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JAN 27 1993

DEPARTMENT OF REAL ESTATE
BY *[Signature]*

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of) NO. H-1153 SD
)
)
ANDREW PHEMISTER)
)
)
)
Respondent.)

ORDER GRANTING REINSTATEMENT OF LICENSE

On May 10, 1983, a Decision was rendered herein,
revoking the real estate salesperson license of Respondent,
ANDREW PHEMISTER, (hereinafter "Respondent"), effective June
1, 1983.

On December 10, 1991, Respondent petitioned for
reinstatement of said real estate salesperson 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 unrestricted real estate
2 salesperson license to Respondent.

3 NOW, THEREFORE, IT IS ORDERED that Respondent's
4 petition for reinstatement is granted and that unrestricted
5 real estate salesperson license be issued to Respondent after
6 Respondent satisfies the following conditions within one (1)
7 year from the date of this Order:

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

10 2. Successful completion of the written examination
11 administered by the Department for a real estate salesperson
12 license.

13 This Order shall become effective immediately.

14 DATED: 1/25/83.

15 CLARK WALLACE
16 Real Estate Commissioner
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18)
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23

24 cc: ANDREW PHEMISTER
25 8651 Larsen Way
26 La Mesa, California 91941
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MAY 12 1993

JAMES A. EDMONDS, JR.
Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation	)	
of:	)	
	)	
ANDREW PHEMISTER,	)	CASE NO. H-1153 SD
	)	
	)	L-27941
Respondent.	)	
	)	
	)	
	)	

PROPOSED DECISION

This matter came on regularly for hearing before Ronald M. Gruen, Administrative Law Judge of the Office of Administrative Hearings, at San Diego, California, on April 11, 1983, at 11:00 a.m. Donna S. Hauptman, Counsel, Department of Real Estate represented the complainant. Respondent was accorded service of process as required by law in that complainant complied with Sections 11505 and 11509 of the Government Code; however, respondent did not appear at the hearing, nor was he represented. Evidence, both oral and documentary having been introduced and the matter submitted, the Administrative Law Judge finds by clear and convincing proof the following facts:

I

Carl Lewis filed the Accusation in his official capacity as a Deputy Real Estate Commissioner in the State of California.

II

At all times herein mentioned, respondent was licensed by the Department of Real Estate of the State of California as a real estate salesperson. Such license expired by its own terms on December 19, 1982. The Department of Real Estate retains jurisdiction to proceed with disciplinary action against a lapsed license pursuant to Section 10103 of the Business and Professions Code.

III

On May 11, 1982, in the Municipal Court of California, El Cajon Judicial District, County of San Diego, respondent was convicted of the crime of violating Penal Code Section 484/488 (Petty Theft), a crime involving moral turpitude.

IV

Pursuant to Section 11520(b) of the Government Code no showing of mitigation was made on the part of the respondent relative to the hereinabove found conviction.

* * * * *

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

Cause for suspension or revocation of the license of respondent exists pursuant to Sections 490 and 10177(b) of the Business and Professions Code.

* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The real estate salesperson license of respondent Andrew Phemister is hereby revoked.

I hereby submit the foregoing which constitutes my Proposed Decision in the above entitled matter as a result of the hearing had before me on April 11, 1983, at San Diego, California, and recommend its adoption as the decision of the Real Estate Commissioner.

DATED: April 10, 1983


RONALD M. GRUEN
Administrative Law Judge
Office of Administrative Hearings

RMG:ss

Section 11522 of the Government Code of the State of California.

11522. Reinstatement of License or Reduction of Penalty.

A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty. (Added Stats. 1945, c. 867, p. 1634, §1.)

3/1/73

CRITERIA OF REHABILITATION (REVOCATION)

Your real estate license has been revoked or suspended by the Real Estate Commissioner based wholly or in part upon a criminal conviction or upon the ground that you knowingly made a false statement of fact in applying for a real estate license. The criteria set forth in Regulation 2912 have been developed by the Department of Real Estate as guidelines to assist persons, who have had their real estate licenses revoked or suspended because of criminal convictions, in a rehabilitation program and in the presentation of the case for reinstatement of the license or reduction of the suspension imposed.

Not all of the factors listed below will be applicable in the case of every revoked or suspended licensee nor will each applicable factor necessarily be given equal weight in evaluating the rehabilitation of an individual. The individual must decide which of these factors are applicable to his or her case and should then take appropriate steps toward rehabilitation to the end of satisfying the Real Estate Commissioner that it would not be against the public interest to grant reinstatement of the license or a reduction of the suspension.

* * *

2912. Criteria of Rehabilitation (Revocation or Suspension). The following criteria have been developed by the department pursuant to Section 482(b) of the Business and

Professions Code for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee.

(a) The passage of not less than two years from the most recent criminal conviction that is "substantially related" to the qualifications, functions or duties of a licensee of the department. (A longer period will be required if there is a history of criminal convictions or acts substantially related to the qualifications, functions or duties of a licensee of the department.)

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee.

(c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action.

(d) Successful completion or early discharge from probation or parole.

(e) Abstinence from the use of controlled substances or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance or alcohol.

(f) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.

(g) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.

(h) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.

(i) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.

(j) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

(k) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(l) Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by any or all of the following:

- (1) Testimony of applicant.
- (2) Evidence from family members, friends or other persons familiar with the licensee's previous conduct and with subsequent attitudes and behavioral patterns.
- (3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.

- (4) Evidence from psychiatrists or other persons competent to testify with regard to neuro-psychiatric or emotional disturbances.

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2 Department of Real Estate
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4 Los Angeles, California 90012
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14 (213) 620-4790

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FILED
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8 DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * * *

11 In the Matter of the Accusation of) NO. H-1153 SD
12 ANDREW PHEMISTER,)
13 Respondent.)
14)

A C C U S A T I O N

15 The Complainant, Carl Lewis, a Deputy Real Estate
16 Commissioner of the State of California, for cause of accusation
17 against ANDREW PHEMISTER, alleges as follows:

18 I

19 The Complainant, Carl Lewis, a Deputy Real Estate
20 Commissioner of the State of California, makes this Accusation
21 in his official capacity.

22 II

23 ANDREW PHEMISTER (hereinafter referred to as Respondent)
24 is presently licensed and/or has license rights under the Real
25 Estate Law (Part 1 of Division 4 of the Business and Professions
26 Code).

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III

At all times herein mentioned, Respondent was licensed by the Department of Real Estate of the State of California as a real estate salesperson.

IV

On or about May 11, 1982, in the Municipal Court of California, El Cajon, Judicial District, County of San Diego, Respondent was convicted of the crime of violating Penal Code Section 484/488 (Petty Theft), a crime involving moral turpitude.

V

The crime of which Respondent was convicted bears a substantial relationship to the qualifications, functions or duties of a real estate licensee.

VI

Respondent's criminal conviction as alleged above subjects his real estate license and/or license rights to suspension or revocation under Sections 490 and 10177(b) of the Business and Professions Code of the State of California.

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1 WHEREFORE, Complainant prays that a hearing be conducted
2 on the allegations of this Accusation, and that upon proof thereof,
3 a decision be rendered imposing disciplinary action against all
4 licenses and license rights of Respondent, ANDREW PHEMISTER,
5 under the Real Estate Law (Part 1 of Division 4 of the Business
6 and Professions Code), and for such other and further relief
7 as may be proper under other applicable provisions of law.

8 Dated at San Diego, California,
9 this 20th day of September, 1982.

10
11 CARL LEWIS
12 Deputy Real Estate Commissioner
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25 cc: Andrew Phemister
26 Sacto
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