

1 Department of Real Estate
2 320 W. 4th Street, Suite 350
3 Los Angeles, CA 90013-1105

4 Telephone: (213) 576-6982

FILED

SEP 21 2018

DEPARTMENT OF REAL ESTATE

By 

8 BEFORE THE DEPARTMENT¹ OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation Against)
12 HOMEBAY BROKER CA, INC.,)
13 formerly known as Broker Tech, Inc.;)
14 MARTIN JAMES BENNETT,)
15 individually and as Designated Officer)
16 of Broker Tech, Inc.; and THOMAS)
17 PATRICK OWEN, JR.)

DRE No. H-40733 LA
OAH No. 2017090711

Respondents.

18 STIPULATION AND AGREEMENT

19 AND

20 DECISION AFTER REJECTION

21 This matter came on for hearing before Irina Tentser, Administrative Law Judge
22 (“ALJ”) of the Office of Administrative Hearings, in Los Angeles, California, on March 28,
23 2018. The hearing in this matter proceeded only as to Respondent THOMAS PATRICK
24 OWEN, JR. (“Respondent”). The two other Respondents named in the Accusation entered into
25 stipulations that became final as Decisions of the Real Estate Commissioner as to each of them.

26 _____
27 ¹ Between July 1, 2013, and July 1, 2018, the Department of Real Estate operated as the Bureau of Real Estate under the Department of Consumer Affairs.

1 At hearing, Amelia V. Vetrone, Counsel, represented the Complainant, Veronica
2 Kilpatrick, Supervising Special Investigator of the State of California Department of Real Estate
3 ("DRE"). The Respondent appeared in person, and was represented by attorney Edward O. Lear
4 of CENTURY LAW GROUP. Oral and documentary evidence was received and the record was
5 left open until April 11, 2018, for the filing of written closing argument by both parties. The
6 matter was submitted on April 11, 2018.

7 On May 2, 2018, the Administrative Law Judge issued a Proposed Decision
8 which the Real Estate Commissioner ("Commissioner") declined to adopt as his decision in this
9 matter. Pursuant to Section 11517(c) of the Government Code of the State of California,
10 Respondent was served with notice of the Commissioner's determination to not adopt the
11 Proposed Decision of the Administrative Law Judge along with a copy of said Proposed
12 Decision.

13 THE PARTIES HERETO NOW STIPULATE as follows for the purpose of
14 settling and disposing of the Accusation ("Accusation") filed on July 29, 2017, in this matter:

15 1. This Stipulation is based on the factual allegations contained in the Accusation
16 filed in this proceeding. In the interest of expedience and economy, Respondent chooses not to
17 contest these factual allegations, and understands that, as a result thereof, these factual statements
18 will serve as a prima facie basis for the disciplinary action stipulated to herein. The
19 Commissioner shall not be required to provide further evidence to prove such allegations.

20 2. Respondent further acknowledges that the Commissioner held a hearing on
21 this Accusation on March 28, 2018, before the Office of Administrative Hearings for the purpose
22 of proving the allegations therein. Respondent was present at the hearing, was represented by
23 attorney Edward O. Lear, and participated therein. Further, Respondent has had an opportunity
24 to read and review the Proposed Decision.

25 3. Respondent understands that pursuant to Government Code Section 11517(c),
26 the Commissioner has rejected the Proposed Decision of the Administrative Law Judge.
27 Respondent further understands that pursuant to the same Section 11517(c), the Commissioner

1 may decide this case upon the record, including the transcript, without taking any additional
2 evidence, after affording Respondent the opportunity to present written argument.

3 4. Respondent further understands that by signing this Stipulation and
4 Agreement, Respondent is waiving his right to seek a dismissal of the Accusation through
5 proceedings under Government Code Section 11517(c) if this Stipulation and Agreement
6 (“Stipulation”) is not accepted by the Real Estate Commissioner.

7 5. It is understood by the parties that the Real Estate Commissioner may adopt
8 this Stipulation as his Decision in this matter thereby imposing the penalty and sanctions on
9 Respondent’s real estate license and license rights as set forth in the below “Order”. In the event
10 that the Commissioner in his discretion does not adopt the Stipulation, the Stipulation shall be
11 void and of no effect and Respondent shall retain the right to further proceedings under the
12 Administrative Procedure Act (beginning at Government Code Section 11500).

13 6. The Order or any subsequent Order of the Commissioner made pursuant to this
14 Stipulation shall not constitute an estoppel, merger or bar to any further administrative or civil
15 proceedings by the DRE with respect to any matters which were not specifically alleged to be
16 causes for accusation in this proceeding.

17 7. Respondent understands that, by agreeing to this Stipulation, Respondent
18 agrees to pay, pursuant to Business and Professions Code (“Code”) Section 10106, the costs of
19 investigation and enforcement of this matter in the amount of \$6,394.90.

20 DETERMINATION OF ISSUES

21 By reason of the foregoing, it is stipulated and agreed that the following
22 determination of issues shall be made:

23 The conduct, acts or omissions of THOMAS PATRICK OWEN, JR., as described
24 in the Accusation are in violation of Code Section 10137 and are a basis for discipline of
25 Respondent’s license and license rights as a violation of the Real Estate Law, Part 1 of Division
26 4 of the Code, pursuant to Code Sections 10177(d), and 10177(g).

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I.

A. All licenses and licensed rights of Respondent THOMAS PATRICK OWEN, JR. under the Real Estate Law are suspended for a period of ninety (90) days from the effective date of this Decision; provided, however, that the initial thirty (30) days of that suspension shall be stayed for two years upon the following terms and conditions:

1. Respondent shall pay a monetary penalty pursuant to Code Section 10175.2 of \$1,500.00.

2. Said payment shall be in the form of a cashier's check made payable to the Department of Real Estate. Said check must be delivered to the Department of Real Estate, Flag Section, P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this Decision.

3. No further cause for disciplinary action against the real estate license of Respondent occurs within two (2) years from the effective date of the Decision in this matter.

4. If Respondent fails to pay the monetary penalty in accordance with the terms and conditions of the Decision, the suspension shall go into effect automatically. In that event, Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.

5. If Respondent pays the monetary penalty and if no further cause for disciplinary action against the real estate license of Respondent occurs within two (2) years from the effective date of this Decision, the stay hereby granted shall become permanent.

B. The remaining sixty (60) days of the ninety (90) day suspension shall be stayed for two (2) years upon the following terms and conditions:


1. That Respondent obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and

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1 this disciplinary action in the amount of \$6,394.90. Said payment shall be in the form of a
2 cashier's check made payable to the Department of Real Estate. Said check must be delivered to
3 the Department of Real Estate, Flag Section, P.O. Box 137013, Sacramento, CA 95813-7013,
4 prior to the effective date of this Decision.

5 If Respondent fails to satisfy this condition in a timely manner as provided for
6 herein, Respondent's real estate license shall automatically be suspended until payment is made
7 in full, or until a decision providing otherwise is adopted following a hearing held pursuant to
8 this condition.

9
10 DATED: 9-4-18

11 
12 Amelia V. Vetrone, Counsel for the
13 Department of Real Estate

14 * * *

15 EXECUTION OF THE STIPULATION

16 I have read the Stipulation. Its terms are understood by me and are agreeable and
17 acceptable to me. I understand that I am waiving rights given to me by the California
18 Administrative Procedure Act (beginning at Government Code Section 11500), and I willingly,
19 intelligently and voluntarily waive those rights, including the right to require the Commissioner
20 to provide additional evidence in support of the Accusation or as a basis for the disciplinary
21 action stipulated to herein.

22 MAILING


23 Respondent shall mail the original signed signature page of the stipulation herein
24 to Amelia V. Vetrone: Attention: Legal Section, Department of Real Estate, 320 W. Fourth St.,
25 Suite 350, Los Angeles, California 90013-1105.

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27 ///

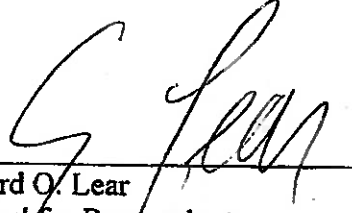
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Respondent's signature below constitutes acceptance and approval of the terms and conditions of this Stipulation. Respondent agrees, acknowledges and understands that by signing this Stipulation Respondent is bound by its terms as of the date of such signature and that this agreement is not subject to rescission or amendment at a later date except by a separate Decision of the Real Estate Commissioner.

DATED: 8/24/18


THOMAS PATRICK OWEN, JR.
Respondent

DATED: 8/24/18


Edward O. Lear
Counsel for Respondent
Approved as to Form

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The foregoing Stipulation and Agreement and Decision After Rejection is hereby
adopted as my Decision as to Respondent THOMAS PATRICK OWEN, JR. only, and shall
become effective at 12 o'clock noon on OCT 11 2018.

IT IS SO ORDERED September 14, 2018.

DANIEL J. SANDRI
Acting Real Estate Commissioner

Daniel J. Sandri

flag

FILED

JUN 12 2018

BUREAU OF REAL ESTATE

By *Zni Jm*

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

HOME BAY BROKER CA, INC.,
formerly known as Broker Tech, Inc.;
MARTIN JAMES BENNETT, individually
and as Designated Officer of Broker Tech,
Inc.; and THOMAS PATRICK OWEN, JR.,

Respondents.

) CalBRE No. H-40733 LA

) OAH No. 2017090711

NOTICE

TO: THOMAS PATRICK OWEN, JR, Respondent, and EDWARD O. LEAR , his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated
May 2, 2018, of the Administrative Law Judge is not adopted as the Decision of the Real Estate
Commissioner. A copy of the Proposed Decision dated May 2, 2018, is attached hereto for your
information.

In accordance with Section 11517(c) of the Government Code of the State of
California, the disposition of this case will be determined by me after consideration of the record
herein including the transcript of the proceedings held on Thursday, March 29, 2018, and any
written argument hereafter submitted on behalf of respondent and complainant.

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1 Written argument of respondent to be considered by me must be submitted within 15
2 days after receipt of the transcript of the proceedings of Thursday, March 29, 2018, at the Los
3 Angeles office of the Bureau of Real Estate unless an extension of the time is granted for good
4 cause shown.

5 Written argument of complainant to be considered by me must be submitted within
6 15 days after receipt of the argument of respondent at the Los Angeles Office of the Bureau of Real
7 Estate unless an extension of the time is granted for good cause shown.

8 DATED: June 7, 2018.

9 WAYNE S. BELL
10 REAL ESTATE COMMISSIONER

11 By 
12 DANIEL J. SANDRI
13 Chief Deputy Commissioner

BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

HOMEBAY BROKER CA, INC., formerly known as Broker Tech, Inc.; MARTIN JAMES BENNETT, individually and as Designated Officer of Broker Tech, Inc.; and THOMAS PATRICK OWEN, JR.,

Respondents.

Case No. H-40733 LA

OAH No. 2017090711

PROPOSED DECISION

Administrative Law Judge (ALJ) Irina Tentser of the Office of Administrative Hearings, State of California, heard this matter on April 6, 2018, in Los Angeles, California.

Amelia V. Vetrone, Counsel, Bureau of Real Estate (Bureau), represented Veronica Kilpatrick (Complainant), a Supervising Special Investigator of the State of California.

Thomas Patrick Owen Jr. (Respondent Owen) appeared and was represented by Edward O. Lear, Attorney.

Respondents Homebay Broker CA, Inc., formerly known as Broker Tech, Inc., and Martin James Bennett entered into settlement with the Bureau prior to hearing. On April 4, 2018, a copy of the Stipulation and Agreement as to Respondent Martin James Bennett only was filed and served by the Bureau, marked as Exhibit 9.

Oral and documentary was received at hearing. By stipulation of the parties and with the court's order, the record was left open until April 11, 2018, for Respondent to file and serve Exhibit D¹ and for the parties to file and serve their respective closing briefs. On April 4, 2018, Exhibit D was received and admitted into evidence. On April 11, 2018,

¹ Exhibit D is a copy of a photograph taken by Respondent's counsel on his cell phone of a corporate diagram drawn by Respondent during his hearing testimony.

Complainant's and Respondent's closing briefs were received, respectively marked as Exhibits 8 and E.

The matter was submitted on April 11, 2018.

FACTUAL FINDINGS

Procedural Background

1. On July 29, 2017, Complainant filed the Accusation in her official capacity. As noted, Homebay Broker CA, Inc. and Martin James Bennett settled with the Bureau prior to hearing. As a result, this hearing proceeded in the matter of Respondent Owen for violation of Business and Professions Code (Code) sections 10177, subdivisions (d) and (g), solely on the allegations related to the first cause of the Accusation, unlawful payment of compensation, in violation of Code section 10137. Specifically, Complainant seeks to impose disciplinary action against Respondent Owen's real estate broker's license based on his non-licensed company's acceptance of consumer payments for real estate services from escrow in transactions, as more fully described below.

2. Respondent Owen was licensed as a real estate broker on February 2, 2006. His broker license expired on February 1, 2010. (Exhibit 2.) On April 11, 2017, Respondent's broker license was reissued. Respondent is presently licensed and has license rights under the Real Estate Law (Part 1 of Division 4 of the Code). His real estate broker's license is scheduled to expire April 10, 2021. No evidence of prior license discipline was submitted during hearing.

Payment of Real Estate Related Services by Consumers to a Non-Licensed Entity

3. Respondent Owen is the co-founder and partial owner of Home Bay Technologies, Inc., a Delaware corporation formerly known as HomeBay, Inc. (Homebay).² At no time has Homebay been licensed by the Bureau in any capacity.

4. Broker Tech, Inc. (BTI) is also a corporation and was licensed as a corporate real estate broker by the Bureau on March 27, 2015. Since that date and continuing to April 23, 2017, Respondent Martin James Bennett was the designated officer of BTI.

5. Effective April 7, 2017, BTI changed its name with the California Secretary of State to Homebay Broker CA, Inc. (HBCI). The licensee name change was effective with the Bureau as of July 13, 2017, with licensed real estate broker David Michael Bezeau as the Designated Officer of HBCI. HBCI, previously BTI, is a subsidiary of Homebay.

² According to Respondent Owen, Homebay was initially registered as FireCrackler, Inc. in Delaware. Homebay is now known as TechCo. For purposes of clarity, the corporation will be referred to as Homebay in this decision.

6. Between 2015 to 2017 time period covering the Accusation's allegations, Respondent Owen, who is also a California licensed attorney, acted as the chief executive officer and general counsel Homebay.

7. At all times relevant to the Accusation, Respondent Owen engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California within the meaning of Code section 10131, subdivision (a). His activities included the solicitation for listings of and the negotiation of the purchase and sale of real property for and on behalf of others for compensation.

8. Specifically, from approximately April 1, 2015, and continuing through April 7, 2017, Respondent Owen, through his unlicensed corporation Homebay, solicited members of the public interested in selling their residential real property and advertised that Homebay would list the consumer's property for sale in the Multiple Listing Service (MLS), review offers and propose counter offers, and manage all transaction paperwork in exchange for a fee ranging from \$250 to \$3,000.

9. Consumers who retained Homebay signed listing agreements with BTI. According to that agreement, BTI charged no commission for any services, unless BTI represented the buyer in the transaction. At the close of escrow, the fee for listing the property and related services rendered on behalf of the seller was paid to Homebay.

10. By having Homebay accept payment for real estate transactions, as described in Factual Finding 9, Respondent Owen employed and compensated Homebay for engaging in activities that require a real estate license when Homebay is not licensed, in violation of code section 10137.

11. By his actions, as described in Factual Finding 3 through 10, Respondent Owen willfully disregarded Real Estate Law in that he had Homebay accept escrow payments. Further, Respondent Owen was negligent and incompetent of Real Estate Law by failing to notice for nearly two years that Homebay was violating Real Estate Law by accepting escrow moneys from consumers as an unlicensed entity.

Factors in Mitigation and Rehabilitation

12. Respondent credibly testified at hearing that Homebay's acceptance of payment for real estate transactions was the result of inadvertent error and lack of oversight, and was not an intentional violation of Real Estate Law.³ Respondent explained that when Homebay was founded, he intended BTI to be the entity that would list the property for sale on the MLS and would be compensated as such, in compliance with Real Estate Law.

³ Complainant did not establish through clear and convincing evidence that Respondent Owen intentionally set up the escrow payment system to evade a non-competition clause. (Exhibit 8.)

13. However, when Homebay began to conduct business, it was self-funded by Respondent Owen. (Exhibit A.) He was paying expenses and working seven days a week to keep Homebay going, providing customer support from 9 a.m. to 9 p.m., seven days a week. Respondent Owen was the customer representative for the bulk of those hours, including Saturday and Sunday evenings. In addition, Respondent was working with the investment community to obtain investment for Homebay. (*Ibid.*)

14. Respondent Owen was overwhelmed and stressed by his responsibilities. He made personal loans to keep the business afloat. Homebay almost went out of business several times prior to receiving venture funding in 2017. As a result, Respondent Owen negligently failed to notice that someone, whom he speculates to be in accounting, at Homebay, created an invoice template that had Homebay, Inc. at the top, instead of BTI, and started using it for transactions.

15. Respondent Owen convincingly testified at hearing that, if he had paid attention to the error or thought about it, he would have changed the invoice to show BTI, the brokerage subsidiary and Bureau licensee, on the invoices to escrow. Once the ongoing accounting error was brought to Respondent Owen's attention in February 2017 by Bureau investigators, he immediately took affirmative steps to rectify the compliance issues. As a result, subsidiary and licensee BTI, rather than non-licensee Homebay, became the payee for escrow services from February 2017 onward.

16. Additional steps have been taken by Respondent Owen to prevent a recurrence of noncompliance. For example, Respondent Owen testified that he is no longer Homebay's chief executive officer and general counsel; Homebay's has outside compliance counsel; has retained Summer Goralick, a former Bureau investigator, to quarterly monitor to ensure compliance with Real Estate Law; and employs Jennifer Feltren, a RESPA (Real Estate Settlement Procedures Act) attorney.

17. Respondent Owen is a sophisticated licensee. He is a graduate of the University of California, Berkeley, and the law school at the University of California, Los Angeles. In 2001, Respondent Owen was admitted to the California State Bar. He asserts that his law license has not been disciplined in the past 17 years. From 2001 to 2006, Respondent Owen worked as a mergers and acquisitions associate at Cooley LLP. Since 2006, Respondent Owen has been a licensed real estate broker in California. He co-owns a boutique real estate brokerage, Tom Owen Properties, Inc., in Coronado, California. In 2009, Respondent Owen co-founded a real estate software company, Zurple, Inc., which he describes as providing software to more than 4,000 real estate agents. In 2013, Respondent Owen left Zurple to start Homebay.

18. Respondent Owen submitted three character reference letters in support of his continued licensure. (Exhibit B.) Each of the letter authors wrote that, despite being aware of the Accusation, they continued to view Respondent Owen as honest, highly skilled, competent, and would continue to work with him in the future. (*Ibid.*)

19. At hearing, Respondent mostly accepted responsibility for his violation of Real Estate Law. However, he partially attributed the past mistakes which led to the Bureau's Accusation to Homebay's then lack of resources. He also deferred some personal responsibility for his compliance errors on the Bureau. Respondent infers that the Bureau is somehow responsible for his errors related to Homebay, describing how the Bureau notified him that it could not provide legal advice when he contacted the Bureau in 2014, prior to launching his businesses, to discuss how to run them in compliance with Real Estate Law. Respondent's argument on the latter point is unconvincing and inconsistent with his assertion that the error occurred because of his lack of oversight, as both chief executive officer and general counsel of Homebay, during the relevant time period. Despite some deflection of blame, Respondent testimony that he regrets his past error and is committed to complying with the Real Estate Law going forward is credited based on his immediate efforts to correct Homebay's compliance issues once he became aware of the situation.

Costs of Investigation and Enforcement

20. Complainant offered certified statements that supported investigative costs of \$4,481.40 and enforcement costs of \$1,913.50. The reasonableness of the claimed costs was not challenged by Respondent Owen. The combined investigative and enforcement costs of \$6,394.90 are reasonable.

LEGAL CONCLUSIONS

1. A professional license may be disciplined only upon "clear and convincing evidence to a reasonable certainty." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal. App.3d 853-856.)

2. A real estate license may be disciplined when the licensee willfully disregards or violates Real Estate Law and/or demonstrates negligence or incompetence in performing act(s) for which a license is required. (Bus. & Prof. Code, §10177, subs. (d) and (g).)

3. Cause exists to discipline Respondent Owen's license pursuant to Code section 10177, subdivision (d), by reason of Factual Findings 3 through 17. "Willfully" does not require the intent to violate the law, only the intent to engage in the act or conduct prohibited by the pertinent statute. (*Milner v. Fox* (1980) 102 Cal.App.3d 567, 574.) Complainant established through clear and convincing evidence that Respondent Owen intended for Homebay to directly accept escrow payment from consumers.

4. Cause exists to discipline Respondent Owen's license pursuant to Code section 10177, subdivision (g), by reason of Factual Findings 3 through 17. Respondent Owen's actions in accepting escrow payments from consumers through his company, an unlicensed entity, Homebay, over a nearly two year period, in violation of Real Estate Law, were negligent and incompetent. Respondent Owen, as a licensee, cannot escape responsibility for

statutory duties designed to protect the public from harm by delegating the accounting details of his business, Homebay, to employees and then pleading mistake and ignorance.

Appropriate Discipline

5. a. Respondent Owen has the burden of demonstrating rehabilitation. Criteria have been developed by the Bureau to evaluate the rehabilitation of a licensee who has committed a crime. Although Respondent Owen has not committed a crime, it is appropriate to evaluate his rehabilitation by reference to the applicable criteria found at California Code of Regulations, title 10 (Regulation), section 2912. Respondent has met most of the relevant rehabilitation criteria. Once he became aware of Homebay's violation of Real Estate Law, Respondent Owen immediately corrected the business practice. (Cal. Code Regs., tit. 10, § 2912, subd. (h).) However, it has been fewer than two years since Homebay's violations were corrected in February 2017. Regulation section 2912, subdivision (a)(1), requires the passage of two years since the act or offense, which can be increased by considering the nature and severity of the crime and the licensee's history of criminal convictions that are "substantially related" to the qualifications, functions, or duties of a real estate licensee. Respondent Owen presented no evidence that he has been involved in programs designed to provide social benefits or to ameliorate social problems. (Cal. Code Regs., tit. 10, § 2912, subd. (l).)

b. Regulation section 2912, subdivision (m), calls for a change in attitude from the time of the criminal acts to the present, evidenced by: (1) evidence of rehabilitation from respondent; (2) evidence from family members, friends or others familiar with his previous conduct and subsequent attitudes and behavior patterns; (3) evidence from probation or parole officers or law enforcement officials regarding respondent's social adjustments; (4) evidence from psychiatrists, psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances; and (5) absence of subsequent convictions or other conduct which reflect an inability to conform to societal rules when considered in light of the conduct in question.

c. Respondent Owen demonstrated sincere remorse for Homebay's errors. He clearly understands how he violated his licensee duties by his negligent conduct. Accordingly, he has demonstrated the necessary change in attitude that makes future recurrence of violations of Real Estate Law unlikely. (Cal. Code Regs., tit. 10, § 2912, subd. (m).)

d. Respondent submitted three character reference letters attesting to his professional competence and good character. "Favorable testimony of acquaintances, neighbors, friends, associates and employers with reference to their observation of the daily conduct and mode of living" can be helpful in determining whether a person seeking licensure is rehabilitated. (*In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309, 317-318.)

6. Rehabilitation is a state of mind and the law looks with favor upon one who has achieved reformation and regeneration with the reward of the opportunity to serve. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.)

7. Rehabilitation depends upon a track record of conduct that convinces the Bureau that that the public would be safe in granting privileges of licensure to respondent. A respondent must establish a history of reliable, responsible and consistently appropriate conduct. In determining the appropriate discipline, the central question is what level of discipline is necessary to protect the public. Disciplinary proceedings to suspend or revoke a real estate license are not conducted for the primary purpose of punishing an individual. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) Public protection requires real estate licensees know the law and ethics of their profession and demonstrate the same by properly completing continuing education courses. As a Bureau licensee, and co-owner conducting real estate transactions, Respondent Owen is aware of this requirement.

8. Based on the totality of the circumstances, Respondent Owen should be suspended for 60 days, a period of time that will allow him to reflect on his violation of Real Estate Law and study and review all laws relating to Bureau approved real estate courses. Placing Respondent Owen on probation with regard to his licenses is not necessary for public protection and would serve no purpose. Here, Respondent Owen's actionable conduct was negligent, not intentional, and was promptly addressed and corrected, ensuring the protection of the public. Similar future conduct is unlikely.

Costs

9. Code section 10106 permits the Real Estate Commissioner to request an administrative law judge hearing a disciplinary matter to direct a licensee to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case, except as otherwise provided by law. Evidence is required to support an award.

10. *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, sets forth factors to be considered in determining a reasonable cost assessment for disciplined licensees. Factors to be considered include whether the licensee had a "subjective good faith belief" in the merits of his or her position, whether the licensee raised a "colorable challenge" to the proposed discipline, and the extent of the licensee's financial ability to make later payments. Further, full costs may not be assessed when a "disproportionately large investigation" was conducted given the circumstances of the case. Finally, the Administrative Law Judge should consider the public interest in regulating the targeted conduct.

11. Based on Factual Finding 20, in conjunction with the factors set forth in *Zuckerman*, a cost assessment of \$6,394.90 represents a reasonable amount to impose on Respondent Owen. Respondent Owen shall reimburse the Bureau in this amount.

ORDER

A. All licenses and licensed rights of Respondent Thomas Patrick Owen, Jr. under the Real Estate Law are suspended for a period of 60 days from the effective date of this Decision and Order; provided, however, that the initial 30 days of that suspension shall be stayed for two years upon the following terms and conditions:

1. Respondent Thomas Patrick Owen, Jr. shall pay a monetary penalty pursuant to Business and Professions Code Section 10175.2 of \$500 within 90 days of the effective date of this Decision.

2. No further cause for disciplinary action against the real estate license of Respondent Thomas Patrick Owen, Jr. occurs within two years from the effective date of the Decision in this matter.

3. If Respondent Thomas Patrick Owen, Jr. fails to pay the monetary penalty in accordance with the terms and conditions of the Decision, the suspension shall go into effect automatically. In that event, Respondent Thomas Patrick Owen Jr. shall not be entitled to any repayment or credit, prorated or otherwise, for money paid to the Bureau under the terms of this Decision and Order.

4. If Respondent Thomas Patrick Owen, Jr. pays the monetary penalty and if no further cause for disciplinary action against the real estate license of Respondent Thomas Patrick Owen Jr. occurs within two years from the effective date of the Decision, the stay hereby granted shall become permanent.

B. The remaining 30 days of the 60-day suspension shall be stayed for two years upon the following terms and conditions:

1. That Respondent obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and

2. That no final subsequent determination be made after hearing or upon stipulation, that cause for disciplinary action occurred within two years from the effective date of this Decision. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and re-impose all or a portion of the stayed suspension. Should no such determination be made under this section, the stay imposed herein shall become permanent.

C. Respondent Thomas Patrick Owen, Jr. shall, within six months from the effective date of this Decision and Order herein, take and pass the Professional Responsibility Examination administered by the Bureau including the payment of the appropriate examination fee. If Respondent Thomas Patrick Owen Jr. fails to satisfy this condition, his real estate license shall be automatically suspended until he passes the examination.

D. Respondent Thomas Patrick Owen, Jr. shall, within nine months from the effective date of this Decision and Order, present evidence satisfactory to the Real Estate Commissioner that he has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education course in ethics, professional conduct, and legal aspects of real estate, which shall include, but not be limited to, relevant legislation, regulations, articles, reports, studies, court decisions, treatises, and information of current interest specified in paragraph (1) of subdivision (a) of Business and Professions Code section 10170.5. If Respondent Owen fails to satisfy this condition, his real estate license shall be automatically suspended until he presents evidence satisfactory to the Commissioner of having taken and successfully completed the course. Proof of completion of the continuing education course must be delivered to the Bureau.

E. Respondent shall pay the Bureau's costs in the amount of \$6,394.90 within 90 days of the effective date of this Decision.

Dated: May 2, 2018

DocuSigned by:
Irina Tentser
AP01484EB193489...
Irina Tentser
Administrative Law Judge
Office of Administrative Hearings