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FILED
JUN 14 1999
DEPARTMENT OF REAL ESTATE

By *K. Niederholt*

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	NO. H-26731 LA
)	
MICHAEL ERIC WOOTEN)	
)	
Respondent.)	

ORDER GRANTING REINSTATEMENT OF LICENSE

On January 9, 1997, a Decision was rendered herein revoking the real estate broker license of Respondent, MICHAEL ERIC WOOTEN (hereinafter "Respondent"), effective February 13, 1997. In said Decision Respondent was given the right to apply for and receive a restricted real estate salesperson license which was issued to him on April 7, 1997.

On January 22, 1999, Respondent petitioned for reinstatement of said real estate broker license and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has demonstrated to my satisfaction that grounds do not presently

1 exist to deny the issuance of an unrestricted real estate
2 broker license to Respondent.

3 NOW, THEREFORE, IT IS ORDERED that Respondent's
4 petition for reinstatement is granted and that an
5 unrestricted real estate broker license be issued to
6 Respondent, MICHAEL ERIC WOOTEN, after Respondent satisfies
7 the following conditions within six months from the date of
8 this Order:

9 1. Submittal of a completed application and
10 payment of the fee for a real estate broker license.

11 2. Submittal of evidence satisfactory to the Real
12 Estate Commissioner that Respondent has, since his real
13 estate broker license was revoked, taken and successfully
14 completed the continuing education requirements of Article
15 2.5 of Chapter 3 of the Real Estate Law for renewal of a real
16 estate license.

17 This Order shall become effective immediately.

18 DATED: June 4, 1999

19
20 JOHN R. LIBERATOR
Acting Commissioner

21 
22

23 MICHAEL ERIC WOOTEN
24 1356 Stone Meadow Ct.
25 Camarillo, California 93010
26
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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:)

MICHAEL ERIC WOOTEN,)
Respondent.)
Agency No. H-26731 LA)
OAH No. L-9609057)

PROPOSED DECISION

This matter came on regularly for hearing before Carolyn D. Magnuson, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California, on November 22, 1996.

The complainant was represented by Chris Leong, Staff Counsel.

Respondent appeared personally and represented himself.

Evidence was received, and the matter submitted. The Administrative Law Judge finds the following facts:

I

Thomas McCrady made and filed the accusation in his official capacity as a Deputy Real Estate Commissioner for the Department of Real Estate ("DRE").

II

At all relevant times herein, Michael Eric Wooten (hereinafter "respondent"), was licensed and/or had licensing rights as a real estate broker under the Real Estate Law.

III

On November 28, 1994, in the Superior Court of the State of California, County of Ventura, in People v. Michael Eric Wooten, case number CR31752A, respondent was convicted of violating Penal Code §487[1] (theft of personal property by false pretenses), a crime involving moral turpitude and substantially related to the duties, functions, and qualifications of a departmental licensee.

On its own motion, the trial court reduced the conviction to a misdemeanor. Imposition of sentence was

suspended and respondent was placed on formal probation for 12 months, and assessed a \$5,000 restitution fee.

Respondent successfully completed probation, and the conviction has been expunged under the provisions of Penal Code §1203.4.

IV

The criminal conviction resulted from respondent's failure to tell a construction lender that he was performing supervision work on a real property development project and that respondent's company was, therefore, being paid for that work.

The problem was that respondent concealed from the lender the fact that respondent was personally performing the supervision work and receiving payment through the general contractor, causing the lender to believe that the general contractor was supervising the project.

The court concluded that respondent's failure to be honest with the lender, thus causing the lender to be misled while advancing loan funds, was sufficient to sustain a finding of theft on respondent's part.

V

This was a very technical violation. There was nothing in the loan contract which restricted respondent from performing the supervision function. The work for which respondent was paid was adequately performed by him, and the amount charged for the work was reasonable.

VI

The reason that respondent chose to do the supervision personally was that his development company was experiencing financial problems, and he needed the money he earned from supervising the project.

Respondent did not want to reveal the financial difficulties to the lender for fear that the loan might be jeopardized, and so he had the general contractor act as a middleman in obtaining payment from the lender.

VII

Respondent convincingly declares that he did not think he was acting criminally in concealing that he was being compensated for supervising the project. He was simply trying to make the best of a very difficult situation.

He had no intention of defrauding the lender, and the fact that no restitution was ordered by the court supports the claim that the lender suffered no loss as a result of respondent's conduct.

VIII

Respondent states that he has rededicated himself to living his personal and professional lives openly and honestly.

He has left the real estate development field and has severed all ties with his former partner.

He is active in his community and has been involved with a number of organizations.

Respondent is also very active in his church.

The letters of commendation which were written on respondent's behalf at the time of his sentencing on the criminal conviction show that he is well liked and well respected by a broad spectrum of the community.

IX

There is no more important attribute required of a DRE licensee than honesty. Thus, respondent's conviction for theft strikes at the very heart of his qualification for licensure.

However, given the particular circumstances underlying this case, and given the fact that respondent has met most of the rehabilitation criteria set forth in 10 CCR §2912, this criminal conviction is less condemnatory than such a conviction would usually be.

Respondent has established that it would be consistent with the public interest to issue to him a properly conditioned probationary license would be consistent with the public interest and welfare.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

Cause exists to discipline respondent's license under the provisions of Business and Professions Code sections 490 and 10177(b) for conviction of a crime.

* * * * *

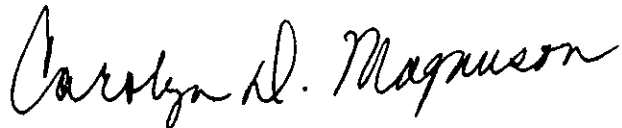
WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of respondent under the Real Estate Law are revoked; provided, however, 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 of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

1. The restricted license issued to respondent 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 is substantially related to respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to respondent 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 the restricted license.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until one year has elapsed from the effective date of this Decision.
4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:
 - a. That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
 - b. That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent 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: December 19, 1996



CAROLYN D. MAGNUSON
Administrative Law Judge
Office of Administrative Hearings

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CHRIS LEONG, Counsel
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, California 90012

(213) 897-3937

FILED
AUG - 2 1996
DEPARTMENT OF REAL ESTATE

By C. B.

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H-26731 LA
MICHAEL ERIC WOOTEN,)	<u>ACCUSATION</u>
Respondent.)	
_____)	

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against MICHAEL ERIC WOOTEN (hereinafter "Respondent"), is informed and alleges as follows:

I

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, makes this Accusation against Respondent in his official capacity.

II

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 (hereinafter "the Code"), as a real estate broker.

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III

On or about November 18, 1994, in the California Superior Court Ventura, Respondent was convicted of violation of Section 487(1) of the California Penal Code (Grand theft of personal property), a crime involving moral turpitude which bears a substantial relationship to the qualifications, functions or duties of a real estate licensee, under Section 2910, Title 10, Chapter 6, California Code of Regulations.

IV

Respondent's criminal conviction, as alleged above in Paragraph III, is cause under Sections 10177(b) and 490 of the Code for the suspension or revocation of all licenses and license rights of Respondent under the Real Estate Law.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondent MICHAEL ERIC WOOTEN, 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.

Dated at Los Angeles, California
this 2nd day of August, 1996.

THOMAS McCRADY

Deputy Real Estate Commissioner

cc: Michael Eric Wooten
Sacto.
MGS