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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

SAM WALKER et al.,

Plaintiffs and Appellants,

v.

THE OFFICE OF
ADMINISTRATIVE HEARINGS,

Defendant and Respondent;

CALIFORNIA BOARD OF
ACCOUNTANCY et al.,

Real Parties in Interest and
Respondents.

B277315

(Los Angeles County
Super. Ct. No. BS162421)

APPEAL from an order of the Superior Court of Los Angeles County, Amy D. Hogue, Judge. Dismissed.

The Law Office of Sam Walker, Samuel R. Walker for
Plaintiffs and Appellants.

No appearance for Defendant and Respondent.

Xavier Becerra, Attorney General, Linda K. Schneider, Senior Assistant Attorney General, Thomas L. Rinaldi and Steve J. Pyun, Deputy Attorneys General, for Real Parties in Interest and Respondents.

Plaintiffs Sam Walker and Sam Walker CPA, Inc., appeal from an order sustaining a demurrer to their petition for writ of prohibition and dismissing the petition.¹ For the reasons explained below, we find the appeal moot.

On August 12, 2015, real party in interest the California Board of Accountancy (CBA), an agency of the Department of Consumer Affairs, filed a first amended accusation against plaintiffs. The CBA alleged plaintiffs committed negligence and gross negligence in filing tax forms for clients, and practicing without a permit. A hearing before the Office of Administrative Hearings (OAH) regarding the accusation was scheduled for December 13 to 15, 2016.

¹ An order sustaining a demurrer without leave to amend is not directly appealable. (*Hill v. City of Long Beach* (1995) 33 Cal.App.4th 1684, 1695.) However, the trial court also issued an order of dismissal pursuant to Code of Civil Procedure section 581, subdivision (f)(1). The order of dismissal here is appealable. (*Kong v. City of Hawaiian Gardens Redevelopment Agency* (2002) 108 Cal.App.4th 1028, 1032, fn 1.) Consequently, the underlying order sustaining the demurrer is reviewable. (§ 906; *Leader v. Health Industries of America, Inc.* (2001) 89 Cal.App.4th 603, 611.)

Further undesignated statutory references will be to the Code of Civil Procedure.

On May 10, 2016, plaintiffs petitioned for peremptory writ of prohibition stating that the OAH and CBA desist and refrain from any further proceeding before the OAH relating to the CBA's accusation, other than dismissal. Plaintiffs alleged the CBA lacked jurisdiction to pursue these matters because the agency exceeded its statutory grant of disciplinary powers. Plaintiffs alleged defendant the OAH was without jurisdiction to hear the CBA's accusation because the CBA acted beyond its disciplinary powers. Plaintiffs alleged they filed a demurrer with the OAH on April 4, 2016, but the OAH failed to calendar the matter. Plaintiffs alleged they were without a plain, speedy, and adequate remedy other than the issuance of a writ of prohibition.

On July 15, 2016, the CBA demurred to the petition for writ of prohibition. The CBA asserted plaintiffs' demurrer is inapplicable in an administrative proceeding. The CBA argued plaintiffs failed to exhaust administrative remedies. The CBA also argued plaintiffs failed to state facts demonstrating that the CBA lacked jurisdiction to proceed with disciplining plaintiffs. To the extent plaintiffs asserted the OAH erred by failing to calendar plaintiffs' demurrer to the CBA's accusation, the CBA argued it was plaintiffs' responsibility to calendar the matter.

On August 19, 2016, the trial court sustained CBA's demurrer without leave to amend. The trial court determined the OAH did not have an obligation to calendar plaintiffs' demurrer. Furthermore, the trial court found plaintiffs had an adequate remedy to challenge the CBA's accusation, namely through the hearing scheduled for December 2016.

We asked the parties to brief whether the appeal is moot. An appeal is dismissed as moot when, through no fault of respondent, the occurrence of an event renders it impossible for

the appellate court to grant the appellant any effective relief. (*Eye Dog Foundation v. State Board of Guide Dogs for the Blind* (1967) 67 Cal.2d 536, 541.) A court decides actual controversies and does not normally render advisory opinions. (*Ebensteiner Co., Inc. v. Chadmar Group* (2006) 143 Cal.App.4th 1174, 1178-1179.)

We took judicial notice of the final decision in the administrative proceeding. A hearing was held before the administrative law judge of the OAH on December 13 to 15, 2016, for which plaintiffs appeared. On February 22, 2017, the administrative law judge submitted a proposed decision. The CBA reviewed the proposed decision and rejected it on April 3, 2017. On June 1, 2017, the CBA issued an order fixing a date for submission of argument. The CBA granted plaintiffs' request for additional time to submit argument up to August 30, 2017. After all arguments were filed, and consideration of the entire record, the CBA issued its decision on October 2, 2017, which would become effective November 1, 2017.

Given these facts, we find the appeal is moot. Even if we were to find reversible error, the remedy that could have been achieved by plaintiffs is a prohibition of the hearing before the OAH. However, that hearing has already occurred. "The writ of prohibition arrests the proceedings of any tribunal, corporation, board, or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person." (§ 1102.) "[T]he rule is that prohibition ordinarily issues only to prevent future judicial acts rather than to undo acts already performed." (*Melancon v. Superior Court* (1954) 42 Cal.2d 698, 704-705.) Here, the OAH

hearing has already taken place. There is no longer a proceeding for a writ of prohibition to stop.

Plaintiffs assert that the appeal is not moot because unless they have a right of immediate appeal, the trial court's interpretation of the OAH's jurisdiction would evade review. We disagree. Plaintiffs are not without a remedy to seek review of the OAH's jurisdiction. As the CBA acknowledges plaintiffs can petition for a writ of mandate in the superior court challenging the final decision. (See § 1094.5 [administrative mandate].)

DISPOSITION

The appeal is dismissed as moot. Costs are awarded to the California Board of Accountancy.

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RAPHAEL, J.*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.