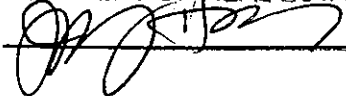


FILED

APR 17 2008

DEPARTMENT OF REAL ESTATE

BY: 

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H-34083 LA
)	
)	L-2007100189
C. BRIAN SMITH,)	
)	
)	
Respondent.)	
)	

DECISION

The Proposed Decision dated March 17, 2008, 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:

Factual Findings, page 2, paragraph No. 6, line 8 & 7, "the Rules of Professional Competence" is amended to read "the Rules of Professional Conduct".

The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

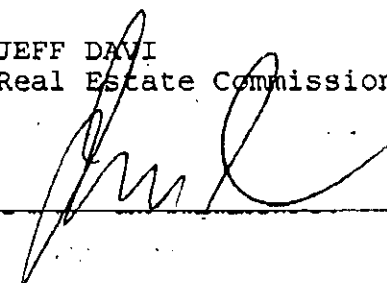
The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on May 7, 2008.

IT IS SO ORDERED

4-16-08

JEFF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

C. BRIAN SMITH,

Respondent.

Case No. H-34083 LA

OAH No. 2007100189

PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter in Los Angeles, California, on February 15, 2008.

Real Estate Counsel Cheryl Keily represented complainant Maria Suarez, a Deputy Real Estate Commissioner of the State of California.

Respondent C. Brian Smith represented himself.

The matter was submitted on February 15, 2008.

FACTUAL FINDINGS

1. Respondent C. Brian Smith is licensed or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) as a real estate broker. Complainant Mary Suarez, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California, filed the accusation against respondent, which alleges that he was convicted of crimes. Respondent filed a notice of defense.

2. On May 30, 2006, in Los Angeles County Superior Court Case No. BA301029, respondent was convicted on his pleas of guilty of a violation of Penal Code section 182, subdivision (a)(1) (conspiracy), two counts of violating Penal Code section 118, subdivision (a) (perjury), a violation of Penal Code section 368, subdivision (e) (theft from elder), and a violation of Penal Code section 487, subdivision (a) (grand theft). All of these crimes are felonies, and perjury and theft are also crimes of moral turpitude. Respondent was sentenced to serve three years in state prison with credit for 69 days in custody, to pay various fines, fees and assessments, and to pay restitution to the estates of nine decedents in the total amount of approximately \$159,000. Ultimately, respondent was given additional time credits of 287 days. Respondent's sentence in this case was ordered to be served concurrently with his sentence in the case set forth below in Finding 3.

3. Also on May 30, 2006, in Los Angeles County Superior Court Case No. BA282965, respondent was convicted on his pleas of guilty of two counts of violating Penal Code section 487, subdivision (a) (grand theft), three counts of violating Penal Code section 118, subdivision (a) (perjury), and a violation of Penal Code section 470, subdivision (a) (forgery). All of these crimes are felonies and crimes of moral turpitude. Respondent was sentenced to serve a total term of three years and four months in state prison with credit for 69 days in custody, to pay various fines, fees and assessments, and to pay restitution to the estates of eight decedents in the total amount of approximately \$415,800.

4. Respondent was incarcerated for one and one-half years and released on parole on August 17, 2007. He will complete his parole on August 17, 2010. Respondent has paid approximately \$100,000 toward his restitution obligation. He paid approximately \$50,000 in January 2006, and paid another \$50,000 on the date he was convicted.

5. Respondent testified that his convictions were the result of wrongful conduct he engaged in as an attorney between the mid-1990's and 2002: he took money that did not belong to him; he took fees before the time that he was statutorily entitled to claim them; and he filed false statements with the court. Respondent did not see the evidence that the forgery conviction was based on; he believes that he probably signed another person's name on a check or a draft. Although respondent also handled real estate and personal injury cases, his misconduct primarily involved probate matters.

6. On November 15, 2002, the California State Bar Court filed a Notice of Disciplinary Charges against respondent based upon the same matters that formed the bases for the criminal prosecutions against him. (Case Nos. 94-O-12921, 96-O-06111, 97-O-17901, 01-O-02160 & 02-O-12301.) Respondent was charged with two counts of violating Business and Professions Code section 6068, subdivision (m) (failure to respond to client inquiries); three counts of violating Rule 3-110(A) of the Rules of Professional Conduct (failure to perform with competence); two counts of violating Rule 4-100(B) of the Rules of Professional Conduct (failure to pay client funds promptly); three counts of violating Rule 4-100(A) of the Rules of Professional Conduct (failure to maintain client funds in trust account); three counts of violating Business and Professions Code section 6106 (misappropriation); three counts of violating Business and Professions Code section 6106 (moral turpitude); a violation of Rule 4-100(B)(3) of the Rules of Professional Conduct (failure to account); a violation of Rule 3-300 of the Rules of Professional Conduct (business transaction with client); and a violation of Business and Professions Code section 6068, subdivision (d) (seeking to mislead a judge). In one matter, it was alleged that respondent employed Cobria Realty to act as a real estate broker in the sale of a client's real property, without informing the client that respondent was the owner of Cobria Realty.

On March 11, 2003, the State Bar Court determined that sufficient grounds existed to involuntarily terminate respondent as an active member of the State Bar.

On March 18, 2003, respondent resigned from the State Bar of California while disciplinary charges against him were pending. The Supreme Court accepted his voluntary resignation on April 24, 2003.

7. Respondent is 49 years old. He married in 1990, separated in 1995 and was divorced in 1998. Respondent has no children.

Respondent graduated from the University of California, Los Angeles, in 1981 with a bachelor's degree in psychology. He was admitted to the State Bar in 1987 and opened his own practice in 1989; he maintained his law practice until his resignation from the Bar in 2003. Respondent was licensed as a real estate broker in 1992. He has not performed any duties related to his real estate license since he closed his law practice.

8. Respondent first learned of the State Bar's complaints against him in 2001, but he later discovered that the Bar had been receiving complaints about him since the mid-1990's. Respondent stated that he did "many wrong things." He was depressed after his divorce and he had financial problems and, as he put it, his moral discipline slipped. Respondent emphasized that he is not a career criminal.

Respondent stated that he has been through a lot over the past six years; his experiences have "opened his eyes" and he feels that he has grown as a person. Respondent testified that he understands the seriousness of his actions and that "his past will shape his future." He will not overextend himself financially again, and he will not let his emotions affect his business. He has lost his home, his license to practice law, and the respect he formerly enjoyed.

Respondent testified that, soon after he learned that he was the subject of a criminal conviction, he realized that he was guilty of many of the offenses with which he had been charged. He agreed to plead guilty and he accepted the restitution order proposed by the prosecution.

9. Since he was released from prison seven months ago, respondent has been trying to find employment so that he will not be a burden on society. It has been hard for him to find work. He is applying for government aid, but he does not want to; he would like to rebuild his career. At least at this time, respondent does not want a job where he has to handle money.

Respondent would like to perform community activities to atone for some of the harm he has done. At this time, however, he is focused on survival. Respondent has no assets and, although he has performed some work as a paralegal, he has no real income. He is living in a temporary residence. Respondent states that he is rebuilding every aspect of his life.

10. Respondent would like to keep his broker license. He points out that he has never had any complaints against him in connection with his broker license. Respondent feels that he has already been severely punished for his crimes, and the loss of his license

would make extremely difficult for him to find work consistent with his knowledge, experience, and training. He would accept a restricted license and any restrictions that the department finds appropriate. Respondent states that he has no real defense to the accusation, but he believes that he has made progress towards his rehabilitation and he hopes that the department will consider his request to keep his license.

11. Respondent's demeanor at hearing was consistent with sincerity.

LEGAL CONCLUSIONS

1. The standard of proof applied to this case is clear and convincing evidence to a reasonable certainty.

2. Business and Professions Code sections 490 and 10177, subdivision (b), together provide that a real estate license may be suspended or revoked if the licensee has been convicted of a felony or a crime of moral turpitude that is substantially related to the qualifications, functions or duties of a licensee. Under California Code of Regulations, title 10, section 2910, a crime is deemed to be substantially related if it involves "[t]he fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person" (subd. (a)(1)), "[c]ounterfeiting, forging or altering on of an instrument or the uttering of a false statement" (subd. (a)(2)), "[t]he employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end" (subd. (a)(4)), "[d]oing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another" (subd. (a)(8)), or "[c]onduct which demonstrates a pattern of repeated and willful disregard of law" (subd. (a)(10)). Respondent's convictions are substantially related to the qualifications, functions of duties of a real estate licensee.

Cause exists to suspend or revoke respondent's real estate broker license under Business and Professions Code sections 490 and 10177, subdivision (b), by reason of the matters set forth in Findings 2 and 3.

3. Respondent has the burden of proving that he has rehabilitated himself sufficiently from his convictions so that discipline against his broker license is not warranted. The department has established criteria to guide the evaluation of a licensee's rehabilitation. (California Code of Regulations, title 10, § 2912.)

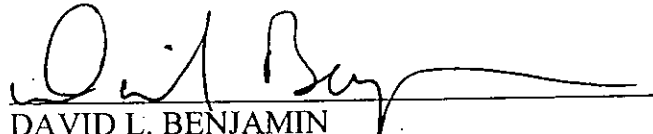
It appears that respondent appreciates and sincerely regrets his wrongful conduct, an indication that meaningful rehabilitation has already begun. Evidence of rehabilitation, however, must be measured against the severity of the crime; the more serious the crime, the stronger the showing of rehabilitation must be. By the standards of conduct that govern fiduciaries, this case could not be more serious. Respondent's convictions demonstrate that he lacks the honesty and integrity to hold a real estate license. Only a compelling showing of rehabilitation can overcome the negative implications of his convictions, and the convictions are too recent for respondent to make such a showing. Respondent was released from prison

just seven months ago. He will be on parole until 2010. He has not had an opportunity to make further restitution payments. At this time, it would be contrary to the public interest to permit respondent to retain his broker license, even on a restricted basis.

ORDER

All licenses and licensing rights of respondent C. Brian Smith under the Real Estate Law are revoked.

DATED: March 17, 2008


DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings

7/2/07

1 CHERYL D. KEILY, Counsel (SBN 94008)
2 Department of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013-1105

FILED

JUN 29 2007

5 Telephone: (213) 576-6982
6 (Direct) (213) 576-5770

DEPARTMENT OF REAL ESTATE
BY: [Signature]

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H- 34083 LA
12)
13 C. BRIAN SMITH) A C C U S A T I O N
14 Respondent.)

15 The Complainant, Maria Suarez, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against C. BRIAN SMITH, aka Charles Brian Smith, ("Respondent")
18 alleges as follows:

19 1.

20
21 The Complainant, Maria Suarez, a Deputy Real Estate
22 Commissioner of the State of California, makes this Accusation
23 in her official capacity.

24 2.

25 Respondent is presently licensed and/or has license
26 rights under the Real Estate Law, Part 1 of Division 4 of the
27

1 California Business and Professions Code ("Code"), as a real
2 estate broker.

3 3.

4 (CRIMINAL CONVICTIONS)

5 On or about May 30, 2006, in the Superior Court for
6 the State of California, County of Los Angeles, in Case No.
7 BA301029, Respondent was convicted of violating California Penal
8 Code Section 182(A)(1) (Conspiracy to Commit Crime), a felony;
9 two counts of Section 118(A) (Perjury), a felony; Section 368(E)
10 (Theft/Embezzlement of Elder), a felony; and Section 487(A)
11 (Grand Theft of Property over \$400), a felony. The underlying
12 facts of these crimes involve moral turpitude, which bear a
13 substantial relationship under Section 2910, Title 10, Chapter
14 6, California Code of Regulations to the qualifications,
15 functions or duties of a real estate licensee.
16

17 4.

18 On or about May 30, 2006, in the Superior Court for
19 the State of California, County of Los Angeles, in Case No.
20 BA282965, Respondent was convicted of violating California Penal
21 Code Section 487(A) (Grand Theft), a felony, two counts; Section
22 118(A) (Perjury), a felony, three counts; and Section 470(A)
23 (Forgery), a felony. The underlying facts of these crimes
24 involve moral turpitude, which bear a substantial relationship
25 under Section 2910, Title 10, Chapter 6, California Code of
26 Regulations to the qualifications, functions or duties of a real
27 estate licensee.

1
2 5.

3 The crimes of which Respondent was convicted, as
4 described in Paragraphs 3 and 4, above, constitute cause under
5 Sections 490 and 10177(b) of the Code for the suspension or
6 revocation of the license and license rights of Respondent under
7 the Real Estate Law.

8 6.

9 DISCIPLINARY ACTION AGAINST PROFESSIONAL LICENSE

10 In aggravation, on or about November 15, 2002, the
11 California State Bar Court, Hearing Department, Los Angeles, in
12 Case Nos. 94-0-12921, 96-0-06111, 97-0-17901, 01-0-02160, and
13 02-0-12301, filed a Notice of Disciplinary Charges against
14 Respondent alleging Respondent's willful violation of the
15 following: Business & Professions Code section 6068(m) (Failure
16 to Respond to Client Inquiries), two counts; Rules of
17 Professional Conduct, rule 3-110(A) (Failure to Perform with
18 Competence), three counts; Rules of Professional Conduct, rule
19 4-100(B)(4) (Failure to Pay Client Funds Promptly), two counts;
20 Rules of Professional Conduct, rule 4-100(A) (Failure to
21 Maintain Client Funds in Trust Account), three counts; Business
22 & Professions Code section 6106 (Misappropriation), three
23 counts; Business & Professions Code section 6106 (Moral
24 Turpitude), three counts; Rules of Professional Conduct, rule 4-
25 100(B)(3) (Failure to Account); Rules of Professional Conduct,
26 rule 3-300 (Business Transaction with Client); and Business &
27

1 Professions Code section 6068(d) (Seeking to Mislead a Judge).

2 7.

3 In aggravation, on or about March 12, 2003, the
4 California State Bar Court, Hearing Department, Los Angeles, in
5 Case No. 02-TE-11259, ordered that Respondent be involuntarily
6 enrolled as an inactive member of the California State Bar
7 pursuant to Business & Professions Code section 6007,
8 subdivision (c) and rule 460 of the Rules of Procedure of the
9 State Bar of California. The foregoing action was taken as a
10 result of the factual allegations contained in the Notice of
11 Disciplinary Charges filed against Respondent as alleged in
12 Paragraph 6, above, and based on a finding that Respondent's
13 conduct posed a substantial threat of harm to the interests of
14 Respondent's clients or to the public.

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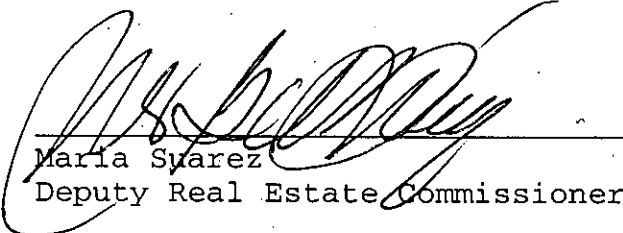
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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all the licenses and license rights of Respondent, C. BRIAN SMITH, under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California
this 27th day of June, 2007.



Maria Suarez
Deputy Real Estate Commissioner

cc: C. BRIAN SMITH
Maria Suarez
Sacto.