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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)**

DANIEL E. GONZALEZ,

Plaintiff and Appellant,

v.

WAYNE S. BELL, as Commissioner, etc.,

Defendant and Respondent.

C070099

(Super. Ct. No.
34-2011-80000794-CU-WM-GDS)

Daniel E. Gonzalez, a licensed real estate broker, represented both parties in connection with the auction sale of a residence. The sale fell through, and the \$7,550 paid by the buyer, Narine Stepanyan, to Gonzalez was not returned. Stepanyan sued Gonzalez to recover the sum and, although Gonzalez prevailed at trial, the former Department of Real Estate (DRE)¹ initiated administrative disciplinary proceedings

¹ In February 2013, Governor Brown appointed Wayne S. Bell as Commissioner of the Department of Real Estate, which was renamed the California Bureau of Real Estate, operating within the California Department of Consumer Affairs, effective July 1, 2013.

against Gonzalez. When Gonzalez did not respond to the DRE accusation, DRE entered his default and subsequently revoked his real estate broker's license.

Gonzalez then filed a petition for a writ of mandate to set aside the DRE's decision revoking his real estate broker's license. The trial court denied the petition as untimely, and Gonzalez now appeals, arguing the trial court erred in concluding the statute of limitations barred his petition. We disagree and shall affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Underlying Civil Litigation²

Before the DRE took the actions complained of in this appeal, Gonzalez held a real estate broker's license.

In 2009, Gonzalez represented both sides in a real estate sales transaction: He represented the seller of residential property located on Don Julio Boulevard in North Highlands, and he represented Narine Stepanyan in connection with her auction bid to purchase the Don Julio property.

Although Stepanyan was the successful bidder, the transaction did not close.

Stepanyan filed a complaint with the DRE against Gonzalez in September 2009, complaining that he was hostile and threatening, advised her to take positions adverse to her interests, acted through an unlicensed entity, and made misrepresentations to her.

Stepanyan then sued Gonzalez in small claims court in December 2009 to recover \$7,500 in cash she delivered to him in connection with the Don Julio Boulevard

² Our summary of the facts giving rise to the civil litigation is based chiefly on the judgment in that action, attached to Gonzalez's appellant's brief as an appendix. We recite these facts for background purposes only; as will appear from the Discussion, *post*, the details are not material to our disposition of this appeal.

transaction.³ According to Stepanyan, the cash represented a deposit, or initial payment made toward the purchase price of the property; in Gonzalez's view, the cash was a nonrefundable "buyer[s] premium" relating to expenses outside of escrow, which Stepanyan could not recover after she failed or refused to proceed with the purchase.

While Stepanyan's small claims action against Gonzalez was pending, deputy DRE commissioner Kyle Jones notified Gonzalez that the DRE had begun an investigation of the transaction. Some of Jones's inquiries were fielded by L. Kent Wyatt, the attorney representing Gonzalez in the case brought against him by Stepanyan, and Robert R. Schaldach, an attorney who had assisted in connection with the Don Julio property auction.

The small claims matter against Gonzalez was ultimately consolidated for trial with Stepanyan's separate small claims action against the sellers of the Don Julio property.⁴ Both cases turned on a determination of the reasons the sale of the Don Julio property to Stepanyan did not close.

Following a court trial, conducted over five days between January and May 2010, the court prepared a written ruling and judgment reflecting its conclusions (among other things) that, although both Stepanyan and Gonzalez engaged in some sloppy methods of doing business, Stepanyan understood that the cash paid to Gonzalez represented a nonrefundable payment; that Stepanyan thereafter chose not to close the purchase transaction, without legal excuse; and Gonzalez therefore "owes nothing" to Stepanyan.

³ Stepanyan gave Gonzalez \$7,550 in connection with the transaction, but \$7,500 was the maximum she could recover in a small claims case.

⁴ These consolidated cases were small claims case Nos. 09SC07833 and 09SC07834, which appear to have been appealed by the defendants (Code Civ. Proc., § 116.710, subd. (b)) and thereafter tried de novo to the superior court (*id.*, § 116.770).

Administrative Proceedings

Four months later, on October 12, 2010, the DRE filed an accusation against Gonzalez based on facts involved in the underlying litigation. The accusation alleged that Gonzalez gave the \$7,550 cash he received from Stepanyan to the seller's attorney Schaldach; without Stepanyan's knowledge or permission, Gonzalez directed Schaldach to make disbursements from that sum, including a check payable to Gonzalez for \$4,250 and a \$1,000 payment to Schaldach for payment of an outstanding personal loan owed by Gonzalez. These actions, DRE alleged, constitute fraud and/or negligence on Gonzalez's part, and justified suspending or revoking Gonzalez's license.

DRE sent the accusation to Gonzalez by regular and certified mail at the following address: 8880 Cal Center Drive, #400, Sacramento, California 95826.⁵ A receipt dated October 13, 2010, was signed by the operations manager for the property.

Gonzalez made no response within the time frame required by Government Code section 11506 and, on November 18, 2010, the DRE filed an order entering Gonzalez's default.

The DRE then issued a written decision determining that the allegations of the accusation had been proven by clear and convincing documentary evidence, and revoking Gonzalez's license. On December 17, 2010, the DRE sent a letter by regular and certified mail to Gonzalez at his Cal Center Drive address, notifying him of its decision that, effective January 6, 2011, his real estate license would be revoked.⁶

⁵ DRE records indicate Gonzalez changed his main office and mailing address to 8880 Cal Center Drive, Suite 400, Sacramento, California 95826 as of June 9, 2010.

⁶ The trial court later determined Gonzalez did not receive actual notice of the default or default decision.

Mandate Proceedings in the Trial Court

On February 22, 2011, Gonzalez filed the instant petition for writ of mandamus or, alternatively, for writ of administrative mandamus, seeking a peremptory writ of mandate compelling Jeff Davi, then Commissioner of the DRE,⁷ to set aside the accusation and revocation of his real estate broker's license, and to reinstate his license.

The petition asserts that (1) the DRE was precluded from initiating proceedings to revoke Gonzalez's real estate broker's license on the basis of res judicata and/or collateral estoppel because he was exonerated in the civil proceedings brought by Stepanyan and the failure of the accusation and revocation to incorporate the civil judgment in Gonzalez's favor constituted an abuse of the DRE commissioner's discretion; and (2) Gonzalez never received actual notice of the accusation or decision revoking his license. Instead, Gonzalez learned of the license revocation from a colleague on January 21, 2011, and received the accusation and default revocation by fax on January 24, 2011.

Gonzalez submitted a declaration in support of his petition, in which he averred he told deputy DRE commissioner Jones that a July 2009 car accident had limited his ability to pick up his mail regularly and Jones orally agreed to give any notice to and/or serve any documents on his attorneys, Wyatt and Schaldach. Gonzalez also submitted a typed letter he wrote to the DRE, dated December 15, 2010—on which was also typed “Second request: 1/21/2011 Certified Mail/Return Receipt”—that stated: “Please note on the attached change form that my license location (8880 Cal Center Drive, Suite 400, Sacramento, CA) shall cease beginning November 15, 2010 due to physical limitations affecting my health and an identity theft incident. When I am able, my new location should begin about January 15, 2011. I wish to retain my real estate license active. [¶]

⁷ Sometime after judgment was entered in this matter, Barbara Bigby was substituted for Jeff Davi as Commissioner of the Department of Real Estate (see fn. 1, *ante*).

As for any pending administrative action by Mr. Jones, please send those materials to both attorneys involved in the trial court proceedings: (1) Mr. Kent Wyatt, Esq., and (2) Mr. Robert Schaldach, Esq. . . .” The letterhead indicates Gonzalez’s mailing address is in Citrus Heights.

The DRE’s response to the petition urged the court to deny the relief requested, chiefly on the ground that Gonzalez’s petition is time-barred because he failed to challenge the default decision within the requisite time period.

Following a hearing on Gonzalez’s petition in August 2011, the trial court denied Gonzalez’s petition as untimely under Government Code section 11523 and entered judgment in favor of the DRE.⁸

DISCUSSION

I. The Petition Was Untimely

The trial court resolved all of the issues raised by Gonzalez’s petition by determining the petition was not timely filed. The trial court was correct.

The Administrative Procedure Act (Gov. Code, § 11500 et seq.) sets strict time deadlines for judicial challenges to administrative decisions. It states, “Judicial review may be had by filing a petition for a writ of mandate in accordance with the provisions of the Code of Civil Procedure, subject, however, to the statutes relating to the particular agency. Except as otherwise provided in this section, the petition shall be filed within 30

⁸ In so doing, the trial court expressly found that the evidence submitted by Gonzalez to establish that he gave the DRE notice of his change of address in December 2010, before the DRE issued its decision revoking his real estate broker’s license “lacks credibility,” and the letter submitted to show otherwise “appears to be a copy of a letter sent by [Gonzalez] to [the DRE] in January 2011, not in December 2010”; accordingly, it does not appear Gonzalez properly notified DRE of his change of address before DRE served its default decision and DRE did not abuse its discretion in mailing its decision to Gonzalez at the Cal Center Drive address.

days after the last day on which reconsideration can be ordered. . . .” (Gov. Code, § 11523.) The parties do not dispute that this provision applies and have not referred us to any statute relating to the DRE that alters the 30-day requirement.

If the licensee “within 10 days after the last day on which reconsideration can be ordered, requests the agency to prepare all or any part of the record, the time within which a petition may be filed shall be extended until 30 days after its delivery to him or her.” (Gov. Code, § 11523.) Otherwise, the “power to order a reconsideration shall expire 30 days after the delivery or mailing of a decision to a respondent, or on the date set by the agency itself as the effective date of the decision if that date occurs prior to the expiration of the 30-day period or at the termination of a stay of not to exceed 30 days which the agency may grant for the purpose of filing an application for reconsideration.” (Gov. Code, § 11521, subd. (a).)

Thus, unless the licensee timely requests preparation of the administrative record, the licensee must file a petition for writ of administrative mandate within 30 days of the last day for reconsideration if he wishes to challenge the board’s decision in court. (Gov. Code, § 11523; see *Jahangiri v. Medical Bd. of California* (1995) 40 Cal.App.4th 1657, 1661-1662.)

Gonzalez did not meet these deadlines. The DRE served its decision revoking Gonzalez’s real estate broker’s license by sending a copy to his address of record via certified mail on December 17, 2010, stating that the decision was effective January 6, 2011. Service by this method is authorized by law. (Gov. Code, §§ 11505, subd. (c) [authorizing agency to serve order adversely affecting respondent by registered mail when statute or rule requires respondent to inform agency of current address], 8311 [whenever statute requires agency to mail document by registered mail, mailing by certified mail “shall be deemed to be a sufficient compliance”]; Bus. & Prof. Code, §§ 100, former 101, subd. (ak) [now (*al*)], 136, subd. (a) [requiring holder of professional

license issued by agency to file current address with agency within 30 days of any change]; Cal. Code Regs., tit. 10, § 2715 [requiring holder of license issued by the DRE to “maintain on file with the commissioner the address of his principal place for brokerage activities, the address of each branch business office and his current mailing address, if different from the business address” and to notify the commissioner of a change in address no later than one business day following the change].) Since the DRE did not grant a stay to allow Gonzalez to apply for reconsideration, its power to order reconsideration expired on January 6, 2011, the effective date of the decision. (Gov. Code, § 11521, subd. (a).) Gonzalez, therefore, had 30 days from that date, i.e., until February 7, 2011, to file his petition for writ of mandate. (Gov. Code, § 11523.) He did not, however, file the petition until February 22, 2011. Because Gonzalez was late in filing his petition, he was “not entitled to any relief as a matter of law.” (*Morton v. Board of Registered Nursing* (1991) 235 Cal.App.3d 1560, 1567.)

II. Gonzalez Has Failed to Show the Statute of Limitations Does Not Apply

Chief among Gonzalez’s arguments that his challenge to his license revocation is not subject to any statute of limitations is his assertion that the DRE lacked jurisdiction to investigate him or to revoke his license because the judgment in his favor in Stepanyan’s civil action effectively resolved the matter in his favor on the basis of “res judicata and collateral estoppel.” As a result, the DRE’s license revocation order was void and could be attacked at any time.

He is mistaken. The DRE had fundamental jurisdiction to investigate Gonzalez on the basis of Stepanyan’s complaint and to revoke his real estate broker’s license based on the misconduct alleged in the accusation, if proven. (Bus. & Prof. Code, § 10176.) Moreover, the outcome of Stepanyan’s civil action seeking a refund is not res judicata on the issue of whether Gonzalez committed professional misconduct. (*Lundborg v. Director of Dep’t of Professional & Vocational Standards* (1967) 257 Cal.App.2d 141,

146 [“It has long been established that exoneration in a prior civil action or acquittal in a criminal proceeding is not res judicata in subsequent administrative license proceedings”].)

Gonzalez also complains on appeal he should not be held to the statute of limitations for filing the writ petition because he did not receive actual notice of the accusation or the decision revoking his license. While the “holder of a professional license has a property interest in the right to practice his or her profession, which cannot be taken away or restricted without due process” (*Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195, 1201), and due process generally requires “notice and opportunity for hearing appropriate to the nature of the case” (*Mullane v. Central Hanover Bank & Tr. Co.* (1950) 339 U.S. 306, 313 [94 L.Ed. 865, 873]), it is well established that the DRE’s service of the default and revocation decision by certified mail at Gonzalez’s current address satisfied the requirements of due process even if (as Gonzalez maintains) he did not actually receive that mail. (*Miller Family Home, Inc. v. Department of Social Services* (1997) 57 Cal.App.4th 488, 493; *Baughman v. Medical Board* (1995) 40 Cal.App.4th 398, 402; *Evans v. Department of Motor Vehicles* (1994) 21 Cal.App.4th 958, 971.)

On appeal Gonzalez relies, for his assertion that the DRE was obliged to serve the accusation on his attorney, on an enclosure letter sent to the DRE by attorney Wyatt while Stepanyan’s civil action against Gonzalez was pending. It states, “Dear Mr. Jones: [¶] As we discussed my firm represents Mr. Gonzalez in the case brought against him by Narine Stepanyan. [¶] In accordance with your request, enclosed please find a Payment Acknowledgement indicating that the auction fee in this transaction was paid to the auctioneer, HomeCo., L.L.C. [¶] I have also enclosed a copy of the receipt from Placer Title Company which indicates that Ms. Stepanyan’s purchase deposit was deposited into escrow at Placer Title Company. [¶] Please contact me if you have any questions or

comments.” This letter does not operate to require the DRE to have served the accusation on Attorney Wyatt. Not only does it fail to indicate that Wyatt shall be Gonzalez’s agent for service of process but, as we have explained, personal service or service by certified mail of the accusation on the licensee is required for an order adversely affecting a licensee’s rights. (Gov. Code, § 11505, former subd. (c).) Gonzalez’s reliance on *Truitt v. Superior Court* (1997) 59 Cal.App.4th 1183 also fails to support his argument. (*Id.* at pp. 1187-1188 [improper to interview a corporation’s employee who is represented by his corporation’s counsel].)

DISPOSITION

The judgment is affirmed. Respondent shall recover costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (2).)

_____ BUTZ _____, J.

We concur:

_____ ROBIE _____, Acting P. J.

_____ MAURO _____, J.