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CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

TERRY HERRERA, Plaintiff and Appellant, v. STATE OF CALIFORNIA DEPARTMENT OF REAL ESTATE, Defendant and Respondent.	B138748 (Super. Ct. No. BS058655)

APPEAL from a judgment of the Superior Court of Los Angeles County. Dzintra Janavs, Judge. Affirmed.

Herrera & Bencze, Terry Herrera, in pro. per., and Stephan Bencze for Plaintiff and Appellant.

Bill Lockyer, Attorney General, David P. Druliner, Chief Assistant Attorney General, Richard W. Bakke and Marla K. Markman, Deputy Attorneys General, for Defendant and Respondent.

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* Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of Issues and parts I and III through VI of the Discussion.

Appellant Terry Herrera appeals from an order denying his petition for writ of mandate in this proceeding to revoke his real estate license. The Department of Real Estate revoked Herrera's real estate license pursuant to Business and Professions Code section 10177, subdivision (f),[1] based on the suspension of Herrera's law license. The Department's disciplinary accusation was filed within three years from the suspension of Herrera's law license, but more than three years from the underlying misconduct. In the published portion of this opinion, we conclude the three-year statute of limitations set forth in section 10101 commences on the date of the suspension of the law license. We address the remaining issues in the unpublished portion of this opinion. We affirm.

FACTS AND PROCEDURAL BACKGROUND

In April 1976, Herrera obtained his real estate license. In December 1986, he was licensed to practice law in California. On February 8, 1989, Herrera received $1,000 on behalf of a client of his law practice. He did not notify the client of the receipt of funds. He deposited the funds into his client trust account. On February 27, 1989, Herrera withdrew from his representation of the client. He did not remit the funds to the client. On May 1, 1989, his client trust account balance fell below $1,000. The State Bar filed a complaint against Herrera in 1991.

In 1996, Herrera and the State Bar stipulated to a "statement of acts or omissions warranting the agreed disposition." In addition to the above facts, the statement provided, "[Herrera] failed to notify [the client] of the receipt of her funds and misappropriated the money for his own use and purpose. [Herrera] committed the above-described acts in willful violation of . . . Section 6106 and Rules of Professional Conduct[, rule] 4-1000(B)(4)." On April 19, 1996, the Supreme Court suspended Herrera's license to

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[1] All further statutory references are to the Business and Professions Code, unless otherwise stated.

practice law for one year, stayed execution of the suspension, and placed Herrera on probation for one year subject to conditions that included a 60-day actual suspension.

On February 16, 1999, the Department filed an accusation against Herrera to suspend or revoke his real estate license under section 10177, subdivision (f), based on the suspension of Herrera's law license. A hearing was held on May 12, 1999. On May 25, 1999, the administrative law judge issued a proposed decision to revoke Herrera's real estate license. The Department adopted the proposed decision and revoked Herrera's real estate license, effective July 13, 1999.

On August 10, 1999, Herrera filed a petition for writ of administrative mandamus. After a hearing, the trial court denied the petition and entered judgment in favor of the Department on November 29, 1999. Herrera filed a timely notice of appeal.

ISSUES

Herrera contends: (1) the Department's action was barred by the statute of limitations; (2) the Department's action was barred by laches; (3) section 10177, subdivision (f) requires a trial on the merits in the underlying action; (4) the underlying offense did not involve moral turpitude; and (5) the administrative law judge abused his discretion by recommending revocation of Herrera's real estate license.

DISCUSSION

I. Standard of Review

"It is well settled that '[t]he right to practice one's profession is a fundamental vested right and if a person's license to practice that profession is revoked by an administrative agency, when a petition for writ of mandate is brought for restoration of the license, the trial court must apply its independent judgment to review the facts underlying the administrative decision.' [Citation.] After a trial court's exercise of its independent

judgment in review of the facts, an appellate court is limited to determining whether the trial court's findings are supported by substantial evidence but may, nonetheless, independently exercise its ability to decide issues of law. [Citations.]" (*Marek v. Board of Podiatric Medicine* (1993) 16 Cal.App.4th 1089, 1095-1096.)

II. Statute of Limitations

Herrera contends the Department did not file an accusation against him within the three-year statute of limitations period. He acknowledges that the accusation was filed within three years of the date of the suspension of his law license. Nevertheless, he argues the accusation was not timely, reasoning that the event commencing the limitations period is the underlying misconduct. This argument is not persuasive.

The Department may suspend or revoke the license of a real estate licensee on a number of grounds including: misrepresentation and false promise (§ 10176, subds. (a)-(c)); conflict of interest (*id*., subd. (d)); commingling of funds (*id*., subd. (e)); fraudulent procurement of a real estate license (§ 10177, subd. (a)); conviction of a felony or a crime of moral turpitude (*id*., subd. (b)); false advertisement (*id*., subd. (c)); willful violation of the real estate law (*id*., subd. (d)); willful misuse of the term "realtor" (*id*., subd. (e)); conduct warranting denial of a real estate license (*id*., subd. (f)); denial, revocation, or suspension of a license issued by a different governmental agency (*ibid*.); negligence or incompetence (*id*., subd. (g)); failure to supervise employees (*id*., subd. (h)); fraud (*id*., subd. (j)); § 10176, subd. (i)); violation of a condition of a restricted license (§ 10177, subd. (k)); discrimination (*id*., subd. (*l*)); violation of the franchise investment law (*id*., subd. (m)); violation of the corporate securities law (*id*., subd. (n)); failure to disclose an ownership interest in real property (*id*., subd. (*o*)); misconduct involving mobilehome sales (§ 10177.2); referral of customers for a fee (§ 10177.4); and a final civil judgment for fraud (§ 10177.5).

Before suspending or revoking a real estate license, the Department must file an accusation notifying the licensee of the alleged grounds for possible disciplinary action and

thereafter hold a hearing. (§ 10100.) The accusation must "be filed not later than three years from the occurrence of the alleged grounds for disciplinary action." (§ 10101.) The three-year limitations period commences on the date of the occurrence of the grounds for revocation or suspension. (*California Real Estate Loans, Inc. v. Wallace* (1993) 18 Cal.App.4th 1575, 1585.) Thus, for example, where the ground for license revocation or suspension is a final civil judgment for fraud, the limitations period commences on the date of the final judgment, "not the acts or omissions underlying that judgment." (*Ibid.*) Similarly, where the ground for revocation or suspension is the conviction of a crime involving moral turpitude, the limitations period commences on the date of the final judgment of conviction, not the acts or omissions underlying the judgment of conviction. (*Karrell v. Watson* (1953) 116 Cal.App.2d 769, 777-778.)

In determining the commencement of the limitations period, the statutory language focuses on the ground for discipline. It is the occurrence of the ground for discipline that commences the limitations period. Where the ground is the actual misconduct of the licensee, the misconduct commences the period. Where, however, the ground is a criminal conviction, a civil judgment or the disciplinary action of a regulatory agency, it is the final official action that commences the period.

In this case, the ground for disciplinary action against Herrera was the suspension of his law license, not the underlying misappropriation of a client's funds. Herrera's law license was suspended on April 19, 1996, and the accusation to revoke or suspend Herrera's real estate license was filed on February 16, 1999, on the ground of section 10177, subdivision (f) ("had a license issued by another agency of this state . . . revoked or suspended"). Thus, it is irrelevant for purposes of the statute of limitations that the misappropriation of client funds took place in 1989. Accordingly, the accusation was timely filed.

III. Laches

Herrera similarly contends the Department was barred from filing its accusation by the doctrine of laches. We disagree.

"'In practice, laches is defined as an unreasonable delay in asserting an equitable right, causing prejudice to an adverse party such as to render the granting of relief to the other party inequitable. [Citation.] Thus, if a trial court finds (1) unreasonable delay; and (2) prejudice, and if its findings are not palpable abuses of discretion, a finding of laches will be upheld on appeal.' [Citation.]" (*In re Marriage of Dancy* (2000) 82 Cal.App.4th 1142, 1148.)

In this case, the trial court found that the accusation was not barred by laches. The accusation was filed within three years of the suspension of Herrera's law license, which was within the statute of limitations. There was no evidence of any delay between the Department discovery of the suspension of Herrera's law license and the institution of the proceedings in this case. Indeed, it appears the Department learned of the suspension from Herrera's self-reporting in 1998 or 1999, and investigated the circumstances thereafter. In addition, Herrera did not show that he was prejudiced by any delay that occurred between the April 19, 1996 suspension of his law license, which was the occurrence that provided the grounds to revoke his real estate license, and the February 16, 1999 accusation filed by the Department. Herrera did not call any witnesses at the administrative hearing. The suspension of his law license was based on stipulated facts. Thus, the trial court's determination that laches did not apply was well within the trial court's discretion.

IV. Express Finding

In order for the Department to take disciplinary action under section 10177, subdivision (f), based on the disciplinary action of another agency, there must have been an express finding of a violation of law by the other agency. Section 10177 provides in pertinent part, "The commissioner may suspend or revoke the license of any real estate

licensee . . . who has done any of the following: [¶] . . . (f) [a]cted or conducted himself or herself in a manner that would have warranted the denial of his or her application for a real estate license, . . . or had a license issued by another agency of this state . . . revoked 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, 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 Procedures Act . . . *and only upon an express finding of a violation of law by the agency or entity*." (Emphasis added.) Herrera misappropriated funds of a client. Herrera does not dispute that he stipulated to the facts and disposition in the State Bar proceedings. However, Herrera contends an express finding in the State Bar proceedings could only have resulted from a trial on the merits. This contention is incorrect.

A stipulation is an agreement between adverse parties. (*Palmer v. Long Beach* (1948) 33 Cal.2d 134, 142.) The stipulation is binding upon the parties. (*Id*. at pp. 141-142.) It is also binding upon the court. (*Green v. Linn* (1962) 210 Cal.App.2d 762, 768.) "'The judgment of a court of competent jurisdiction entered upon a stipulation of the parties has the same effect as if the action had been tried on the merits. [Citations.]' [Citations.]" (*Avery v. Avery* (1970) 10 Cal.App.3d 525, 529.)

Herrera's stipulated statement of acts or omissions expressly stated that his failure to notify his client of receipt of the client's funds and his use of those funds for other purposes constituted a willful violation of section 6106 and Rules of Professional Conduct, rule 4-1000(B)(4). This was an express finding of a violation of law, as opposed to an implied finding. This express finding was agreed to by Herrera, binding on the parties and the court, and had the same effect as a finding after a trial on the merits. We conclude the stipulated findings in the State Bar proceedings satisfied the requirement of section 10177, subdivision (f) of an express finding.

V. Moral Turpitude

Herrera contends his real estate license could not be revoked unless the Department alleged and proved that he had been convicted of an offense which involved moral turpitude. This is not correct.

As stated above, the Department may revoke the license of any real estate licensee who has had a license issued by another state agency revoked or suspended for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a real estate license. (§ 10177, subd. (f).) Among the acts which are grounds for the suspension or revocation of a real estate license, section 10177, subdivision (g) provides that a license may be revoked based on "[d]emonstrated negligence or incompetence in performing any act for which he or she is required to hold a license." The Department may also suspend or revoke a real estate license where the licensee has "[commingled] with his own money or property the money or other property of others which is received and held by him." (§ 10176, subd. (e).) The Department may suspend or revoke a real estate license for any conduct by the licensee which constitutes fraud or dishonest dealing. (§§ 10176, subd. (i), 10177, subd. (j).)

The acts Herrera committed which led to the suspension of his law license were acts that were also grounds for revocation of a real estate license. Herrera was suspended from the practice of law for mishandling client funds. At a minimum, his conduct was negligent. Negligent conduct alone is grounds for suspension or revocation of a real estate license under section 10177, subdivision (g), and therefore, Herrera's conduct was sufficient to establish grounds for revocation of his real estate license under section 10177, subdivision (f). However, Herrera stipulated in the State Bar proceedings that, acting in his capacity as an attorney, he had failed to notify a client of the receipt of the client's funds and misappropriated the money for his own use and purpose. He stipulated that he had committed acts in willful violation of section 6106, which grants authority to the State Bar to discipline licensees found to have committed acts of moral turpitude. Herrera's actions in failing to notify his client of the receipt of funds and using the client's money for other

purposes violated the prohibition of section 10176, subdivision (e), against real estate licensees commingling funds and the prohibition of sections 10176, subdivision (i), and 10177, subdivision (j), against dishonest dealings by real estate licensees. Herrera's acts which caused his law license to be suspended were sufficient grounds for revocation of his real estate license, and therefore, his license was properly revoked under section 10177, subdivision (f). No allegation or finding of moral turpitude was required under these provisions.[2]

VI. Abuse of Discretion

Herrera contends that the revocation of his real estate license was an abuse of discretion. We disagree.

At the hearing, the parties presented oral and documentary evidence, including stipulations. The Department called Herrera as a witness. Herrera did not call any witnesses. The administrative law judge found that although Herrera had not suffered any prior discipline, his conduct concerning the client's funds constituted negligent conduct which caused harm through financial loss to the client, a member of the consuming public. Further, the conduct breached a fiduciary duty to the client. The administrative law judge also found that Herrera had not been active in real estate for some time. Herrera had not established that he could safely engage in the real estate business and strictly adhere to the statutes and regulations governing his license. Therefore, he presented a risk to the public in either a restricted or unrestricted license status.

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[2] The record on appeal does not contain the accusation filed by the Department against Herrera. To the extent Herrera contends that the accusation was defective for failure to state acts or omissions on which the Department could proceed (see *Manning v. Watson* (1952) 108 Cal.App.2d 705, 710 [the accusation filed by the Real Estate Commissioner was defective because it failed to allege specific misconduct that would support disciplinary action under the code sections specified in the accusation]), we cannot review the facts set forth in the accusation and the judgment is presumed to be correct, and

"Where the decision of a statewide administrative tribunal lacking constitutional authority to exercise judicial functions substantially affects fundamental rights, particularly the right to practice one's profession or trade, courts must exercise their independent judgment in determining whether the administrative findings are supported by the weight of the evidence. [Citations.] [¶] However, the propriety of a penalty imposed by an administrative agency is a matter vested in the discretion of the agency and its decision may not be disturbed unless there has been a manifest abuse of discretion. [Citations.] '. . . Such interference, in light of the foregoing authorities, will only be sanctioned when there is an arbitrary, capricious or patently abusive exercise of discretion.' [Citation.]" (*Cadilla v. Board of Medical Examiners* (1972) 26 Cal.App.3d 961, 966.)

In this case, the revocation of Herrera's license was not an abuse of discretion. He had not been active in real estate for some time. He perceived his failure to remit $1,000 to a client and use of the funds for other purposes to be acts concerning a "miniscule" amount and characterized them as the acts of an attorney new to the practice of law. He did not demonstrate to the administrative law judge that he was prepared to strictly adhere to the rules and regulations governing a real estate license with regard to a broker's fiduciary duty. The administrative law judge exercised his discretion and issued a thorough and well-reasoned recommendation to revoke Herrera's real estate license. The trial court found no abuse of discretion. We also find no abuse of discretion.

DISPOSITION

The judgment is affirmed. Appellant is to pay respondent's costs on appeal.

GRIGNON, J.

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therefore, Herrera has waived any such claims for failure to provide an adequate record. (*Rossiter v. Benoit* (1979) 88 Cal.App.3d 706, 712.)

We concur:

TURNER, P.J.

ARMSTRONG, J.