

FEB 14 2001

Shelly Ely

STATE OF CALIFORNIA

* * *

No. H-1332 FRESNO

On November 29, 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.

1 I have considered the petition of Respondent and the
2 evidence and arguments in support thereof including Respondent's
3 record as a restricted licensee. Respondent has demonstrated to
4 my satisfaction that Respondent meets the requirements of law for
5 the issuance to Respondent of an unrestricted real estate broker
6 license and that it would not be against the public interest to
7 issue said license to Respondent.

8 NOW, THEREFORE, IT IS ORDERED that Respondent's
9 petition for reinstatement is granted and that a real estate
10 broker license be issued to Respondent if Respondent satisfies
11 the following conditions within nine months from the date of this
12 Order:

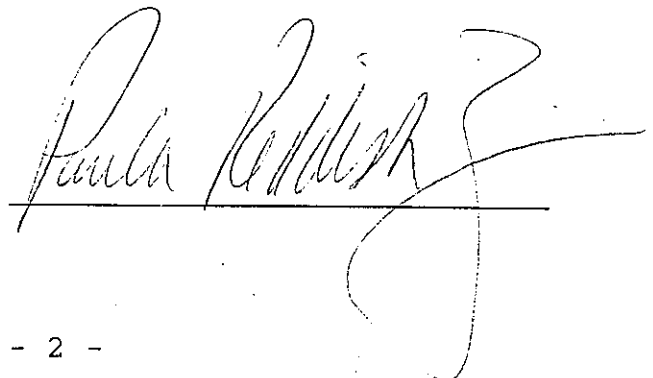
13 1. Submittal of a completed application and payment of
14 the fee for a real estate broker license.

15 2. Submittal of evidence of having, since the most
16 recent issuance of an original or renewal real estate license,
17 taken and successfully completed the continuing education
18 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
19 for renewal of a real estate license.

20 This Order shall be effective immediately.

21 DATED: DECEMBER 22, 2000

22 PAULA REDDISH ZINNEMANN
23 Real Estate Commissioner

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FILED
SEP 29 1997
DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) No. H-1332 FRESNO
ROBERT MARSHALL NOTT,) OAH No. N-1997050515
Respondent.)

ORDER GRANTING RECONSIDERATION

TO: ROBERT MARSHALL NOTT, Respondent, and his attorney of record,
Michael M. Youngfellow:

On July 29, 1997, a Decision was rendered herein by the
Real Estate Commissioner which revoked the real estate broker
license and license rights of Respondent ROBERT MARSHALL NOTT.
Said Decision was to become effective on October 2, 1997.

On August 25, 1997, Respondent petitioned for
reconsideration of said Decision. I have considered the petition
of Respondent and have concluded that good cause has been
presented for reconsideration of the Decision of July 29, 1997,
for the limited purpose of determining whether the disciplinary
action therein imposed should be reduced.



1 I have reconsidered said Decision and it is hereby
2 ordered that the disciplinary action therein imposed against the
3 real estate broker license of ROBERT MARSHALL NOTT be reduced by
4 modifying the Order of said Decision to read as follows:

5
6 ORDER

7 All license(s) and licensing rights of Respondent ROBERT
8 MARSHALL NOTT under the Real Estate Law are revoked; provided,
9 however, a restricted real estate salesperson license shall be
10 issued to Respondent pursuant to Section 10156.5 of the Business
11 and Professions Code if Respondent makes application therefor and
12 pays to the Department of Real Estate the appropriate fee for the
13 restricted license within 90 days from the effective date of this
14 Decision. The restricted license issued to Respondent shall be
15 subject to all of the provisions of Section 10156.7 of the
16 Business and Professions Code and to the following limitations,
17 conditions and restrictions imposed under authority of Section
18 10156.6 of that Code:

19 1. The restricted license issued to Respondent may be
20 suspended prior to hearing by Order of the Real Estate
21 Commissioner in the event of Respondent's conviction or plea of
22 nolo contendere to a crime which is substantially related to
23 Respondent's fitness or capacity as a real estate licensee.

24 2. The restricted license issued to Respondent may be
25 suspended prior to hearing by Order of the Real Estate
26 Commissioner on evidence satisfactory to the Commissioner that
27 Respondent has violated provisions of the California Real Estate



1 Law, the Subdivided Lands Law, Regulations of the Real Estate
2 Commissioner or conditions attaching to the restricted license.

3 3. Respondent shall not be eligible to apply for the
4 issuance of an unrestricted real estate license nor for the
5 removal of any of the conditions, limitations or restrictions of a
6 restricted license until two (2) years has elapsed from the
7 effective date of this Decision.

8 4. Respondent shall submit with any application for
9 license under an employing broker, or any application for transfer
10 to a new employing broker, a statement signed by the prospective
11 employing real estate broker on a form approved by the Department
12 of Real Estate which shall certify:

13 (a) That the employing broker has read the Decision of
14 the Commissioner which granted the right to a restricted license;
15 and

16 (b) That the employing broker will exercise close
17 supervision over the performance by the restricted licensee
18 relating to activities for which a real estate license is
19 required.

20 5. Respondent shall, within nine months from the
21 effective date of this Decision, present evidence satisfactory to
22 the Real Estate Commissioner that Respondent has, since the most
23 recent issuance of an original or renewal real estate license,
24 taken and successfully completed the continuing education
25 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
26 for renewal of a real estate license. If Respondent fails to
27 satisfy this condition, the Commissioner may order the suspension



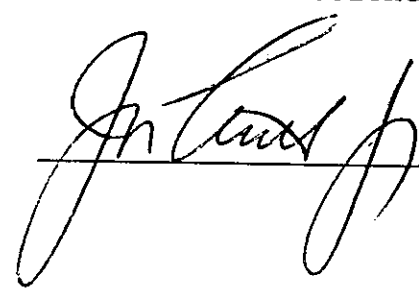
1 of the restricted license until the Respondent presents such
2 evidence. The Commissioner shall afford Respondent the
3 opportunity for a hearing pursuant to the Administrative Procedure
4 Act to present such evidence.

5 As hereby modified and amended, the Decision of July 29,
6 1997, shall become effective at 12 o'clock noon on
7 October 20, 1997.

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9 IT IS SO ORDERED 9/25, 1997.

10 JIM ANTT, JR.
11 Real Estate Commissioner

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FILED
AUG 27 1997

DEPARTMENT OF REAL ESTATE

Shelly Ely

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
ROBERT MARSHALL NOTT,)
Respondent.)

NO. H-1332 FRESNO

OAH NO. N-1997050515

ORDER STAYING EFFECTIVE DATE

On July 29, 1997, a Decision was rendered in the above-entitled matter to become effective September 2, 1997.

On October 25, 1997, Respondent petitioned for reconsideration of the Decision of July 29, 1997.

IT IS HEREBY ORDERED that the effective date of the Decision is stayed for a period of thirty (30). The Decision of July 29, 1997, shall become effective at 12 o'clock noon on October 2, 1997.

DATED: 8/27/97

JIM ANTT, JR.
Real Estate Commissioner

Jim Antt, Jr.



AUG 13 1997

DEPARTMENT OF REAL ESTATE

By Shelly Ely

In the Matter of the Accusation of)
)
 ROBERT MARSHALL NOTT,) NO. H-1332 Fresno
)
 Respondent.) OAH NO. N-1997050515
)

The Proposed Decision dated July 18, 1997, 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 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 2, 1997.

IT IS SO ORDERED 7/29, 1997.

JIM ANTT, JR.
Real Estate Commissioner

John C. Smith

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

ROBERT MARSHALL NOTT,

Respondent.

No. H-1332 FRESNO

OAH No. N-1997050515

PROPOSED DECISION

On July 2, 1997, in Sacramento, California, Spencer A. Joe, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Deidre L. Johnson, Counsel, represented the complainant.

Respondent was present and represented himself.

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

FINDINGS OF FACT

I

Complainant Dolores Vazquez-Ramos, a Deputy Real Estate Commissioner of the State of California, made and filed the Accusation in her official capacity.

II

Robert Marshall Nott ("respondent") is presently licensed and has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code as a real estate broker. Respondent's license is due to expire on April 2, 1999.

III

On January 22, 1996, respondent was convicted upon his plea of guilty in the Municipal Court, County of Mono, State of California, of a misdemeanor violation of California Penal Code section 476a, a crime involving the fraudulent use of checks with insufficient funds.

As a consequence of that conviction, respondent was sentenced to serve five days in the county jail, placed on summary probation without probation department supervision for a period of three years, and to make restitution in the amount and in a manner as determined by the District Attorney's office.

Respondent was originally charged in the matter with a felony. The offense was reduced to a misdemeanor in exchange for respondent's plea of guilty as a result of negotiations between respondent, his attorney, and the District Attorney's office.

The facts and circumstances underlying respondent's conviction are that on January 12, 1995, respondent wrote and delivered to Steve Crowder a check and draft for the payment of money in the sum of one thousand, five hundred dollars (\$1500), knowing at the time that he wrote the check that he did not have sufficient funds in the bank for the payment of that check.

IV

Respondent's action was dishonest and fraudulent and his conviction constitutes a crime involving moral turpitude. This conduct is substantially related to the qualifications, functions and duties of a real estate licensee. "One of the purposes of the governing legislation is to insure, as far as possible, that real estate brokers and salesmen will be honest, truthful and of good reputation." Ring v. Smith (1970) 5 Cal.App.3d 197, 205. Respondent's conduct is fundamentally inconsistent with the behavior required of real estate licensees.

V

Respondent in this hearing, attempted to impeach the validity of the conviction by showing the circumstances of the conviction and offered excuses as to why he did not make a court appearance to contest the charges. In an administrative appeal the agency need not reexamine the facts underlying the conviction so as to permit the licensee to relitigate the issue of his guilt. Regardless of the various motives which impelled respondent's plea, the conviction stands as conclusive proof of respondent's guilt of the offense charged. Arneson v. Fox (1980)- 28 Cal.3d 440. Respondent's attempt to deny the facts underlying the conviction cannot be considered.

Some of respondent's explanations however may be considered as evidence of extenuating circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation. Brandt v. Fox (1979) 90 Cal.App.3d 737.

VI

Respondent received a loan of over \$7000 in 1994 from Steve Crowder, who had been his friend for over 15 years. Respondent, at that time, had become dissatisfied with the real estate business and was pursuing a new career in wireless communications. He had been living off the proceeds from the 1990 sale of his real estate business which was started by his parents, and from whom he acquired the business in 1985. He acknowledges that he has had a drinking and a gambling problem.

VII

Respondent claims that he believed that when he wrote the check to Steve Crowder there were sufficient funds in his checking account to cover the amount of the check, and that the amount of the check was arbitrarily chosen because he had just received a commission from a transaction. He testified that he notified Steve Crowder and unsuccessfully attempted to retrieve the check when he subsequently discovered that there were insufficient funds. He asserts that he gave Steve Crowder some cash, as partial payment for the check that was written. Respondent acknowledges his debt to Crowder, but feels that Crowder is to be blamed for cashing the check.

VIII

Respondent had originally stipulated with the District Attorney's office that he would make restitution in the amount of \$200 to \$300 a month. This was based on respondent's assumption that he would be a salaried employee.

Respondent had made only three payments totaling \$360 towards the restitution ordered by the court from January 1996 through March 1997. It was necessary to place a garnishment of his wages effective April 14, 1997 for 10% of gross commissions received in his current employment at Coldwell Banker. He contends his current balance owed is approximately \$50 to \$60 in interest.

IX

Respondent has been regularly attending Alcoholics Anonymous meetings and will have been alcohol free for one year on July 24 this year. He asserts that he has not gambled in a "while". He volunteers in the fund raising efforts of a local chapter of the American Cancer Society. He is the father of two

teenage boys, one of whom will be living with him soon. He has not paid child support nor is he under any Court Order to do so. These are circumstances in mitigation in this matter.

X

Although he has made restitution on most of the \$1500, respondent estimates that he still owes approximately \$3000 on the original \$7000 loan by Steven Crowder. He continues to have significant debts outstanding to other businesses and individuals.

XI

Respondent has admitted to having three other outstanding warrants, two of which are from the State of Nevada, all of which involve the issuance of worthless checks. The matters in Nevada involve approximately \$2500. No reliable evidence was received to support respondent's claim that he has made full restitution of the \$2500. The third warrant mentioned by respondent was regarding the amount of \$680 to \$700 for a home inspection. Respondent testified that he was convicted of this latter matter under the same circumstances and at the same time as the Crowder offense.

XII

Respondent asserts that his conduct in his private affairs is unrelated to his conduct in his business. He lacks insight into the effect which his conduct and conviction has on the public's perception of his professional responsibilities as a real estate licensee and how it is detrimental to the profession in general.

XIII

The criminal conviction is approximately eighteen months old. Although he does not have to report to a probation officer, he is unaware of the length of his probation. He is only half way through his three years of probation. Respondent has failed to prove he is rehabilitated as evaluated against the criteria set forth in Title 10, California Code of Regulations section 2912.

DETERMINATION OF ISSUES

I

The Real Estate Commissioner has the authority to revoke or suspend a licensee's real estate license. Business and Profession Code section 10176 and 10177. Such action may be

based on a conviction of a crime involving moral turpitude following a plea of guilty. Arneson v. Fox (1980) 28 Cal.3d 440. However, the underlying offense must bear a substantial relationship to the qualifications, functions or duties of the real estate licensee. Business and Profession Code section 490 and Title 10 California Code of Regulations section 2910.

Respondent's fraudulent conduct resulting in the conviction manifestly demonstrates a lack of integrity. Respondent's offense is substantially related to the qualifications, functions or duties of his profession as set forth in Findings III and IV.

II

Clear and convincing evidence to a reasonable certainty established cause for discipline of respondent's license as set forth in Findings III and IV. Respondent violated Business and Professions Code sections 490 and 10177(b) and Title 10, California Code of Regulations, section 2910(a)(4).

III

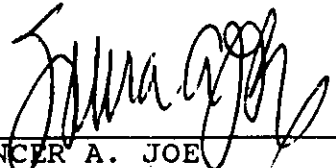
The matters set forth in Findings VI-XIII are considered in making the Order below. Respondent failed to demonstrate rehabilitation sufficient to warrant the issuance of a restricted license.

ORDER

All licenses and licensing rights of respondent Robert Marshall Nott under the Real Estate Law are revoked.

Dated: _____

July 18, 1997



SPENCER A. JOE
Administrative Law Judge
Office of Administrative Hearings

FILED
JUN 3 1997

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Shelly Ely

In the Matter of the Accusation of

ROBERT MARSHALL NOTT

Case No. H-1332 FRESNO

OAH No. N1997050515

Respondent

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 Street,
Suite 220, Second Floor Hearing Rooms, Sacramento, CA 95814
on Wednesday -- July 2, 1997, 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. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal 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: June 3, 1997

By Deidre L. Johnson
DEIDRE L. JOHNSON Counsel

1 DEIDRE L. JOHNSON, Counsel
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789

FILED
MAY - 8 1997
DEPARTMENT OF REAL ESTATE

By Shelly Ely

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7
8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13 ROBERT MARSHALL NOTT,) NO. H-1332 FRESNO
14 Respondent.) ACCUSATION
15

16 The Complainant, Dolores Vazquez-Ramos, a Deputy Real
17 Estate Commissioner of the State of California, for cause of
18 Accusation against ROBERT MARSHALL NOTT, is informed and alleges
19 as follows:

20 I

21 ROBERT MARSHALL NOTT (hereafter Respondent) is presently
22 licensed and/or has license rights under the Real Estate Law, Part
23 1 of Division 4 of the California Business and Professions Code
24 (hereafter the Code) as a real estate broker.

25 II

26 The Complainant, Dolores Vazquez-Ramos, a Deputy Real
27 Estate Commissioner of the State of California, makes this

1 Accusation against Respondent in her official capacity and not
2 otherwise.

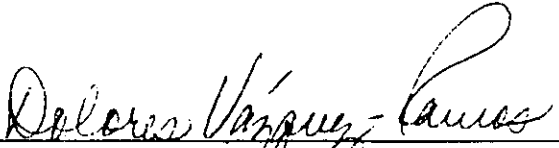
3 III

4 On or about January 22, 1996, in the Municipal Court of
5 California, County of Mono, Mono Judicial District, Respondent was
6 convicted of violation of Section 476a of the California Penal
7 Code (WORTHLESS CHECK), a crime involving moral turpitude, and a
8 crime which is substantially related under Section 2910, Title 10,
9 California Code of Regulations to the qualifications, functions or
10 duties of a real estate licensee.

11 IV

12 The facts alleged above constitute cause under Sections
13 490 and 10177(b) of the Code for suspension or revocation of all
14 licenses and license rights of Respondent under the Real Estate
15 Law.

16 WHEREFORE, Complainant prays that a hearing be conducted
17 on the allegations of this Accusation and that upon proof thereof
18 a decision be rendered imposing disciplinary action against all
19 licenses and license rights of Respondent, under the Real Estate
20 Law (Part 1 of Division 4 of the Business and Professions Code)
21 and for such other and further relief as may be proper under other
22 provisions of law.

23
24 
25 DOLORES VAZQUEZ RAMOS
Deputy Real Estate Commissioner

26 Dated at Fresno, California,
27 this 21st day of April, 1997.