

1 be against the public interest to issue said license to
2 Respondent.

3 NOW, THEREFORE, IT IS ORDERED that Respondent's petition
4 for reinstatement is granted and that a real estate salesperson
5 license be issued to Respondent if Respondent satisfies the
6 following conditions within six (6) months from the date of this
7 Order:

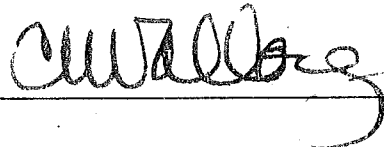
8 1. Submittal of a completed application and payment of
9 the fee for a real estate salesperson license.

10 2. Submittal of evidence of having, since the most
11 recent issuance of an original or renewal real estate license,
12 taken and successfully completed the continuing education
13 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
14 for renewal of a real estate license.

15 This Order shall be effective immediately.

16 DATED: 4/9/93

17 CLARK WALLACE
18 Real Estate Commissioner

19 
20

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

Laurie A. Zin

* * *

In the Matter of the Accusation of))	
)	
DORIS RUTH TOSTE,)	NO. H-1077 FRESNO
)	
Respondent.)	N-38839
)	

DECISION

The Proposed Decision dated January 10, 1992 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 February 18, 19 92.

IT IS SO ORDERED January 24, 19 92.

CLARK WALLACE
Real Estate Commissioner

Clark Wallace

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation)	
Against:)	No. H-1077 FRESNO
)	
DORIS RUTH TOSTE,)	OAH No. N-38839
)	
Respondent.)	

PROPOSED DECISION

On November 25, 1991, in Sacramento, California, Catherine B. Frink, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

David A. Peters, Counsel, represented the complainant.

Respondent was present and was represented by Douglas B. Cone, Attorney at Law, Cone & Motsenbocker, 720 West 19th Street, Merced, California 95340.

Evidence was received, the record was closed and the matter was submitted.

FINDINGS OF FACT

I

Complainant, Jerry E. Fiscus, a Deputy Real Estate Commissioner of the State of California, filed the Accusation in his official capacity.

II

Doris Ruth Toste ("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 as a real estate salesperson.

III

On February 11, 1991, in the United States District Court, Eastern District of California, respondent was convicted of a violation of 26 USC section 7206(1) (Making and Subscribing

to a False Tax Return), a crime involving moral turpitude which is substantially related to the qualifications, functions and duties of a real estate licensee under Title 10, California Code of Regulations section 2910(a)(3).

IV

The facts and circumstances underlying respondent's conviction are as follows. In 1987, respondent obtained a 1-year listing to sell the residence of a long-time client ("seller"). At the time, respondent's employing broker was Kay Stahl, Stahl and Best Realty, in Merced. Offers were made on the property, but were not accepted by the seller. In April of 1988, respondent left Stahl and Best Realty and accepted employment with Century 21-Salvadori, Michael Salvadori, employing broker. The listing on the property remained with Stahl and Best Realty.

After April of 1988, but prior to the expiration of the listing, respondent received a telephone call from Stahl, who wished respondent to contact the seller because a potential purchaser ("buyer") wished to present an offer to the seller. Respondent attended a meeting which also included seller and his wife; Stahl; and Rudy Garcia, agent for the buyer. Stahl was the listing broker; respondent was not working for Stahl at the time of the meeting, and she did not inform her new broker, Salvadori, of her participation in the meeting. According to respondent, she was there as a "friend" of the seller, at his request.

Garcia made two offers on behalf of the buyer. The first was a written offer for a total purchase price of \$100,000, with a \$30,000 cash down payment. The second offer was not in writing; under the terms of the second offer, the purchase price of the property was to be \$80,000, with an additional \$40,000 to be paid to the seller "under the table" in cash outside of escrow. Stahl refused to consider the second offer because she felt it was illegal. Respondent prepared a written counter-offer on behalf of the seller to the first offer of \$100,000, which was rejected by the buyer.

In the fall of 1988, after the listing with Stahl and Best Realty had expired, Garcia contacted respondent in an effort to locate the seller on behalf of Garcia's client. Respondent arranged a meeting between herself, Garcia and the seller. At that time, respondent had no listing agreement or other contractual arrangement with the seller, and she did not tell her employing broker of her activities. Garcia presented an offer on behalf of the buyer for a total of \$130,000, as follows: the purchase price of the property, as reflected in a written purchase contract, was to be \$100,000, with the seller carrying back a note upon which the buyer was to pay in monthly installments. An additional \$30,000 was to be paid to the seller outside of escrow. Some furniture and other personal property

was also included in the deal, for an additional cost to the buyer of approximately \$8,000. The seller accepted the offer as presented, and signed the contract.

In October of 1988, respondent was present when the buyer and his brother came to the property for the walk-through. The buyer had a briefcase which contained between \$30,000 and \$40,000 in cash. Respondent observed the buyer make the cash payment of over \$30,000 to the seller. At the same time, respondent was paid \$3,500 for "bringing the buyer and seller together;" Garcia was also paid \$3,500. Respondent did not disclose this payment to her employing broker.

Respondent did not report the \$3,500 as income on her 1988 tax return. According to respondent, she failed to report the money because she intended to return it. Respondent claims she contacted the seller in February or March of 1989, and told him that she did not feel right about keeping the \$3,500 because she did not earn it working through her broker; she did not immediately return the \$3,500 because she needed the money for family expenses. Respondent eventually returned the money to the seller in December of 1989.

Respondent was contacted by the IRS in October of 1989 concerning the sale of the property to the buyer. The IRS was investigating possible money laundering by the buyer, a suspected drug trafficker.

In 1990, respondent filed an amended 1988 tax return declaring the additional \$3,500 in income, as well as her 1989 tax return, which reflected the return of the \$3,500 to the seller. Respondent paid all fees and penalties assessed by the IRS at that time.

In February of 1990, respondent, Garcia and the seller were subpoenaed to appear before the Grand Jury in Fresno in connection with a criminal prosecution of the buyer. Prior to their appearance before the Grand Jury, respondent met with Garcia and the seller to discuss what the three of them would tell the Grand Jury. The parties initially agreed that they would not disclose the true facts about the \$30,000 cash payment; however, respondent changed her mind and did testify truthfully before the Grand Jury.

V

As a consequence of her conviction, respondent was sentenced to two years probation and was assessed a mandatory penalty of \$50 and a fine of \$1,000, payable in installments. Respondent was also ordered to provide all financial information, including her income tax returns, to the probation officer as directed; and to perform 100 hours of community service.

Respondent paid her fine and penalty prior to October 11, 1991. Respondent served her 100 hours of community service within the first 4 months of probation by volunteering at a convalescent hospital; after completing her required community service, respondent continued to serve coffee to patients on Friday mornings and to help out with birthday parties at the hospital on a regular basis. Respondent will remain on probation until February of 1993.

VI

Respondent has been in the real estate field for 20 years, and was a member of the Board of Directors for the Merced County Association of Realtors, Inc. as well as the California Association of Realtors. Respondent served on the Weaver Union School Board for 11 years, and was also involved in the PTA. Respondent is involved in charitable activities in her community, particularly by raising money and collecting food for the needy. Respondent is married and has four children; she provides financial support for her two youngest children.

VII

Respondent is currently employed at Century 21-Salvadori. Her employing broker, Michael Salvadori, indicated a willingness to exercise close supervision over respondent if she were to be granted a restricted license. Salvadori also indicated that, having heard respondent's testimony at hearing concerning the real estate transaction giving rise to the conviction, he does not believe that respondent did anything wrong "from a real estate point of view," and he did not know that the real estate transaction as described was illegal. However, Salvadori also acknowledged that a written document should reflect the entire sales transaction and admitted that respondent, while employed by him, engaged in the transaction and accepted compensation without advising him of her activities.

The evidence did not establish what steps Salvadori would take to closely supervise respondent, or what he could do to make sure that respondent did not engage in similar unilateral conduct in the future.

VIII

The evidence of mitigation and rehabilitation is insufficient to establish respondent's present fitness to engage in the profession of a real estate salesperson. Respondent argued that the sales transaction was not "illegal" because "it is not illegal to sell real estate for cash." This argument demonstrates a lack of understanding of the nature of the wrongdoing herein. Respondent, a real estate salesperson, participated in a transaction without advising her employing

broker. She should have immediately notified Salvadori when Stahl first contacted her about the potential buyer. Respondent was on notice, from that first meeting, that her prior employing broker considered the offer to purchase with an "under the table" cash payment to be illegal. Respondent nevertheless continued to assist the seller and received compensation for the transaction.

The transaction was illegal not because it involved the payment of cash, but because the documentation of the transaction was fraudulent, i.e., it did not reflect the true purchase price of the property, and the cash payment was designed to further that concealment. Respondent's failure to disclose the cash payment to her on her income tax return is consistent with and demonstrates her participation in the concealment. While respondent claims she decided to return the money in February of 1989, in fact she did not do so until December of 1989, after she had been contacted by the IRS. Respondent's explanation for the delay was not credible.

Respondent's conviction is recent, and she remains on criminal probation. Under all of the circumstances, it would be contrary to the public interest to permit respondent to retain her real estate salesperson license.

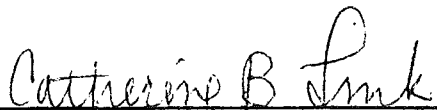
DETERMINATION OF ISSUES

Clear and convincing evidence to a reasonable certainty establishes cause for discipline of respondent's license for violation of Business and Professions Code sections 490 and 10177(b) by reason of Findings III-IV.

ORDER

All licenses and license rights of respondent Doris Ruth Toste under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code, are revoked.

Dated: January 10, 1992



CATHERINE B. FRINK
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
AUG 26 1991
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

DORIS RUTH TOSTE,

Respondent

By Kathleen Contreras

Case No. H-1077 FRESNO

OAH No. N-38839

CONTINUED
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, 501 J St., Suite 220 (2nd Floor), Sacramento, CA 95814 on the 25th day of November, 19 91, at the hour of 1:30 PM, or as soon thereafter as the matter can be heard, upon 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 based upon any express admission 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.

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. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: August 26, 1991

By Susan Yamamoto Bennett
SUSAN YAMAMOTO BENNETT Counsel

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
JUL 23 1991
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

DORIS RUTH TOSTE,

Respondent

By Kathleen Contreras

Case No. H-1077 FRESNO

OAH No. N-38839

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, 501 J St., Suite 220 (2nd Floor), Sacramento, CA 95814

on the 29th day of October, 19 91, at the hour of 9:00 AM, or as soon thereafter as the matter can be heard, upon 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 based upon any express admission 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.

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DEPARTMENT OF REAL ESTATE

Dated: July 22, 1991

By Susan Yamamoto Bennett
SUSAN YAMAMOTO BENNETT Counsel

1 SUSAN A. YAMAMOTO, Counsel
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 (916) 739-3607

FILED
MAY 30 1991
DEPARTMENT OF REAL ESTATE

By *Kathleen Contreras*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 DORIS RUTH TOSTE,)
13 Respondent.)
14 _____)

NO. H-1077 FRESNO

ACCUSATION

15 The Complainant, Jerry E. Fiscus, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against DORIS RUTH TOSTE (hereinafter "Respondent"), is informed
18 and alleges as follows:

19 I

20 Respondent is presently licensed and/or has license
21 rights under the Real Estate Law, Part 1 of Division 4 of the
22 Business and Professions Code (hereinafter "Code") as a real
23 estate salesperson.

24 II

25 The Complainant, Jerry E. Fiscus, a Deputy Real Estate
26 Commissioner of the State of California, makes this Accusation
27 against Respondent in his official capacity.

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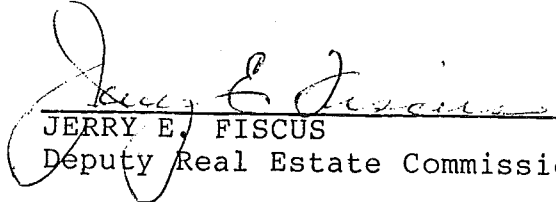
III

On or about February 11, 1991, in the United States District Court, Eastern District of California, Respondent was convicted of violation of 26 USC 7206(i) (Making and Subscribing to a False Tax Return), a crime involving moral turpitude which is substantially related under Section 2910, Title 10, California Code of Regulations to the qualifications, functions or duties of a real estate licensee.

IV

The facts alleged above constitute cause under Sections 490 and 10177(b) of the Code for 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 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 provisions of law.


JERRY E. FISCUS
Deputy Real Estate Commissioner

Dated at Fresno, California
this 25th day of May, 1991.