

FILEDNOV 05 2004 *ROC*STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

THE STATE BAR COURT
HEARING DEPARTMENT - LOS ANGELES

In the Matter of) Case No. 03-O-03022-RMT
IONE YOUNG GRAY,)
Member No. 74491,)
A Member of the State Bar.)

DECISION

I. INTRODUCTION

In this contested disciplinary matter, Alan B. Gordon appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent, Ione Young Gray, was represented by Edward O. Lear.

Respondent is charged with a single count of committing an act involving moral turpitude, dishonesty or corruption in wilful violation of Business and Professions Code section 6106.¹ After considering the evidence and the law, the court finds by clear and convincing evidence that Respondent is culpable of professional misconduct. The court recommends that Respondent be suspended for two years and that the suspension be stayed on conditions including a six-month actual suspension.

II. SIGNIFICANT PROCEDURAL HISTORY

On August 26, 2003, the State Bar filed and properly served a Notice of Disciplinary Charges (NDC) in case number 03-O-03022 alleging that Respondent wilfully violated section 6106 by

¹Unless otherwise noted, all further references to "section" refer to the Business and Professions Code.



1 affirmatively asserting on her broker license renewal application that she had not been convicted of
2 any violation of federal law within the last five years when in fact she had been convicted of several
3 violations of federal law a year prior. On September 9, 2003, Respondent filed a response denying
4 misconduct.

5 On April 12, 2004, Respondent filed a motion to dismiss arguing that the NDC fails to state
6 a disciplinable offense and in the alternative that the proceeding is barred by statute.

7 On April 23, 2004, the court denied Respondent's motion to dismiss.

8 The court conducted a hearing in this matter on May 4, 2004, and took the matter under
9 submission on August 23, 2004.

10 **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

11 The court's findings are based on the parties' stipulation of facts and the testimony presented
12 and documentary evidence introduced during the hearing.

13 **A. Jurisdiction**

14 Respondent was admitted to the practice of law in California on June 28, 1977, and has been
15 a member of the State Bar at all times since.

16 **B. Facts**

17 On January 31, 1997, after a trial in the United States District Court, Central District of
18 California, a jury returned a verdict finding Respondent guilty of two felony counts of violating 18
19 U.S.C. section 1014 (Bank fraud) and two felony counts of violating 42 U.S.C. section 408(a)(7)(B)
20 (Fraudulent use of a social security number).

21 On August 28, 1997, Respondent was convicted and sentenced to eighteen months in prison
22 on each count to be served concurrently. After Respondent's appeal, the United States Court of
23 Appeals for the Ninth Circuit Court remanded the case to the district court for re-sentencing. On
24 July 26, 1999, Respondent was sentenced to fifteen months in prison on each count to be served
25 concurrently.

26 Respondent formerly held a real estate broker license issued by the State of California
27 Department of Real Estate (DRE). Respondent's broker license expired on September 6, 1996, but
28 remained renewable for a period of two years.

1 On September 2, 1998, the DRE received a Broker Renewal Application for Respondent.
2 Item number three on page one of said application asks whether the applicant has been convicted
3 of any violation of federal law within the last five years. Respondent checked the box "No" after
4 this question on the application.

5 The application contains three signatures of Respondent at item twenty-one on page two and
6 reflects a date of January 25, 1997, which is lined out and followed by the date of August 31, 1998.

7 After conducting a hearing on June 24, 2003, an administrative law judge signed a decision
8 and order on July 25, 2003, revoking Respondent's real estate broker license. By order filed August
9 14, 2003, the Real Estate Commissioner adopted the decision of the administrative law judge as its
10 own. The Real Estate Commissioner's decision became effective September 3, 2003.

11 **1. Respondent's Testimony**

12 Respondent testified that she had an assistant, Danny Hernandez, who over several years
13 performed employment and personal tasks for her. In January 1997, Hernandez informed
14 Respondent that her broker license had expired and that it should be renewed. Respondent agreed
15 and delegated the responsibility of completing and filing the application to Hernandez.

16 Hernandez typed the application form and presented it to Respondent for her signature on
17 January 25, 1997. Respondent signed the application form at Hernandez's home and admitted that
18 she may not have read the application before signing it.

19 After signing the original application, Respondent made copies and, upon the suggestion of
20 Hernandez, affixed her signature to some of the copies. On one copy, Respondent signed I. Young
21 Gray to the right of the original photo-copied signature of Ione Young Gray. To correct the
22 inconsistency, Respondent signed the copy a second time with Ione Young Gray directly beneath
23 I. Young Gray. On January 25, 1997, Respondent left the original application, the executed copies
24 of the original application, and a money order in the amount of \$427 with Hernandez with the
25 direction to mail the original application to the DRE. At the time the jury returned guilty verdicts
26 on January 31, 1997, Respondent believed that her broker license application had already been
27 mailed and approved.

28 On August 31, 1998, Respondent signed a DRE Continuing Education Course Verification

1 form and a State Public Benefits Statement form. Respondent also photocopied the identification
2 page of her passport as an attachment to the latter form. Respondent testified that Hernandez told
3 her the DRE required the documentation so that her broker license would remain active. Although
4 Respondent believed that her license had been renewed in 1997, she did not question Hernandez
5 about the need for the additional documentation. Respondent similarly failed to question
6 Hernandez's request for an additional money order payable to the DRE in the amount of \$315.

7 Respondent denies having signed the DRE application or authorizing its submission after
8 January 25, 1997.

9 **2. Testimony of Connie Ross**

10 Connie Ross testified that she has been employed as a supervisor with the DRE for fourteen
11 years in the fiscal section which receives mail and payments submitted to the DRE in Sacramento,
12 California.

13 According to Ross, mail is sorted into categories such as original applications or renewals
14 and each page of any document is stamped with the date it is received by the DRE. Each page of
15 the application the DRE received for Respondent is stamped "Received September 2, 1998." After
16 sorting and stamping, materials are examined to determine whether they contain all requisite
17 documentation. Materials with all required documents are then forwarded to licensing.

18 Ross noted that on the first page of Respondent's application, in the upper right corner the
19 box "Late" is marked followed by \$427 which is lined out but the dollar figure \$315 is handwritten
20 below it. This represents the amount of money the DRE received with the broker renewal
21 application for Respondent. The late filing fee was reduced from \$427 to \$315 late in 1997 or early
22 in 1998. Had Respondent's application been sent in January 1997 as Respondent believed, then the
23 filing fee would have been \$427, not \$315 which was sent in with the application.

24 **3. Testimony of Lawrence Cannon**

25 Lawrence Cannon testified that he is a manager of the licensing division of the DRE and has
26 held that position since 1981.

27 Cannon testified that after a licensing application is received by the department, it is
28 reviewed for any missing documents. If documents are missing, a letter is sent to the applicant

1 requesting the additional information and the application is maintained in a suspense file until the
2 requisite information is received. No such letter was prepared or sent to Respondent with respect
3 to her application.

4 Respondent's first broker license was issued on September 7, 1976. Respondent's license
5 was renewed on four-year cycles thereafter on September 7, 1980, 1984, 1988, and 1992.
6 Respondent was eligible to renew her license for the September 7, 1996, cycle as long as the
7 application was submitted within a two-year grace period ending September 7, 1998. According to
8 Cannon, no applications submitted for Respondent were ever determined to be defective or
9 incomplete.

10 The renewal application date stamped September 2, 1998, is the only application the DRE
11 received to renew Respondent's 1996 broker license. Cannon is positive that no application was
12 received for Respondent in 1997 because it would have been noted in his department's data base as
13 well as his department's master file. Further, if the application were somehow deficient, a letter
14 would have been sent to Respondent.

15 **4. Testimony of John Jenkins**

16 John Jenkins is a salaried employee of Respondent who began working for her in 1984 or
17 1985 after he attended one of her seminars.

18 Jenkins testified that he saw Respondent sign the DRE renewal application at Hernandez's
19 home on January 25, 1997, and thereafter he claims that he took the completed application to the
20 post office and mailed it.

21 Jenkins also claims that he saw Respondent sign the application again on August 31, 1998,
22 at her home.

23 **C. Conclusions**

24 Based on the documentary evidence and testimony of Ross and Cannon, the court finds the
25 testimony of Respondent and Jenkins to be inconsistent and their recollection of facts untrustworthy.

26 If the renewal application had been sent in 1997 as Respondent and Jenkins contend, this
27 would have been reflected in the DRE records system. Furthermore, had the application and renewal
28 fee been submitted in 1997, there would have been no need to tender an additional fee payment of

1 \$315. Respondent failed to explain what happened with the original fee payment of \$427. Finally,
2 if the Continuing Education Course Verification form and a State Public Benefits Statement form
3 Respondent signed on August 31, 1998, were merely additional documentation required to complete
4 a deficient renewal application submitted in 1997, DRE records would have so reflected.

5 Based on this evidence, the court finds that although Respondent might have originally
6 signed the DRE broker license renewal application on January 25, 1997, said application was not
7 sent to the DRE until after Respondent signed the Continuing Education Course Verification form
8 and a State Public Benefits Statement form on August 31, 1998. The DRE received Respondent's
9 broker license renewal application on September 2, 1998, approximately twelve months after she
10 was convicted and sentenced for four federal felony violations.

11 At the time the jury returned guilty verdicts against her on January 31, 1997, Respondent
12 believed that her broker license application had already been mailed and approved, yet she did
13 nothing to confirm this mistaken belief.² Even after Respondent signed a DRE Continuing
14 Education Course Verification form and a State Public Benefits Statement form and photocopied
15 the identification page of her passport as an attachment on August 31, 1998, Respondent again did
16 nothing to confirm her belief that her broker license was approved. Instead, Respondent declined
17 to question Hernandez about the need for the additional documentation and failed to question his
18 request for an additional money order payable to the DRE in the amount of \$315.

19 Because Respondent delegated to Hernandez unfettered authority to complete and file the
20 application, signed the application without being certain that she read it, and failed to confirm her
21 belief that her license had been renewed, despite evidence to the contrary, the court finds that
22 Respondent's conduct was unreasonable and grossly negligent.

23 Due to Respondent's gross negligence, Respondent's license application was sent to the DRE
24 containing a material misrepresentation. Respondent's failure to adequately supervise Hernandez
25 does not absolve her of responsibility for the material misrepresentation. Furthermore, by abdicating
26

27
28 ²The court is unaware if Respondent had an ongoing duty to apprise the DRE of her
convictions after the application was sent since no evidence was presented on this issue.

1 to Hernandez complete responsibility for completing and filing her license application, Respondent
2 displayed gross negligence constituting moral turpitude.

3 Therefore, the court finds by clear and convincing evidence that Respondent committed an
4 act of moral turpitude in wilful violation of Business & Professions code section 6106 when she
5 recklessly allowed her assistant to submit to the DRE a license application containing the material
6 misrepresentation that she had not been convicted of any violation of federal law within the last five
7 years when, in fact, she had.

8 **IV. LEVEL OF DISCIPLINE**

9 **A. Aggravating Circumstances**

10 Respondent's prior record of discipline is an aggravating factor. (Standard 1.2(b)(i), Rules
11 Proc. Of State Bar, tit. IV, Stds. For Atty. Sanctions for Prof. Misconduct (Standards).)

12 In Supreme Court case number S098146 (State Bar Court case numbers 97-C-10651, 97-O-
13 13256, 97-O-13370, 97-O-14707, 97-O-14872), effective September 20, 2001, Respondent was
14 suspended for five years, stayed, and placed on probation for four years upon condition that she be
15 actually suspended for four years and six months and until she shows proof of her rehabilitation,
16 fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii).

17 Case number 97-C-10651 involved the same federal felony convictions involved in the DRE
18 license renewal application in the present matter. Respondent stipulated that in July 1992 and
19 September 1993 she knowingly misrepresented her name, social security number and income in
20 documentation supporting loan applications.

21 In case numbers 97-O-13370, 97-O-14707, and 97-O-14872, Respondent stipulated that she
22 wilfully held herself out as entitled to practice law or actually practiced law on six occasions
23 between April and May 1997 while she was on interim suspension in case number 97-C-10651.
24 Respondent further stipulated that she committed acts involving moral turpitude by failing to inform
25 courts and opposing counsel of her suspended status.

26 **B. Mitigating Circumstances**

27 Respondent testified that she exercised bad judgment in delegating so much responsibility
28 to her assistant, Danny Hernandez. The court accords some mitigative weight to Respondent's

1 expression of remorse for her bad judgment.

2 **Discussion**

3 The purpose of disciplinary proceedings is not to punish the attorney, but to protect the
4 public, to preserve public confidence in the profession, and to maintain the highest possible
5 professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; Standard
6 1.3.)

7 Standard 1.6 provides that the appropriate sanction for the misconduct found must be
8 balanced with any mitigating or aggravating circumstances, with due regard for the purposes of
9 imposing discipline. The standards, however, are guidelines from which the court may deviate in
10 fashioning the most appropriate discipline considering all the proven facts and circumstances of a
11 given matter. (*Howard v. State Bar* (1990) 51 Cal.3d 215.) They are not mandatory sentences
12 imposed in a blind or mechanical manner.” (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.)

13 Standard 2.3, also applies in this matter and provides for actual suspension or disbarment
14 when a member is culpable of an act of moral turpitude, fraud, or intentional dishonesty, depending
15 on the degree of any harm to a victim, the magnitude of the misconduct and the degree to which it
16 relates to the practice of law.

17 Respondent has been found culpable of committing an act involving moral turpitude. There
18 is minimal mitigation for Respondent’s expression of remorse. In aggravation, the court has found
19 a prior record of discipline.

20 In *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, discipline
21 consisting of a two-year stayed suspension, and a two-year probation with a six-month actual
22 suspension was imposed. The attorney was found to have committed three violations of section
23 6106. The attorney was grossly negligent in completing an application letter for a position as a
24 judicial arbitrator and improperly held himself out as entitled to practice law while he was on interim
25 suspension. The attorney violated section 6106 on two additional occasions when he submitted job
26 applications for employment as an attorney with the Office of Administrative Law and the
27 Department of Transportation that failed to disclose his prior suspension from the practice of law.
28 Although the applications did not specifically request whether the attorney had been suspended, his

1 omission misrepresented his employment history and was calculated to imply that no gap existed
2 in his ability to practice law. The court found no mitigation, but in aggravation, found harm to the
3 administration of justice, and multiple acts. The attorney also had a prior record of discipline in
4 which he had been actually suspended for three and one-half years as a result of his conviction for
5 attempting to receive stolen property and for his abuse of the legal process in five matters. Although
6 moral turpitude was an issue in the case at bar and the attorney's prior, the court declined to find a
7 pattern.

8 In *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 333, an attorney
9 received a one-year stayed suspension with a 60-day actual suspension for misrepresenting his legal
10 education on his resume and in interviews with prospective employers. The misconduct was
11 aggravated by a lack of candor, multiple acts, and uncharged misconduct for submitting untrue
12 responses to discovery the State Bar propounded. The attorney received only minimal mitigation
13 for his lack of a prior record of discipline and his reputation for good character.

14 In determining the appropriate level of discipline, the State Bar urges the court to consider
15 *In Re Rivas* (1989) 49 Cal.3d 794 and *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar
16 Ct. Rptr. 502. The court does not find these cases persuasive since both involve attorneys who were
17 disciplined due to their conviction of crimes involving moral turpitude, a significant distinguishing
18 factor from Respondent's present matter.³

19 The court believes *Wyrick* and *Mitchell* offer better guidance in determining the appropriate
20 level of discipline since the misconduct in those cases involves material misrepresentations in
21 applications to third parties. Similarly, Respondent submitted an application to the DRE which
22 contained a material misrepresentation. Although Respondent's misconduct involves a single,
23 affirmative misrepresentation resulting from gross negligence rather than repeated, intentional
24 omissions as occurred in *Wyrick* and *Mitchell*, the gravamen of the ethical misconduct remains the
25 same - violation of section 6106 due to a material misrepresentation in an application.

26
27 ³Although the Real Estate Commissioner revoked Respondent's broker license, the court
28 is unaware of any criminal charges stemming from Respondent's reckless submission of the
license renewal application.

1 As in *Wyrick*, Respondent has a prior record of discipline resulting from misconduct
2 involving moral turpitude resulting in the imposition of a significant period of actual suspension.
3 Similar to *Wyrick*, the court does not find that the existence of moral turpitude in Respondent's prior
4 and the present matter constitutes a pattern of misconduct. Based on these similarities, the court
5 considers *Wyrick* an accurate benchmark in determining the appropriate level of discipline to
6 recommend.

7 After considering the standards, case law, Respondent's misconduct, and existing
8 aggravating and mitigating factors, the court recommends, among other things, actual suspension
9 of six months.

10 **V. DISCIPLINE RECOMMENDATION**

11 Accordingly, it is hereby recommended that Respondent, IONE YOUNG GRAY, be
12 suspended from the practice of law for two years and until she has shown proof satisfactory to the
13 State Bar Court of respondent's rehabilitation, fitness to practice and learning and ability in the
14 general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional
15 Misconduct, that said suspension be stayed, and that she be placed on probation for two years and
16 that during said probation, Respondent satisfy the following conditions:

- 17 1. Respondent must be actually suspended from the practice of law for the first six
18 months of probation.
- 19 2. Comply with the State Bar Act and the Rules of Professional Conduct.
- 20 3. Within ten (10) days of any change, report to the Membership Records Department
21 of the State Bar, 180 Howard Street, San Francisco, California, 94105-1639 **and** to the Office of
22 Probation, all changes of information, including current office address and telephone number, or if
23 no office is maintained, the address to be used for State Bar purposes, as prescribed by section
24 6002.1 of the Business and Professions Code.
- 25 4. Respondent shall submit written quarterly reports to the Office of Probation on each
26 January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury,
27 Respondent shall state whether Respondent has complied with the State Bar Act, the Rules of
28 Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the

1 first report will cover less than thirty (30) days, that report shall be submitted on the next following
2 quarter date and cover the extended period.

3 In addition to all quarterly reports, a final report, containing the same information, is due no
4 earlier than twenty (20) days before the last day of the probation period and no later than the last day
5 of the probation period.

6 5. Subject to the assertion of applicable privileges, Respondent shall answer fully,
7 promptly, and truthfully, any inquiries of the Office of Probation which are directed to Respondent
8 personally or in writing, relating to whether Respondent is complying or has complied with the
9 conditions contained herein.

10 6. Within one (1) year of the effective date of the discipline herein, Respondent shall
11 provide to the Office of Probation satisfactory proof of attendance of the State Bar Ethics School
12 and passage of the test given at the end of that session.

13 7. The period of probation shall commence on the effective date of the Supreme Court
14 order imposing discipline in this matter.

15 8. At the expiration of the period of probation in this matter, if Respondent has
16 complied with all the terms of probation, the Supreme Court order suspending Respondent from the
17 practice of law for two years shall be satisfied and that suspension shall be terminated.

18 It is further recommended that Respondent be ordered to comply with the requirements of
19 rule 955 of the California Rules of Court within 30 calendar days of the effective date of the
20 Supreme Court order in this matter, and file the affidavit provided for in paragraph (c) within 40
21 days of the effective date of the order showing her compliance with said order.

22 It is not recommended that Respondent take and pass the Multistate Professional
23 Responsibility Examination (MPRE) because she was ordered to do so in case number S0981416

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2 **VI. COSTS**

3 The court recommends that costs be awarded to the State Bar pursuant to Business and
4 Professions Code section 6086.10 and that those costs be payable in accordance with section 6140.7.

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7 Dated: November 4th, 2004


8 ROBERT M. TALCOTT
9 Judge of the State Bar Court
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CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on November 5, 2004, I deposited a true copy of the following document(s):

DECISION, filed November 5, 2004

in a sealed envelope for collection and mailing on that date as follows:

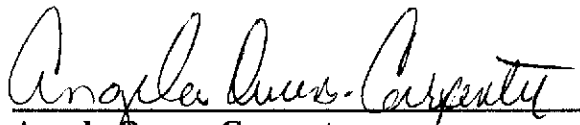
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

EDWARD O. LEAR, ESQ.	IONE YOUNG GRAY, ESQ.
CENTURY LAW GROUP	2265 WESTWOOD BLVD., #337
5200 W. CENTURY BLVD., #940	LOS ANGELES, CA 90064
LOS ANGELES, CA 90045	

- [X] by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

ALAN GORDON, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **November 5, 2004.**



Angela Owens-Carpenter
Case Administrator
State Bar Court