

FILED  
APR 20 1977

DEPARTMENT OF REAL ESTATE

By Sondia Klein

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Application of

RUSSELL TERRY SCHAUER,

Respondent.

NO. H-1225 SAC

N-9323

DECISION

The Proposed Decision dated March 23, 1977 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 salesman license is denied, but the right to a restricted real estate salesman 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 of Section 11522 is attached hereto for the information of respondent.

If and when application is made for a real estate salesman 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 attached hereto.

This Decision shall become effective at 12 o'clock noon on May 10, 1977.

IT IS SO ORDERED

4/19

, 1977.

David H. Fox  
DAVID H. FOX  
Real Estate Commissioner

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Application )  
of: )  
RUSSELL TERRY SCHAUER, )  
Respondent. )

No. H-1225 SAC

N-9323

PROPOSED DECISION

The above-entitled matter came on for hearing before Robert R. Coffman, an Administrative Law Judge of the Office of Administrative Hearings, on February 25, 1977 in Sacramento, California.

The complainant was represented by Larry A. Alamao, Counsel.

The respondent appeared in person and was represented by Stephen A. Mason, his attorney.

Evidence was received, the hearing was closed but the record was held open to permit the filing of briefs. On March 14, 1977, Complainant's Brief was received and marked Exhibit 6; on March 17, 1977 Respondent's Reply Brief was received and marked Exhibit C, whereupon the record was closed. Respondent's objection to Exhibit 4 for identification is overruled and said exhibit is received in evidence.

FINDINGS OF FACT

I

Joseph Hofmann made the Statement of Issues in his official capacity as a Deputy Real Estate Commissioner of the State of California.

## II

Respondent duly made application to the Department of Real Estate of the State of California for a real estate salesman license on or about October 28, 1976.

## III

On November 4, 1976 the Department issued a real estate salesman license to respondent. On February 1, 1977 the Real Estate Commissioner entered his order suspending Respondent's license, pending final determination made after the within hearing, under Section 10177.1 of the Business and Professions Code. Said action purportedly was taken as a result of respondent's failure to disclose the existence of two criminal convictions on his application.

## IV

On or about June 2, 1972, in the Municipal Court of the Sacramento Judicial District, County of Sacramento, State of California, Respondent was convicted of a violation of Section 2106 (Failure to Furnish Required Reports) of the California Unemployment Insurance Code.

## V

In response to question 7a of the application for license: "Have you ever been convicted of any violation of law other than a non-moving type of traffic violation?", Respondent failed to disclose the conviction for violation of Section 2106.

## VI

Respondent operated a dry cleaning business from 1969 to 1974. He failed to submit payroll tax reports to the State for the quarters ending June 30, 1971 and September 30, 1971. During 1971 respondent contracted with another firm to perform his accounting work, including the filing of tax reports. The accounting firm failed to submit the tax reports. When respondent learned the reports had not been filed he undertook to prepare the reports. Preparation took considerable time. At that time he was working approximately 70-80 hours per week.

Respondent was sentenced to one year informal probation. He was not imprisoned or fined.

## VII

Respondent is now employed as general manager of a Sacramento drapery cleaners. He is 34 years of age, married with 3 children. Respondent is active in dry cleaning trade organizations.

## VIII

It was not established, by the facts and circumstances surrounding the conviction, that it involved moral turpitude. Evidence established some relationship, but not a substantial relationship, between the conviction and the functions or qualifications of a real estate salesman. It was not established that respondent continuously refused to file the payroll tax reports despite being personally contacted by the State on numerous occasions over a 6 month period.

### DETERMINATION OF ISSUES

#### I

Cause was not established for denial of respondent's application under Sections 10177(b) and 480 of the Business and Professions Code, for conviction of a crime.

#### II

Cause was established for denial of respondent's application under Section 480(b) of the Business and Professions Code, for making a misstatement of fact on his application.

### ORDER

1. The application of Russell Terry Schauer for a real estate salesman license is hereby denied.

2. A restricted real estate salesman 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 said license within 90 days from the effective date of the Decision.

3. 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 said Code:

A. Said restricted license 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 bears a significant relation to respondent's fitness or capacity as a real estate licensee.

B. Said restricted license may be suspended prior to hearing by Order of the Real Estate 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 this restricted license.

C. Respondent 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 of a restricted license until one year has elapsed from the date of issuance of the restricted license to respondent.

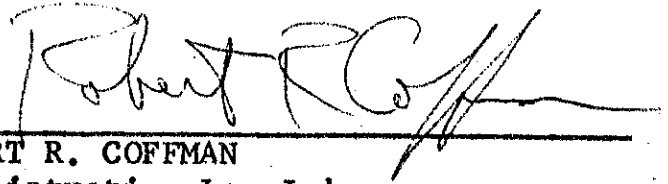
D. Respondent shall submit with his application for license under an employing broker -- or his application for transfer to a new employing broker -- a statement signed by the prospective employing broker which shall certify:

- (a) That he has read the Decision of the Commissioner which granted the right to a restricted license; and
- (b) That he will exercise close supervision over the performance by the restricted licensee of activities for which a real estate license is required.

\* \* \* \* \*

The foregoing constitutes my proposed decision in this matter. I recommend its adoption as the decision of the Real Estate Commissioner of the State of California.

Dated: March 23, 1977

A handwritten signature in cursive script, appearing to read "Robert R. Coffman", written over a horizontal line.

ROBERT R. COFFMAN  
Administrative Law Judge  
Office of Administrative Hearings

*Flag Decker*

**FILED**  
FEB 1 1977

DEPARTMENT OF REAL ESTATE

By *Gordia Klein*

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

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Application of )  
RUSSELL TERRY SCHAUER, )  
Respondent. )

ORDER SUSPENDING REAL ESTATE LICENSE

TO: RUSSELL TERRY SCHAUER

On October 13, 1976, the above-named respondent filed with the Department of Real Estate of the State of California (hereinafter referred to as Department) an application for a real estate salesman license. In response to a question in said application, to wit: "Have you ever been convicted of any violation of law other than a non-moving type of traffic violation?", respondent failed to disclose the existence of two criminal convictions.

On November 4, 1976, Department issued a real estate salesman license to respondent in reliance upon the aforesaid answer of respondent.


1                    On February 1, 1977, in case No. H-1225 SAC, a  
2                    Statement of Issues signed by a Deputy Real Estate Commissioner  
3                    of the State of California was filed charging respondent with  
4                    having procured a real estate license by fraud, misrepresentation  
5                    or deceit and with knowingly having made a false statement of  
6                    fact required to be revealed in the application for such license.

7                    NOW, THEREFORE, IT IS ORDERED under authority of  
8                    Section 10177.1 of the Business and Professions Code of the  
9                    State of California that the real estate salesman license  
10                   heretofore issued to respondent and the exercise of any  
11                   privileges thereunder is hereby suspended pending final deter-  
12                   mination made after a hearing on the aforesaid Statement of  
13                   Issues, a copy of which is attached hereto.

14                   IT IS FURTHER ORDERED that all license certificates  
15                   and identification cards issued by Department which are in the  
16                   possession of respondent be immediately surrendered by personal  
17                   delivery or by mailing in the enclosed self-addressed envelope  
18                   to: Department of Real Estate, 714 P Street, Sacramento,  
19                   California, 95814.

20                   This Order shall be effective immediately.

21                   DATED: February 1, 1977

22  
23                     
24                   

---

DAVID H. FOX  
25                   Real Estate Commissioner  
26  
27



1 LARRY A. ALAMAO, Counsel  
2 Department of Real Estate  
3 714 P Street, Suite 1550  
4 Sacramento, CA 95814

5 Phone: (916) 445-6112

FILED  
FEB 1 1977

DEPARTMENT OF REAL ESTATE

By Sandra Klein

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Application of )  
12 RUSSELL TERRY SCHAUER, )  
13 Respondent. )

No. H-1225 SAC

STATEMENT OF ISSUES

14  
15 The complainant, JOSEPH HOFMANN, a Deputy Real Estate  
16 Commissioner of the State of California, for cause of Statement  
17 of Issues against RUSSELL TERRY SCHAUER (hereinafter referred  
18 to as Respondent) is informed and alleges as follows:

19 FIRST CAUSE OF ACTION

20 I

21 Respondent duly made application to the Department of  
22 Real Estate of the State of California for a real estate salesman  
23 license on or about October 13, 1976.

24 II

25 Complainant, JOSEPH HOFMANN, a Deputy Real Estate  
26 Commissioner of the State of California, acting in his official  
27 capacity as such and not otherwise makes this Statement of Issues

1 against Respondent.

2 III

3 On or about June 2, 1972, in the Municipal Court of  
4 the Sacramento Judicial District, County of Sacramento, State of  
5 California, Respondent was convicted of a violation of Section  
6 2106 (Failure to Furnish Required Reports) of the California  
7 Unemployment Insurance Code, a misdemeanor involving moral  
8 turpitude which bears a substantial relationship to the  
9 qualifications, functions or duties of a real estate salesman.

10 IV

11 By reason of the facts hereinabove alleged, Respondent  
12 has committed acts constituting grounds to deny the issuance of  
13 a real estate salesman license under the provisions of Section  
14 10177(b) and Section 480 of the Business and Professions Code of  
15 the State of California.

16 SECOND CAUSE OF ACTION

17 There is hereby incorporated into this Second Cause of  
18 Action all of the allegations contained in Paragraphs I, II, and  
19 III of the above First Cause of Action with the same force and  
20 effect as if herein fully set forth.

21 I

22 In response to question 7a of the application referred  
23 to in Paragraph I of the First Cause of Action: "Have you ever  
24 been convicted by any violation of law other than a non-moving  
25 type of traffic violation?", Respondent failed to disclose the  
26 conviction described in Paragraph III of the First Cause of  
27 Action.

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

II

By reason of the facts hereinabove alleged, Respondent has committed acts constituting grounds to deny the issuance of a real estate salesman license under the provisions of Section 10177(a) and Section 480 of the Business and Professions Code of the State of California.

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

  
\_\_\_\_\_  
JOSEPH HOFMANN  
Deputy Real Estate Commissioner

Dated at Sacramento, California,  
this 1st day of February, 1977.