

**Ken Van Vleck**

Ken is a real estate and commercial litigation attorney at GCA Law Partners LLP

He can be reached at (650) 428-3900

“A brokers’ license may be suspended for conviction of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.”

Loss of Broker’s License for \$100 Misdemeanor Conviction

THIS ISSUE

A real estate brokers’ license may be suspended or revoked by the Department of Real Estate based upon the broker’s conviction of a crime that is “substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.” In this issue, we discuss what is “substantially related.”

FACTUAL SCENARIO

Lance Jay Robbins was licensed as a real estate broker and an attorney. On January 23, 2001, he pled *nolo contendere* and was convicted of three misdemeanor violations of the fire protection and prevention provisions of the Los Angeles Municipal Code – unlawful obstruction of buildings, failing to test a fire signal system, and failing to inspect fire extinguishers. Robbins was fined \$100, placed on summary probation for 18 months and required to pay investigative costs incurred by the Fire Department.

In March 2003, the Department of Real Estate filed an accusation alleging Robbins’s convictions constituted cause for the suspension or revocation of his license as a broker, as they were crimes involving moral turpitude that were substantially related to the qualifications, functions and duties of a real estate licensee. In a first amended accusation filed in February 2004, the Department alleged, “in aggravation,” that in the period between 1986 and 1995, Robbins had been convicted of some 50 municipal building code violations, and was twice disciplined (in 1991 and 1994) by the State Bar of California with private reprimands.

The administrative law judge hearing the case issued a proposed decision revoking Robbins’s license, concluding:

“A substantial relationship existed between Robbins’s 2001 convictions and the qualifications, functions or duties of a licensee. The code violations arose out of Robbins’s ownership and/or management of apartments; Robbins indicated this was a very profitable business; and his convictions resulted from his failure to take care of health and safety requirements for the tenants of the apartments. This met the requirements described in the Department’s regulations, which state that a substantial relationship is established by the ‘[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.’

“Cause existed for suspension or revocation of Robbins’s real estate license because ‘he was convicted of crimes involving moral turpitude involving the health and safety of the community and inhabitants of the apartments in question and which were substantially related to the qualifications, functions or duties of a licensee....’

“Given the number of years in which Robbins was charged with building code health and safety violations, and the fact that he continued to be in a business affecting the management and operation of a large number of apartments in Los Angeles, it was too early to determine that he was sufficiently rehabilitated to retain his license.”

Moral Turpitude is Irrelevant to Suspension

Robbins filed an action in court seeking an order overturning the Administrative Law Judge’s ruling, contending that, in order to revoke his license, the Department had to establish that the crimes of which he was convicted were crimes of moral turpitude and were substantially related to the qualifications, functions or duties of a real estate licensee, and that, as a matter of law, neither requirement was established.

Legislative changes have clarified that the question of moral turpitude is irrelevant, and consequently the only question in this case is whether Robbins’s crimes were substantially related to the qualifications, functions or duties of a real estate licensee. The court of appeal found that they were, and upheld the suspension of his license.

Standards for Revocation of License

Section 490 of the Business and Professions Code permits the revocation of a broker’s license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

Finding that a licensee’s conviction justifies discipline “requires a reasoned determination that the conduct was in fact substantially related to the licensee’s fitness to engage in the profession.” Licensing authorities do not have unfettered discretion to determine whether a given conviction is substantially related to the relevant professional qualifications. Rather, the licensing authorities are required to develop criteria to aid them in making that determination. The Department of Real Estate’s criteria appear in section 2910 of title 10 of the California Code of Regulations. Those criteria state:

“When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, ... the crime... shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department... if it involves: ... Doing 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.”

Why Was Robbins' Suspension Upheld?

The Administrative Law Judge observed that the code violations arose out of Robbins' ownership and/or management of apartments, and Robbins himself indicated this was a very profitable business. He testified he had discovered that by acquiring and upgrading apartment buildings, "he could obtain extraordinary rates of return on the marginal sums spent on rehabilitation, and could purchase buildings at disproportionately high discounts in price for the problems involved." And, "[c]urrently he represents owners of over twenty properties with over 1,000 apartment units and the owners continue to upgrade buildings and achieve significant operating income increases in greater Los Angeles."

As the Administrative Law Judge concluded, Robbins's convictions for violations of fire protection and prevention provisions of the Municipal Code "resulted from his failure to take care of health and safety requirements for the tenants of the apartments." Since there was a profit motive (as well as the chance of substantial injury to apartment inhabitants), he concluded the requirements of section 2910 of the regulations were met. The trial court agreed.

And that decision was upheld on appeal, the court finding that "when this profit motive – which of course is unassailable standing alone – is viewed in the context of Robbins's extensive history of convictions for building code violations, it is clear that section 2910 is fully satisfied: Robbins's convictions for fire code violations occurred in connection with a property he managed (and indeed a broker's license is required for persons who, for compensation, lease or rent real property, collect rents from real property, and so on), and it is reasonable to infer from his history of convictions for similar violations that his unlawful acts were done "with the intent of conferring a financial or economic benefit upon the perpetrator...."

Robbins Contested This Finding

Robbins argued against this finding, contending no substantial relationship exists as a matter of law because his convictions did not involve "honesty or truthfulness" and did not "impair[] his performance of professional duties to his clients in an honest and faithful manner." But the Court found that "certainly honesty and truthfulness are required for the holder of a real estate license. There is more to being a licensed professional than mere knowledge and ability; honesty and integrity are deeply and daily involved in various aspects of the practice. But nothing ... cited by Robbins supports the proposition that crimes must involve a failure of 'honesty or truthfulness' in order to be substantially related to the fitness of a real estate licensee. Moreover, while a licensee's integrity may not be implicated by three convictions for code violations, when those convictions are placed in the context of an extensive history of similar violations, one may well question the claim that the licensee's integrity is not implicated. In any event, all that is required to find a substantial relationship between a crime and the qualifications of a licensee is the doing of an unlawful act with the intent of conferring a financial benefit on the doer of the unlawful act. Contrary to Robbins's assertions, and as we have just concluded, the evidence in the record is sufficient to show that requirement has been met."

CONCLUSION

Robbins' license suspension appears to be related to greed, profit, and a callous disregard for the law. But a license suspension does not have to be; the DRE would certainly be justified in prosecuting an administrative action for a mere single criminal conviction related to the broker's performance of his duties as a broker, even if that is unlikely.

NEXT ISSUE

Revisiting equitable easements.

R.E.A.C.H. Distribution List

- If you are not receiving this newsletter directly, please send me your e-mail address and I will add you to the R.E.A.C.H. Distribution List.
 - Please feel free to redistribute R.E.A.C.H., unedited and with credit to the author. Or if you would like this newsletter sent directly to others in your organization, please send me their e-mail addresses and I will add them to the distribution list.
- Archived issues of R.E.A.C.H. may be found on the GCA Law Partners website at www.gcalaw.com.
 - R.E.A.C.H. is a publication of general applicability and not specific to any set of facts. Thus, it should not be relied upon for any specific case or matter without further discussion. No attorney-client relationship is formed as a result of your reading or replying to this newsletter, which is not intended to provide legal advice on any specific matter, but rather to provide insight into current developments and issues.



KEN VAN VLECK
kvanvleck@gcalaw.com

1891 LANDINGS DRIVE
MOUNTAIN VIEW, CA 94043
TEL 650.428.3900
FAX 650.428.3901
www.gcalaw.com

