; *Marks v. Watson* (1952) 112 Cal.App.2d 196, 200; *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Code section 10050.1 makes public protection the Department's highest priority.

12. To this date, respondent Chaney has failed to produce any of the documentation sought by the Department since November 2020 other than a copy of his business card. Respondent Chaney did not establish a valid basis for not fully and completely responding to the Department's request. His attempt to blame his assistant for his lack of response was not convincing. Respondent Chaney acknowledged at hearing he had not attempted to obtain the requested files from his old computer, and he did not make known what efforts, if any, he has made to retrieve copies of the requested documents from others, such as escrow officers or deal participants. Respondent Chaney also did not explain why his inability to obtain the files prevented him from at least providing the requested lists of recent transactions. (Factual Findings 24–27.) Additionally, respondent Chaney offered no testimony or reference letters to vouch for his professionalism and trustworthiness. Character references from employers, supervisors, colleagues, and associates familiar with respondent Chaney's work practices are given careful consideration. (See *Werner v. State Bar of Cal.* (1954) 42 Cal.2d 187, 196-197 [recommendations of persons best in position to judge moral character "should weigh heavily in the scale of justice"]; *Preston v. State Bar of Cal.* (1946) 28 Cal.2d 643, 650-651.)

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13. Respondent Chaney's failure to cooperate in the Department's investigation is contrary to his license obligations and frustrates the Department's role in monitoring its licensees and ensuring the protection of the public from incompetent, unscrupulous, or dishonest licensees. Through his dilatory conduct, respondent Chaney has prevented the Department from reviewing any of respondent RCI's files for more than three years. The filing of the Accusation has not had any discernible effect as respondent Chaney has yet to produce the files or demonstrate his good faith in attempting to retrieve them. Respondent Chaney's repeated excuses betray a lack of seriousness and responsibility at best. As respondent Chaney has afforded the Department no avenue to check his competency and fitness to practice real estate activities requiring licensure, revocation is warranted.

Costs

14. Code section 10106 permits the Department Commissioner to request the administrative law judge in a disciplinary hearing to direct a licensee found to have violated the Real Estate Law to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. Complainant requests reimbursement of \$6,458.22 in investigation and enforcement costs under section 10106. (Factual Finding 27.) In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought under statutory provisions like section 10106. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

15. Here, while respondents may have had a subjective good faith in the merits of their position, respondents were not successful in getting charges dismissed or reduced and did not raise a colorable challenge to the proposed discipline. Respondent Chaney can afford to pay the requested costs under a payment plan approved by the Department. Thus, in light of the *Zuckerman* factors, the requested sum of \$6,458.22 is reasonable.

ORDER

All licenses, license endorsements, and license rights of respondents Jeffrey Christopher Chaney and Rockland Commercial Inc under the Real Estate Law are revoked.

Respondents Chaney and Rockland Commercial Inc shall pay a total of \$6,458.22 in investigative and enforcement costs, individually or severally, under a payment plan approved by the Department.

DATE: 02/06/2024



CINDY F. FORMAN
Administrative Law Judge
Office of Administrative Hearings