

Flag

FILED
AUG 18 1981

BEFORE THE DEPARTMENT OF REAL ESTATE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

By Emily Sakeda

In the Matter of the Accusation of)
LARRY EUGENE PERRY,)
UNION EQUITIES, INC.,)
AGRI GENERAL RESOURCES, INC.,)
Respondent.)

No. H-543 Fresno
N-16163

DECISION

The Proposed Decision dated July 14, 1981,
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 September 8, 1981.

IT IS SO ORDERED August 17th, 1981.

David H. Fox
DAVID H. FOX
Real Estate Commissioner by
Richard D. Cartow
Assistant Commissioner

FINDINGS OF FACT

I

Robert E. McCabe made the Accusation in his official capacity of Deputy Real Estate Commissioner of the State of California.

II

At all times material herein, respondent Larry Eugene Perry (hereafter referred to as "Perry") was, and he now is, licensed by the Department of Real Estate of the State of California as a real estate broker and as the designated broker-officer for respondent corporations. At all times material herein, the respondent corporations were licensed as real estate corporations by and through Perry as designated broker-officer. On May 12, 1980, a formal request was made for the cancellation of the license held by Union Equities, Inc. The license held by respondent Agri General Resources, Inc. remains in effect.

III

On May 22, 1979, in the United States District Court for the Eastern District of California, Perry was convicted on his plea of nolo contendere of violations of 26 USC 7201 and 7206(2) (tax evasion and fraudulent statements on a tax return), each a felony and each, under the circumstances of the case, a crime substantially related to the qualifications, functions and duties of a real estate licensee.

IV

The conviction described in Finding IV was preceded by an indictment following a lengthy investigation of a complicated series of real estate transactions in which Perry played a leading role. The transactions were a major part of Perry's business at the time and there can be no question that they had a substantial relationship to Perry's qualifications, functions and duties as a real estate licensee, as found above. The main objective of the transactions, all of which involved large tracts of farm land, was to provide tax shelters for a number of investors. Perry himself was a partner in one of the organizations formed as part of the overall plan and, as such, had a financial interest above and beyond that of an agent or broker.

V

In the course of these transactions, and after seeking and receiving expert legal and tax consultant advice, Perry and several others decided that certain expenditures could be claimed as income tax deductions in a tax year preceding the year in which the money was actually going to be spent.

VI

The advice received by Perry and his associates as outlined in Finding V came from highly qualified and respected sources but it was tentative and guarded and did not go beyond stating that the method of claiming deductions as described might be sustained, but that this was by no means a certainty. Perry and his associates then decided to go ahead anyway. Eventually he was indicted and convicted as described in Findings III and IV.

VII

It was not established that, under the circumstances of the case at hand, Perry's conduct was fraudulent and thus the allegations contained in paragraph III of the Accusation, that the crimes of which he was convicted were crimes involving moral turpitude, were not sustained.

VIII

Following the conviction described in Finding III, Perry was fined \$5,000 and placed on probation for one year. The imposition of any term of confinement was stayed. The fine has been paid and probation has been completed. At the time of the hearing, negotiations over the civil tax liability were still in progress but were said to be near settlement. Perry and others have paid, or will be liable for, substantial amounts in back taxes, whatever the outcome of these negotiations may be.

IX

Perry explains that he entered the plea of nolo contendere because he and his attorney had been assured by the prosecutor that leniency would be recommended and that in all probability a comparatively nominal fine would be imposed. This turned out to be true. The cost of preparing for and going to trial on the merits would have cost far more than \$5,000.

X

Perry established that he and the various corporations and partnerships formed to carry out the original plan had done a great deal to mitigate the damages to the investors and that he himself had lost a great deal of money on the deal. He is actively engaged in land development in the San Joaquin Valley at this time and "absolutely" needs his broker's license to remain in business.

XI

It was established that the Internal Revenue Service issues ruling in advance on such questions as the deductibility of certain expenditures in a particular tax year. Perry explained that the decision to go ahead on the basis of the advice described in Findings V and VI was reached in part because it takes a very long time to get an IRS ruling and time was of great importance to the success of the overall plan.

DETERMINATION OF ISSUES

I

Separate cause exists for the suspension or revocation of the licenses described in Finding II under the facts contained in Finding III and, respectively, Sections 490 and 10177(b) of the Business and Professions Code.

II

Cause as described in Determination of Issues I exists notwithstanding the contents of Finding VII, that the allegations in the Accusation regarding moral turpitude had not been established, and notwithstanding the cancellation of the Union Equities, Inc. license.

III

The contents of Findings IV through XI were considered in the formulation of the Order.

IV

Cause exists for the issuance to respondent of a restricted real estate broker license under the facts contained in Findings IV through XI and Sections 10156.5 et seq. of the Business and Professions Code.

ORDER

1. All real estate licenses and license rights held by respondent Larry Eugene Perry as described in Finding II are, and each of them is, revoked.

2. Upon proper application made within ninety (90) days from the effective date hereof, a restricted real estate broker license shall be issued to respondent under the provisions and subject to the conditions of Sections 10156.5 through 10156.8 of the Business and Professions Code and the following additional specific conditions:

A. The restricted license may be suspended prior to hearing by order of the Real Estate Commissioner in the event of respondent's conviction of, 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. The restricted license may be suspended prior to hearing by order of the Commissioner on evidence satisfactory to him that respondent has violated provisions of the California Real Estate Law, the Sub-Divided Lands Law, the Regulations of the Real Estate

Commissioner or any of the conditions attaching to this restricted license.

C. The restricted license may be suspended by order of the Real Estate Commissioner, pending a final determination after a hearing, if the respondent fails to present evidence satisfactory to the Commissioner within six months from the effective date of the Decision of having taken and completed 45 hours of approved continuing education offerings within the four-year period immediately preceding the date on which the respondent presents such evidence to the Commissioner.

D. 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 three (3) years have elapsed from the date of issuance of the restricted license to him.

E. Respondent shall report in writing to the Department of Real Estate as the Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect, such information concerning respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of respondent and periodic summaries of salient information concerning each real estate transaction in which the respondent engaged during the period covered by the report.

Dated: July 14, 1981.

Rudolf H. Michaels
RUDOLF H. MICHAELS
Administrative Law Judge
Office of Administrative Hearings

FLAG

FILED
SEP 15 1980

DEPARTMENT OF REAL ESTATE

By Lucy L. Bain

1 LARRY A. ALAMAO, Counsel
2 Department of Real Estate
3 1719 - 24th Street
4 P. O. Box 160009
5 Sacramento, CA 95816
6
7 Telephone: (916) 445-6112

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 LARRY EUGENE PERRY)
13 UNION EQUITIES, INC.)
14 AGRI GENERAL RESOURCES, INC.)
15 Respondents.)

NO. H-543 Fresno
ACCUSATION

16
17 The Complainant, Robert E. McCabe, a Deputy Real Estate
18 Commissioner of the State of California for cause of accusation
19 against Larry Eugene Perry (hereinafter referred to as
20 Respondent) and Union Equities, Inc., and Agri General Resources,
21 Inc. (hereinafter referred to as Respondent Corporations) are
22 informed and alleges as follows:

23 I

24 At all times herein mentioned Respondent was, and now
25 is, licensed by the Department of Real Estate of the State of
26 California as a real estate broker and as the designated broker-
27 officer for Respondent Corporations. Respondent Corporations

1 were and now are licensed as real estate corporations, by and
2 through Respondent as designated broker-officer.

3 II

4 The Complainant, Robert E. McCabe, a Deputy Real Estate
5 Commissioner of the State of California, acting in his official
6 capacity as such and not otherwise, makes this Accusation against
7 Respondents.

8 III

9 On or about May 22, 1979, in the United States District
10 Court for the Eastern District of California, Respondent was con-
11 victed on his plea of nolo contendere, of a violation of 26 USC
12 7201 and 7206(2) (tax evasion and fraudulent statements on a tax
13 return), felonies involving moral turpitude and substantially
14 related to the qualifications, functions and duties of a real
15 estate licensee within the meaning of Section 490 of the
16 California Business and Professions Code.

17 IV

18 The facts alleged above are grounds for disciplinary
19 action against Respondent's real estate broker license and
20 Respondent Corporations' real estate licenses under Sections 490
21 and 10177(b) of the California Business and Professions Code.

22
23 WHEREFORE, Complainant asks that this matter be set for
24 hearing and, upon proof of the allegations, that the Commissioner

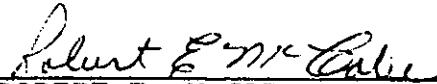
25 /////

26 /////

27 /////

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

suspend or revoke the licenses held by Respondent, and take such other action as may be proper.



ROBERT E. McCABE
Deputy Real Estate Commissioner

Dated at Fresno, California,
this 10th day of December, 1980.