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DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By C. Westbrook
C. Westbrook

In the Matter of the Accusation of)	No. H-5637 SF
)	
TSANG-CHI CHEN,)	N 26732
aka JAMES CHEN,)	
)	
Respondent.)	

DECISION

The Proposed Decision dated July 18, 1986, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the decision of the Real Estate Commissioner in the above-entitled matter.

The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on August 27, 1986.

IT IS SO ORDERED 7-28, 1986.

JAMES A. EDMONDS, JR.
Real Estate Commissioner

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
TSANG-CHI CHEN, aka) NO. H-5637 SF
JAMES CHEN,)
) N 26732
Respondent.)
)
)
)

PROPOSED DECISION

This matter was heard before Robert R. Coffman, Administrative Law Judge, State of California, Office of Administrative Hearings, on June 2, 1986 at San Francisco, California.

Edward L. Molyneaux, III, Attorney at Law, represented the respondent.

Joseph McGovern, Counsel, represented the Department of Real Estate.

The matter was submitted and the following decision is proposed and recommended for adoption:

FINDINGS OF FACT

I

Respondent Tsang-Chi Chen, aka James Chen is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code of the State of California).

II

On or about May 21, 1984, respondent was licensed by the Department of Real Estate of the State of California as a real estate salesperson. The license will expire on May 20, 1988.

III

The complainant Edward V. Chiolo, a Deputy Real Estate Commissioner of the State of California, acting in his official

capacity as such and not otherwise, made the accusation against respondent.

IV

On or about May 11, 1983, in the United States District Court for District of Arizona, respondent was found guilty by jury verdict on four (4) counts of violating Sections 201(b)(3) and 2, Title 18, United States Code (Aid and Abet and Bribery of a Public official).

V

The crime of which respondent was convicted as set forth above are felonies and crimes involving moral turpitude and crimes which are substantially related to the qualifications, functions, or duties of a real estate licensee.

VI

Respondent is presently on probation, which is scheduled to terminate in June 1988.

VII

The facts and circumstances surrounding the above conviction are set forth in Exhibit A in evidence, the Opinion of the 9th Circuit U.S. Court of Appeals, which states in part as follows:

"The Chens owned a Chinese restaurant in Tucson, Arizona. They had both been in the United States for approximately five years on non-immigrant visas from Taiwan. United States Border Patrolman Theodore Nordmark went to the Chens' restaurant in July 1982, where he attempted to arrest illegal aliens. On August 5, 1982, Amey Chen called Nordmark and told him that if he stayed away from her restaurant she would make it "good" for him. Nordmark told this to his supervisor, and it was decided that Nordmark would tape record his meetings with Amey Chen.

Between August 20 and October 6, Agent Nordmark met with Amey ten times, primarily to discuss illegally obtaining immigration documents. Amey's husband, James Chen, was present at five of these meetings. Several payments ranging between \$100.00 to \$500.00 were made at the meetings. Moreover, Amey Chen made two \$1,000.00 payments to William Johnston, the director of the Immigration and Naturalization Service ("INS"), to obtain a green card for her cook.

On December 7, 1982, Amey was indicted on twelve counts of bribery or aiding and abetting bribery of INS officials, Ted Nordmark and William Johnston, in violation of 18 U.S.C. §§ 201(b)(2) and (3). James Chen was charged in the same indictment with four counts of bribery or aiding and abetting bribery."

The court further stated, in discussing the sufficiency of the evidence to support the conviction, as follows:

"There are also sufficient evidence to support the jury's finding that the defendants were predisposed to commit the crimes charged. As to Amey, there was repeated evidence that she gave Nordmark money or was present when others did. Moreover, Amey's own statements show that she knew her conduct was illegal.

In James's case, he was repeatedly informed by Nordmark that the law would have to be broken to obtain the green cards. Furthermore, Nordmark used no undue inducements and James was at several of the meetings when money was received by Nordmark. Moreover, James assured Nordmark that they, the Chens, did not keep records of their payments to him, because Chinese people know not to do that."

II. Elements of the Crime

a. Corrupt Intent

The crime of bribery requires that an individual corruptly give money to an official to influence him or her in the performance of his or her duties. 18 U.S.C. § 201(b). Thus, bribery requires "corrupt intent," which is a higher degree of intent than is required under the provision outlawing gratuities to public officials. United States v. Strand, 574 F.2d 993, 995 (9th Cir. 1978). Both James Chen and Amey Chen contend that the evidence was insufficient to show corrupt intent.

We find that there was sufficient evidence to support the jury's finding that the Chens had the requisite corrupt intent. Amey initially indicated that she would do something for Nordmark if he would do something for her. Her own statements show that she was aware of the illegality of the transaction. Similarly, Nordmark repeatedly told James that the law would have to be broken to obtain the green cards. Because James was present when money was

given to Nordmark on several occasions, a jury could reasonably find that he knew that Nordmark was being paid to obtain the cards in violation of law."

VIII

(a) Respondent in this proceeding explained that he participated in the conduct which led to his conviction because he thought it was legal and proper to give money to a government official.

(b) Respondent came to the United States from Taiwan in September 1977. In his native country of Taiwan it is a widespread practice and custom when dealing with government officials to make gifts to such officials.

(c) Respondent has been a real estate salesperson for two years. He supports his wife, who does not work, and four minor children.

Prior to coming to California respondent owned and operated a motel and restaurant in Tuscon, Arizona.

(d) Respondent's broker over the past two years believes that respondent is a hard working, honest salesperson. The broker is unaware of any complaints about respondent's activities as a licensed salesperson.

(e) Two of the three 9th Circuit judges who affirmed respondent's conviction were very critical of the government's handling of the case. They were of the opinion that the government official, once approached by respondent's wife, should have indicated to her that her solicitations were not acceptable in the United States, that that would have ended the matter.

DETERMINATION OF ISSUES

Cause for discipline was established under Sections 490, 10177(b), and 10177(f) of the Business and Professions Code.


ORDER

1. The license is revoked.
2. A restricted real estate salesperson license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department the appropriate fee for said license within 90 days of the effective date of this Decision. The restricted license shall be subject to all of the provisions

of Section 10156.7 of the Business and Professions Code and the following additional conditions:

- A. Said restricted license may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which bears a significant relation to respondent's fitness or capacity as a real estate licensee.
- B. Said restricted license may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.
- C. Respondent shall submit with his application for license under an employing broker--or his application for transfer to a new employing broker--a statement signed by the prospective employing broker which shall certify:
- (1) That the broker has read the Decision of the Commissioner which granted the right to a restricted license; and
 - (2) That the broker will exercise close supervision over the performance by the restricted licensee of activities for which a real estate license is required.
- D. Respondent shall, within 6 months from the effective date of the Decision, present evidence satisfactory to the Real Estate Commissioner that he has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: July 18, 1986


ROBERT R. COFFMAN
Administrative Law Judge

RRC:lhj

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BEFORE THE DEPARTMENT OF REAL ESTATE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By Mary A. Morello
Mary A. Morello

In the Matter of the Accusation of

TSANG-CHI CHEN, aka
JAMES CHEN

Case No. H-5637 SF

N 26732

Respondent(s)

NOTICE OF HEARING ON ACCUSATION

TO THE ABOVE NAMED RESPONDENT:

YOU ARE HEREBY NOTIFIED that a hearing will be held before the Department of Real Estate at Office of Administrative Hearings, State Building, 455 Golden Gate Avenue, Room 2248, San Francisco, California

on the 2nd day of June, 1986, at the hour of 1:30 P.M., (One-half Day Hearing)

or as soon thereafter as the matter can be heard, upon the charges made in the Accusation served upon you.

You may be present at the hearing, and you may be represented by counsel, but you are neither required to be present at the hearing nor to be represented by counsel. If you are not present in person, nor represented by counsel at the hearing, the Department may take disciplinary action against you upon any express admissions, or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

DATED: April 14, 1986

DEPARTMENT OF REAL ESTATE

By Joseph McGovern
JOSEPH MCGOVERN Counsel

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1 JOSEPH McGOVERN, Counsel
2 DEPARTMENT OF REAL ESTATE
3 185 Berry Street, Room 5816
4 San Francisco, CA 94107-1770

DEPARTMENT OF REAL ESTATE

5 Telephone: (415) 557-3220

By Mary A. Novello
MARY A. NOVELLO

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

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In the Matter of the Accusation of)
TSANG-CHI CHEN, aka)
JAMES CHEN,)
Respondent.)

NO. H-5637 SF
ACCUSATION

The complainant, EDWARD V. CHIOLO, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against TSANG-CHI CHEN, aka JAMES CHEN, alleges as follows:

I

That TSANG-CHI CHEN, aka JAMES CHEN (hereinafter respondent) is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code of the State of California).

II

That on or about May 21, 1984, respondent was licensed by the Department of Real Estate of the State of California

1 (hereinafter the Department) as a real estate salesperson; that
2 said license will expire on May 20, 1988.

3 III

4 That the complainant EDWARD V. CHIOLLO, a Deputy Real
5 Estate Commissioner of the State of California, acting in his
6 official capacity as such and not otherwise, makes this
7 accusation against respondent and is informed and alleges as
8 follows:

9 IV

10 That on or about May 11, 1983, in the United States
11 District Court for District of Arizona, respondent was found
12 guilty by jury verdict on four (4) counts of violating Sections
13 201(b)(3) and 2, Title 18, United States Code (AID AND ABET AND
14 BRIBERY OF A PUBLIC OFFICIAL).

15 V

16 That the crimes of which respondent was convicted as
17 alleged in Paragraph IV above are felonies and crimes involving
18 moral turpitude and crimes which are substantially related to
19 the qualifications, functions, or duties of a real estate
20 licensee.

21 VI

22 That the facts as alleged in Paragraphs IV and V above
23 constitute grounds for disciplinary action under the provisions
24 of Sections 490, 10177(b), and 10177(f) of the Business and
25 Professions Code of the State of California.

26 WHEREFORE, complainant prays that a hearing be
27 conducted on the allegations of this Accusation and that upon

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proof thereof, a decision be rendered imposing disciplinary
action against all licenses and license rights of respondent
under the Real Estate Law (Part 1 of Division 4 of the Business
and Professions Code) and for such other and further relief as
may be proper under other applicable provisions of law.

Edward V. Chiolo

EDWARD V. CHIOLO
Deputy Real Estate Commissioner

Dated at San Francisco, California
this 13th day of February, 1986.