

Sect. 107

FILED
MAR 10 1993

DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE
Jana B. Orona

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of

No. H- 1457 SA

DONALD JAY HESS,

L- 58623

Respondent(s).

DECISION

The Proposed Decision dated February 19, 1993
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.

This Decision shall become effective at 12 o'clock
noon on March 30, 1993.

IT IS SO ORDERED March 4, 1993.

CLARK WALLACE
Real Estate Commissioner

By:

John R. Liberator
JOHN R. LIBERATOR
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation)	
against:)	
DONALD JAY HESS,)	Case no. H-1457-SA
)	
Respondent.)	OAH no. L-58623
)	

PROPOSED DECISION

This matter came on regularly for hearing before David B. Rosenman, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California on January 26, 1993. Complainant was represented by James R. Peel, Staff Counsel. Respondent, Donald Jay Hess, was present and represented himself.

Oral and documentary evidence was received and the matter was then submitted.

FINDINGS OF FACT

The Administrative Law Judge makes the following Findings of Fact:

1. The Accusation was made by Thomas McCrady, a Deputy Real Estate Commissioner, in his official capacity.
2. The Department issued real estate broker's license no. 963851 to respondent on August 13, 1987. His present license will expire on August 12, 1995. Respondent has not previously been disciplined by the Department.
3. Respondent was admitted to the practice of law in California on December 22, 1976.

On December 18, 1991, the Supreme Court of the State of California entered an order which suspended respondent's license to practice law for five years, stayed the suspension, and placed respondent on probation for 5 years under various terms and conditions, including actual suspension for six months. See Exhibit 3.

4. Respondent cooperated in the disciplinary proceedings against him. The initial proceeding, State Bar Court case no. 87-O-17481-ERS, went to hearing in March and April, 1991, and resulted in a Decision, filed July 16, 1991, wherein it

was found:

a. Respondent was employed in 1985 to represent Marcos Rodriguez in his capacity as the administrator of three probate estates. As a result of the inter-relationship of the estates, half of the assets of the P. Wood estate would go to Rodriguez, and the other half to M. Levine. The main asset of this estate was a house, which was sold, yielding proceeds of \$71,834.69. This sum was deposited in an account with Rodriguez as signatory but with respondent having custody of the checkbook.

Respondent's secretary/paralegal, Nancy Bruce, asked him for a loan from the account to prevent foreclosure on real property that she owned. Respondent allowed her to request the loan from Rodriguez. Bruce consulted with Rodriguez and ultimately forged his signature on a trust account check for \$57,900.40. Although a note and deed of trust were prepared, the deed was not recorded. The loan was reimbursed by Bruce about three months later.

The court found that respondent violated Rules of Professional Conduct (RPC) Rule 6-101, by failing to perform various services--he failed to seek Probate Court approval for the loan or oversee Bruce's actions, or properly advise Rodriguez about the loan.

b. Respondent borrowed a total of \$30,806 from the estate during the time period from October 28, 1986 to March 24, 1987, without seeking approval or signatures from Rodriguez. Of this sum, respondent commingled \$8,356 with the funds in his client trust account. In June, 1987, he reimbursed all of the funds except for \$1466.93, due to a bookkeeping error. This amount was reimbursed in March, 1988.

The court found that respondent violated: Business and Professions Code section 6106 based upon his reckless disregard for the interests of his client; RPC 8-101(A) for failing to maintain deposited funds in a fiduciary account and misappropriating and commingling funds; RPC 8-101(B)(3) by failing to maintain records of the loans; and RPC 8-101(B)(4) by failing to keep monies in the account to distribute to the beneficiaries.

c. When the accounting was filed with the Probate Court on December 12, 1986, Bruce had forged Rodriguez' signature. Respondent had not monitored her or explained the accounting to Rodriguez. The accounting misrepresented the status of estate assets. When the Order of Distribution was filed January 14, 1987, the estate did not have the funds indicated, due to the loans noted above.

The court found that respondent violated: Business and

Professions Code section 6068(d) for the forged signatures (also a violation of RPC 7-105); section 6106 based upon his reckless disregard for the interests of his client; RPC 8-101(B)(3) for failing to file a proper accounting with the court; and RPC 6-101(A)(2) by failing to review the accounting with the client and obtain his signatures.

d. Respondent paid for a new accounting, and the court determined that he owed restitution for interest on the loans as well as on the amounts unavailable for distribution to the beneficiaries, for a total of \$7280.55, payable half to Rodriguez and half to Levine.

e. The court made note of various mitigating circumstances, including respondent's candor and cooperation and his "extraordinary demonstration of good character"; but for this evidence, the court would have recommended two years of actual suspension.

f. The court decision establishes various conditions of probation to create additional safeguards in respondent's practice of law, including: full restitution; quarterly written reports to the Bar; separate reports, with a certificate from a Certified Public Accountant, as to handling of clients' funds; the assignment of a probation monitor; development of a law office management/organization plan; and continuing education in office management and ethics.

5. At the hearing in the present matter, respondent established that he has fully satisfied the terms of probation to date, including restitution. Respondent was candid and cooperative throughout, and asked that the mitigating circumstances set forth in the State Bar Court decision also be considered herein.

6. Respondent rarely uses his real estate license in sales transactions, but is actively involved as a mortgage broker and has an employee in that business who is also a Department licensee. Respondent is presently the sole signatory on the bank accounts he has established for use in the mortgage brokerage business.

7. All evidence in mitigation and of rehabilitation has been considered.

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DETERMINATION OF ISSUES

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

1. Grounds exist for the suspension or revocation of respondent's real estate broker's license pursuant to Business and Professions Code section 10177(f), for suspension of respondent from the practice of law by the Supreme Court, as set forth in Findings 2, 3 and 4.

2. Considering all the facts and circumstances of this matter, it would be consistent with the public interest to suspend respondent's license, stay the suspension, and place respondent on probation with appropriate terms and conditions.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of respondent Donald Jay Hess under the Real Estate Law, and specifically real estate broker's license no. 963851, are suspended for three and one half (3 1/2) years from the effective date of this Decision; provided, however, that said suspension shall be stayed upon the following terms and conditions:

1. Respondent shall submit written reports to the Department of Real Estate, as the Real Estate Commissioner shall direct by separate written order, including 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, including mortgage broker activities, in which the respondent engaged during the period covered by the report.

2. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department, and pay the appropriate examination fee.

3. Respondent shall, within 12 months of the effective date of this Decision, present evidence satisfactory to the Commissioner that he has, since the most recent issuance of his renewed license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real

Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may reimpose the suspension of respondent's license until such evidence is presented. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

4. During the period of the stay, respondent shall not be the sole signatory of any bank account established in conjunction with his activities for which a real estate license is necessary. Any such bank accounts must require, in addition to respondent's signature, the signature of another Department licensee. This additional signatory is to be shown a copy of this Decision so as to be made aware of the reasons for the imposition of this condition on respondent's real estate broker's license.

5. Upon the completion of respondent's probation with the State Bar, respondent shall be entitled to petition the Department for removal of these conditions. Otherwise, the stay will lapse of its own accord in three and one half (3 1/2) years from the effective date of this Decision, and respondent's license will be restored in full and without conditions.

DATED: February 19, 1993.



DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings

DBR/dr

Sacto
do

1 JAMES R. PEEL, Counsel
2 Department of Real Estate
3 107 South Broadway, Room 8107
4 Los Angeles, CA 90012
5 (213) 897-3937

FILED

SEP 22 1992

DEPARTMENT OF REAL ESTATE
BY Laura B. Orma

8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * *

11	In the Matter of the Accusation of)	NO. H-1457 SA
12	DONALD JAY HESS,)	A C C U S A T I O N
13)	
14	Respondent.)	
15	_____)	

16 The Complainant, Thomas McCrady, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against DONALD JAY HESS, alleges as follows:

19 I

20 The Complainant, Thomas McCrady, a Deputy Real Estate
21 Commissioner of the State of California, makes this Accusation
22 in his official capacity.

23 II

24 DONALD JAY HESS (hereinafter referred to as
25 respondent) is presently licensed and/or has license rights
26 under the Real Estate Law (Part 1 of Division 4 of the Business
27 and Professions Code, hereinafter 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 broker.

IV

Respondent, an attorney in the State of California, in State Bar Court Case No. 87-0-17481, filed December 18, 1991, was suspended from the practice of law for a period of six months, and until he makes restitution.

V

The matter set forth above is grounds to suspend or revoke the real estate license of respondent under Section 10177(f) of the Business and Professions Code of the State of California.

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 DONALD JAY HESS, 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 applicable provisions of law.

Dated at Santa Ana, California
this 22nd day of September, 1992.

THOMAS McCRADY
Deputy Real Estate Commissioner

cc: Donald Jay Hess
Sacto.
DKB

lbo