

FILED
FEB 28 2001

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

* * *

By Laurel A. Zinnemann

In the Matter of the Application of)
BRION SCOTT MASKELL,)
Respondent.)

NO. H-7874 SF
OAH NO. N-2000100551

DECISION

The Proposed Decision dated January 26, 2001, 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 application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to Respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy is attached hereto for the information of Respondent.

If and when application is made for a real estate salesperson license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto.

This Decision shall become effective at 12 o'clock noon on March 21, 2001.

IT IS SO ORDERED February 13, 2001.

PAULA REDDISH ZINNE MANN
Real Estate Commissioner

Paula Reddish Zinnemann

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of

BRION SCOTT MASKELL,

Respondent.

No. H-7874 SF

OAH No. N 2000100551

PROPOSED DECISION

On January 10, 2001, in Oakland, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

David A. Peters, Counsel, represented complainant.

Eliezer Ben-Shmuel, Attorney at Law, of the Law Offices of Hirsch & Ben-Shmuel, 166 Santa Clara Avenue, Oakland, California 94610, represented respondent Brion Scott Maskell, who was present at all times during the hearing.

On January 10, 2001, the parties submitted the matter and the record closed.

FACTUAL FINDINGS

1. Complainant Les R. Bettencourt ("complainant"), in his official capacity as a Deputy Real Estate Commissioner of the State of California, made the statement of issues against respondent.

2. On May 23, 2000, respondent made application to the Department of Real Estate for a real estate salesperson license. He made the application with the knowledge and understanding that any license issued as a result of the application would be subject to the conditions of Business and Professions Code section 10153.4.

On May 26, 2000, the Department received the application signed by respondent.

3. On October 7, 1996, the United States District Court for the Northern District of California convicted respondent, on his plea of guilty, of violating 18 United States Code section 1955 (Illegal Gambling), a felony.

The crime for which respondent was convicted involves moral turpitude and is substantially related to the qualifications, functions and duties of a real estate licensee.

4. The facts and circumstances of the events that led to respondent's conviction pertain to respondent's participation in a gambling scheme where he operated a telephone bookie operation from his home on behalf of a gambling kingpin.

Between December 1994 and June 1995, respondent worked as a significant member in a substantial sports bookmaking and football card operation as organized and led by an individual named Richard Passalagua. When federal law enforcement officials raided respondent's home on or about June 14, 1995, the police discovered substantial indicia that respondent was involved in gambling operations.

6. As a result of the conviction, the U.S. District Court on October 7, 1996, issued an order that placed respondent to three (3) years of formal probation and ordered him to pay a special assessment fee of \$50. The court also sentenced respondent to six months of home confinement with electronic monitoring. The court commanded respondent to complete 150 hours of community services.

Under a Plea Agreement attendant to his conviction, respondent forfeited \$6,425, a Brother telefacsimile machine, and a Sportax Sporting News Data System.

Matters in Extenuation

7. In 1994, respondent's deteriorated knee disorder required that he stop working as a carpenter. After he stopped working in the building trades, he responded to the invitation of a gambling organizer to become one of his bookies by taking bets over the telephone.

Matters in Mitigation

8. Complainant provides no evidence of past criminal convictions of respondent other than the matter set forth in Finding 3, above. Respondent insists that he has never been convicted of any other crime in his life.

Matters in Rehabilitation

9. Respondent has fulfilled the terms of his criminal sentence during the twenty-four months that the U.S. Probation Office supervised his behavior.

On August 13, 1998, the Assistant United States Attorney for the Organized Crime Strike Force complemented respondent's petition for earlier termination of probation. The U.S. Attorney's office set out, in part, that "[respondent's] performance

while on probation ... evidences his rehabilitation and successful integration into the community. The United States believes, therefore, that an early termination of the probation is warranted and [agrees] to ... probation being terminated at the end of two years, to wit, October 4, 1998....”

10. On August 24, 1998, the United States District Court for the Northern District of California issued an order that granted respondent's motion for early termination of probation. The court terminated respondent's probation as of October 4, 1998.

11. Although the federal court's order of probation required that respondent complete 150 hours of community service, respondent compellingly represents that he performed 176 hours of such service by laboring as a carpenter and handyman for the YMCA in San Mateo County.

Among the projects completed by him for the YMCA, respondent built a set of wooden structures to guard the non-profit entity from theft. He designed and built petitions and walls to protect the YMCA's property. Also, respondent constructed a set of cabinets for the organization. The latter project required that respondent devote hours to the YMCA that was time beyond the 150 hours of community service associated with the criminal probation's terms and conditions.

YMCA's management personnel entrusted respondent to expend the YMCA's finances to purchase supplies and parts to complete the community service projects.

12. In June 1996, shortly before the sentencing in the federal court, respondent moved from his old neighborhood in San Mateo County to Richmond in Contra Costa County. He sought to "get some distance" from old acquaintances and to become a homeowner. Respondent, his wife and two children live in the hills of Richmond, California.

13. At the time of his arrest of the federal crime of gambling, respondent was a single man. He married in 1999. In October 2000, respondent adopted his wife's teenage daughter.

Respondent's relationship with his family, that includes his wife, demonstrates that he possesses the ingredients for long-term personal stability. There is no evidence that respondent has neglected his wife or two dependent children—an adopted daughter of 12 years and a son born in April 1999.

14. Currently respondent works as a handyman for neighbors, friends and acquaintances, who need small home improvement and repair work. He is also a stay-at-home Dad who cares for his 1½-year-old son.

15. Respondent has taken basic real estate classes. He studied at Prudential's school. Respondent passed the basic real estate licensing examination on one sitting.

16. As a former construction trades worker, respondent has gained knowledge of the quality of components used in good houses. Respondent has an aspiration to offer buyers and sellers of houses and commercial structures the benefit of his knowledge of the building trades' work-products, with carpentry as his specialty.

17. At the hearing of this matter respondent calls three witnesses to support accounts of his progress towards full rehabilitation:

a. Andrew William Cheak, a project manager for Custom Kitchen company of Oakland, has known respondent for about 12 years. Mr. Cheak first supervised respondent for the construction company. Due to respondent's knee disorder, he had to leave Custom Kitchen about six years ago. Nevertheless, Mr. Cheak admires respondent's skills as a craftsman in carpentry matters.

Mr. Cheak has maintained an acquaintance with respondent over the years. He knows of respondent's success in marriage and that respondent is a good father.

Within six months of the date of respondent's conviction Mr. Cheak learned of respondent's conviction from respondent. Respondent has been forthright about the offense.

Mr. Cheak finds respondent to be an honest and straightforward person. Respondent is a person to be trusted by the witness. Respondent has matured into a stable and productive member of his community.

b. Patricia Gershaneck works for YMCA in San Mateo County as manager of volunteers. She has known respondent for about 15 years.

Ms. Gershaneck views respondent as a genuine and caring person.

Respondent performed community service hours at the YMCA where she has a management position. Respondent engaged in considerable construction work at the YMCA for which she is grateful.

Ms Gershaneck has never doubted respondent's integrity or trustworthiness.

Ms Gershaneck knows respondent to have become a more mature individual as compared to the person she knew respondent to have been 15 years ago.

c. Barbara Florio has known respondent for 20 years. For several years she lived next door to respondent's aunt and uncle in Half Moon Bay, California, at a time

when respondent lived with those relatives. Even though he moved to Richmond, Ms Floria has stayed in contact with him.

When she first met respondent he was young, yet he was industrious and willing to help others. Respondent has greatly matured especially over the immediate past few years. In the past he was a party person, now he is a homebody who takes care of his baby son.

Ms Floria learned early after criminal charges were leveled against respondent that respondent's criminal misconduct caused him to come to the bar of justice. Ms Floria knows that respondent was a "bookie" and that he took illegal gambling wagers over the telephone.

Ms Floria believes that the conviction against respondent was good for him as he changed his priorities. He became a regular and socially responsible person. The birth of his son made a huge change on respondent's life.

18. In his application for licensure, respondent disclosed the fact of his past conviction. Respondent is candid in disclosing his criminal conviction history.

LEGAL CONCLUSIONS

1. Cause for disciplinary action against the license issued to respondent exists under Business and Professions Code sections 480(a) and 10177(b), by reason of the matters set forth in Finding 3.

2. The matters in extenuation, mitigation, rehabilitation and aggravation as set forth in Findings 7 through 18 have been considered in making the following order.

Respondent has successfully attained a majority of the criteria for rehabilitation as set out in Title 10, California Code of Regulations section 2911.

3. With the passage of three years six months between the date of his conviction and the date of his application for licensure, coupled with there not being any other instance of respondent engaging in criminal activities or other questionable behavior as well as his acts to rehabilitate himself, it would not be against the public interest to allow respondent to hold a restricted license as issued by the Department.

ORDER

Respondent Brion Scott Maskell's application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code. The restricted license issued to respondent Brion Scott Maskell shall be subject to all of the

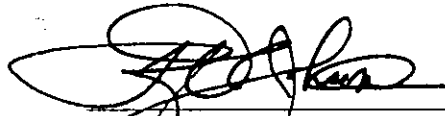
limitations, conditions and restrictions imposed under authority of Business and Professions Code section 10156.6:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:
 - (a) The conviction of respondent (including a plea of nolo contendere) of a crime that is substantially related to respondent's fitness or capacity as a real estate licensee; or
 - (b) The receipt of evidence 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.
2. Respondent Brion Scott Maskell shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until four (4) years have elapsed from the date of issuance of the restricted license to respondent.
3. With the application for license, or with the application for transfer to a new employing broker, respondent Brion Scott Maskell shall submit a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate that shall certify as follows:
 - (a) That the employing broker has read the Decision that is the basis for the issuance of the restricted license; and
 - (b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.
4. Respondent Brion Scott Maskell's restricted real estate salesperson license is issued subject to the requirements of Business and Professions Code section 10153.4, to wit: respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two of the courses listed in section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If respondent fails to timely present to the

advanced real estate appraisal. If respondent fails to timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of its issuance. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, respondent has submitted the required evidence of course completion and the Commissioner has given written notice to respondent of lifting the suspension.

5. Pursuant to Business and Professions Code section 10154, if respondent Brion Scott Maskell has not satisfied the requirements for an unqualified license under Code section 10153.4, respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license that is subject to Code section 10153.4 until four years after the date of the issuance of the preceding restricted license.

DATED: January 26, 2001



PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

FILED
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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By [Signature]

In the Matter of the Application of
BRION SCOTT MASKELL,

}

Case No. H-7874 SF

OAH No. _____

Respondent

CORRECTED
NOTICE OF HEARING ON APPLICATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at _____

The Office of Administrative Hearings, The Elihu Harris State

Building, 1515 Clay Street, Suite 206, Oakland, California 94612

on Wednesday, January 10, 2001, at the hour of 10:30 AM,
or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you are not present nor represented at the hearing, the Department may act upon your application without taking evidence.

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.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay for his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: January 2, 2001

By [Signature]
DAVID A. PETERS Counsel

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

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DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

In the Matter of the Accusation of
BRION SCOTT MASKELL,

}

Case No. H-7874 SF

OAH No. _____

Respondent

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 _____

The Office of Administrative Hearings, The Elihu Harris State

Building, 1515 Clay Street, Suite 206, Oakland, California 94612

on January 10, 2001, at the hour of 10:30 AM,
or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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DEPARTMENT OF REAL ESTATE

Dated: October 23, 2000

By David A. Peters
DAVID A. PETERS Counsel

1 DEIDRE L. JOHNSON, Counsel
State Bar No. 66322
2 Department of Real Estate
P. O. Box 187000
3 Sacramento, CA 95818-7000
4 Telephone: (916) 227-0789

FILED
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DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Application of)
13)
14 BRION SCOTT MASKELL,)
15 Respondent.)
16)

NO. H-7874 SF
STATEMENT OF ISSUES

17 The Complainant, Les R. Bettencourt, a Deputy Real
18 Estate Commissioner of the State of California, for cause of
19 Statement of Issues against BRION SCOTT MASKELL, alleges as
20 follows:

21 I

22 BRION SCOTT MASKELL (hereafter Respondent), pursuant to
23 the provisions of Section 10153.3 of the Business and Professions
24 Code, made application to the Department of Real Estate of the
25 State of California for a real estate salesperson license on or
26 about May 26, 2000, with the knowledge and understanding that any
27 license issued as a result of said application would be subject

1 to the conditions of Section 10153.4 of the Business and
2 Professions Code.

3 II

4 The Complainant, Les R. Bettencourt, a Deputy Real
5 Estate Commissioner of the State of California, makes this
6 Statement of Issues in his official capacity and not
7 otherwise.

8 III

9 On or about October 7, 1996, in the United States
10 District Court for the Northern District of California,
11 Respondent was convicted of violation of Title 18 United States
12 Code Section 1955 (ILLEGAL GAMBLING), a felony, a crime involving
13 moral turpitude, and a crime which bears a substantial
14 relationship under Section 2910, Title 10, California Code of
15 Regulations, to the qualifications, functions, or duties of a
16 real estate licensee.

17 IV

18 The crime of which Respondent was convicted as alleged
19 above constitutes cause for denial of Respondent's application
20 for a real estate license under Sections 480(a) and 10177(b) of
21 the California Business and Professions Code.

22 ///

23 ///

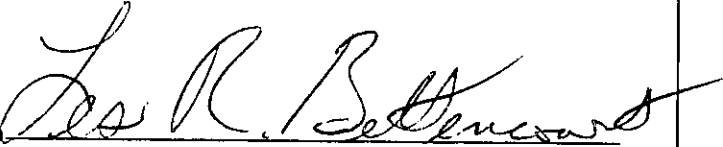
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1 WHEREFORE, the Complainant prays that the above-
2 entitled matter be set for hearing and, upon proof of the charges
3 contained herein, that the Commissioner refuse to authorize the
4 issuance of, and deny the issuance of, a real estate salesperson
5 license to Respondent, and for such other and further relief as
6 may be proper in the premises.

7
8
9
10 
11 LES R. BETTENCOURT
12 Deputy Real Estate Commissioner

13
14 Dated at Oakland, California
15 this 20th day of September, 2000.