

FILED

JAN 18 2001

DEPARTMENT OF REAL ESTATE

By Shelly Ely

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 Accusation of)	
BARRY STEVEN HENDLER,)	No. H-1798 SD
Respondent.)	

ORDER GRANTING REINSTATEMENT OF LICENSE

On April 26, 1991, an Order was rendered herein revoking the real estate salesperson license of Respondent, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on September 9, 1991, and Respondent has operated as a restricted licensee without cause for disciplinary action against Respondent.

On September 8, 1999, 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.

///

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
6 salesperson license and that it would not be against the public
7 interest to 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 salesperson license be issued to Respondent if Respondent
11 satisfies the following conditions within nine months from the
12 date of this Order:

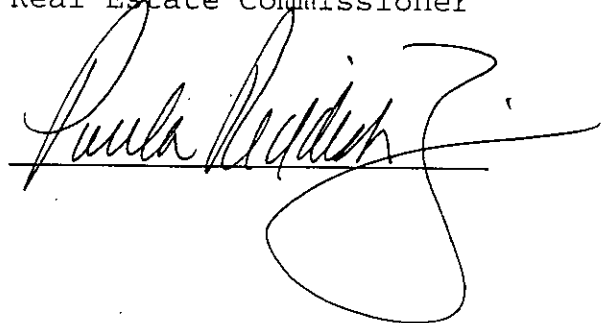
13 1. Submittal of a completed application and payment of
14 the fee for a real estate salesperson license.

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: November 20, 2000
22

23 PAULA REDDISH ZINNEMANN
24 Real Estate Commissioner

25 
26
27

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

MAY -7 1991

DEPARTMENT OF REAL ESTATE
BY *K. Kneider*

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation and)	No. H-1797 SD
Application of)	H-1798 SD
)	
BARRY STEVEN HENDLER,)	L-50900
)	L-50899
Respondent.)	
)	

STIPULATED ORDER AFTER HEARING


I have read the Statement of Issues and Accusation filed herein, the Proposed Decision of the Administrative Law Judge dated November 19, 1990, and the attached Stipulations and Waivers signed by Respondent. I am satisfied that it will not be inimical to the public interest to deny the application of Respondent for a real estate broker license, and to issue a restricted real estate salesperson license to Respondent.

Therefore, IT IS HEREBY ORDERED that the application of Respondent for a real estate broker license is hereby denied, and that the real estate salesperson license of Respondent be revoked and a restricted real estate salesperson license be issued to Respondent BARRY STEVEN HENDLER if Respondent has otherwise

1 fulfilled all of the statutory requirements for licensure. The
2 restricted license shall be limited, conditioned and restricted as
3 specified in the attached Stipulation and Waiver.

4 This Order shall become effective on May 28
5 1991.

6 Dated this 26th day of April
7 1991.

8
9 
10 JOHN R. LIBERATOR
11 Chief Deputy Real Estate Commissioner

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

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

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	No. H-1798 SD
BARRY STEVEN HENDLER,)	<u>STIPULATION AND</u>
Respondent.)	<u>WAIVER</u>
_____)	

I, BARRY STEVEN HENDLER, respondent herein, acknowledge that I have received and read the Accusation filed by the Department of Real Estate on June 28, 1990, and the Statement to Respondent sent to me in connection with the Accusation.

I hereby admit that the allegations of the Accusation filed against me are true and correct and constitute a basis for the discipline of my real estate salesperson license.

I further acknowledge that the Real Estate Commissioner held a hearing on this Accusation on September 26, 1990, before the Office of Administrative Hearings, for the purpose of proving the allegations therein. I was present at the hearing and participated therein. Further, I have had an opportunity to read and review the Proposed Decision of the Administrative Law Judge.

1 I understand that pursuant to Government Code Section
2 11517(c), the Real Estate Commissioner has rejected the Proposed
3 Decision of the Administrative Law Judge. I further understand
4 that pursuant to the same Section 11517(c), the Real Estate
5 Commissioner may decide this case upon the record, including the
6 transcript, without taking additional evidence, after affording
7 me the opportunity to present written argument to the Real Estate
8 Commissioner.

9 I further understand that by signing this Stipulation
10 and Waiver, I am waiving my right to obtain a dismissal of the
11 Accusation through proceedings under Government Code Section
12 11517(c) if this Stipulation and Waiver is accepted by the Real
13 Estate Commissioner. However, I also understand that I am not
14 waiving my rights to further proceedings to obtain a dismissal of
15 the Accusation if this Stipulation and Waiver is not accepted by
16 the Real Estate Commissioner.

17 I hereby request that the Real Estate Commissioner in
18 his discretion revoke my real estate salesperson license and issue
19 to me a restricted real estate salesperson license under the
20 authority of Section 10156.5 of the Business and Professions Code
21 if I make application therefor and pay to the Department of Real
22 Estate the appropriate fee for said license within one year from
23 the effective date of the Decision herein.

24 I further understand that the restricted license shall
25 be subject to the provisions of Section 10156.7 of the Business
26 and Professions Code and the following conditions, limitations and
27 restrictions will attach to the restricted license issued by the

1 Department of Real Estate pursuant hereto:

2 1. The license shall not confer any property right in
3 the privileges to be exercised thereunder and the Real Estate
4 Commissioner may by appropriate order suspend the right of
5 respondent to exercise any privileges granted under this restricted
6 license in the event of:

7 a. The conviction of respondent (including a plea
8 of nolo contendere) to a crime which bears a
9 substantial relationship to respondent's
10 fitness or capacity as a real estate licensee;
11 or

12 b. The receipt of evidence that respondent has
13 violated provisions of the California Real
14 Estate Law, the Subdivided Lands Law, Regulations
15 of the Real Estate Commissioner or conditions
16 attaching to this restricted license.

17 2. Respondent shall not be eligible to apply for the
18 issuance of an unrestricted real estate license nor the removal
19 of any of the conditions, limitations or restrictions attaching to
20 the restricted license until one year has elapsed from the date
21 of issuance of the restricted license to respondent.

22 3. With the application for license, or with the
23 application for transfer to a new employing broker, respondent
24 shall submit a statement signed by the prospective employing
25 broker on a form approved by the Department of Real Estate wherein
26 the employing broker shall certify as follows:

27

/

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

a. That the broker has read the Accusation and this Stipulation and Waiver which are the basis for the issuance of the restricted license; and

b. That the broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

4. Respondent shall, within six months from the effective date of the restricted license, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of the restricted license until respondent passes the examination.

5. Respondent shall, within 12 months from the effective date of the Decision, present evidence satisfactory to the Real Estate Commissioner that he has, since the most recent issuance of an original or renewal real estate 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 order the suspension of the restricted license

/
/
/

1 until the respondent presents such evidence. The Commissioner
2 shall afford respondent the opportunity for a hearing pursuant to
3 the Administrative Procedure Act to present such evidence.

4 DATED this 7th day of MARCH, 1991.

5
6 Barry Steven Hendler
7 BARRY STEVEN HENDLER
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

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

FILED

DEC 18 1990

DEPARTMENT OF REAL ESTATE
BY *K. Hendler*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation and)	
Application of)	
	NO. H-1797 SD
	H-1798 SD
BARRY STEVEN HENDLER,)	
	L-50900
Respondent.)	L-50899

NOTICE

TO: BARRY STEVEN HENDLER, Respondent
and
JERRY MICHAEL SUPPA, his Counsel

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated November 19, 1990, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated November 19, 1990, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on September 26, 1990, and any written argument hereafter

1 submitted on behalf of respondent and complainant.

2 Written argument of respondent to be considered by
3 me must be submitted within 15 days after receipt of the
4 transcript of the proceedings of September 26, 1990, at the Los
5 Angeles office of the Department of Real Estate unless an
6 extension of the time is granted for good cause shown.

7 Written argument of complainant to be considered by
8 me must be submitted within 15 days after receipt of the
9 argument of respondent at the Los Angeles office of the
10 Department of Real Estate unless an extension of the time is
11 granted for good cause shown.

12 DATED: December 7, 1990

13 JAMES A. EDMONDS, JR.
14 Real Estate Commissioner

15 
16 By: JOHN R. LIBERATOR
17 Chief Deputy Commissioner

18
19
20
21
22
23
24
25
26
27

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation)	
and Application of:)	No. H-1797 SD
)	H-1798 SD
BARRY STEVEN HENDLER)	
)	OAH Nos. L-50900
)	L-50899
Respondent.)	
<hr/>		

PROPOSED DECISION

On September 26, 1990, in San Diego, California, Greer D. Knopf, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter. James R. Peel, Staff Counsel, Department of Real Estate, represented complainant. Jerry Michael Suppa, Esquire, represented respondent Barry Steven Hendler who was present. Evidence was received and the record remained open for the receipt of correspondence from Assistant United States Attorney William D. Welch which was received on October 4, 1990 and marked as Exhibit E and received as administrative hearsay pursuant stipulation of counsel. The record was closed and the matter was submitted on October 8, 1990. The administrative law judge finds the following facts:

FINDINGS OF FACT

I

The Statement of Issues No. H-1797 SD was filed on June 28, 1990, by Deputy Real Estate Commissioner J. Chris Graves. The Accusation No. H-1798 SD was also filed on June 28, 1990 by complainant J. Chris Graves in his official capacity as Deputy Real Estate Commissioner.

II

Respondent and applicant Barry Steven Hendler (hereinafter referred to as "respondent") currently holds a real estate salesperson's license no. 01008239 issued on November 23, 1989, by the Department of Real Estate, State of California (hereinafter the "Department").

/
/
/
/

III

On December 30, 1988, respondent was charged with, plead guilty to, and was convicted of possession with intent to distribute cocaine in violation of 21 U.S.C. section 841(a)(1). Respondent was sentenced on the same day by the U.S. District Court in Denver, Colorado, to three years incarceration with three years of supervision to follow. He was also fined \$4,000.00. The crime which respondent committed is a felony involving moral turpitude which substantially relates to the duties, functions and qualifications of a real estate licensee.

IV

Respondent was incarcerated for almost fifteen months and then released to a halfway house in San Diego.

V

On December 24, 1989 respondent submitted a license application to the Department seeking licensure as a broker. In answer to the question on the application, "Have you ever been convicted of any violation of law?", respondent answered, "Yes" and disclosed his December 30, 1988 felony conviction.

VI

The facts and circumstances surrounding respondent's criminal conviction are as follows:

In 1987, respondent was living in Denver, Colorado, and was part-owner of a personal fitness studio. Respondent's business partner was Mitchel Pfeffer who invested one-half of the funds to open the club. Mr. Pfeffer was a drug dealer and respondent knew it. In November 1987, respondent became involved in the sale of approximately one pound of cocaine. Respondent's involvement was that he knowingly allowed his partner, Mr. Pfeffer, to leave the package containing the cocaine at the health club to be picked up by the buyer. Respondent directed the buyer to the package containing the cocaine and allowed the buyer to leave payment at the health club for Mr. Pfeffer. Respondent received payment of \$2,000.00 for his participation in the transaction.

Respondent was contacted by the federal law enforcement authorities on April 12, 1988, when his health club was seized by order of the U.S. District Court in Denver, Colorado. Respondent was not arrested at the time and was free to leave the jurisdiction. After moving to San Diego and obtaining his real estate salesperson's license respondent was asked to return to Denver to be charged with distribution of cocaine. Respondent voluntarily returned to Denver and on December 30, 1988, he was

formally charged with the unlawful distribution of cocaine. On that day, respondent plead guilty, was convicted and was sentenced for the crime.

VII

The existence of mitigation, extenuation and rehabilitation was established by the following facts:

Respondent is 32 years old. He received a marketing degree from the University of Colorado in 1981. He worked as a stock broker from 1983 to 1985 for Dean Witter and Beacher & Company.

In September 1987 respondent opened the Excel Personal Fitness Studio in Denver with Mr. Pfeffer. Respondent exercised extremely poor judgment when he became involved with Mr. Pfeffer. Respondent knew exactly who Mr. Pfeffer was and how he made his money.

Respondent cooperated with the government in their investigation from the beginning and has acknowledged to the authorities full responsibility for his actions. Respondent was a model prisoner. He participated in a youth awareness program to help young people avoid getting into the sort of trouble he did. He showed strength and courage in speaking candidly about his one mistake which destroyed his life. Respondent hoped that he could help young adults make the right decisions in their lives. Respondent also helped set up a weight and nutritional program for inmates and staff at the prison.

While in prison, respondent promised himself that he would repair his life. He promised he would try to make up for his mistake and gain back the respect of all the people he had disappointed. Respondent used his time in prison to better himself personally, educationally and professionally.

Respondent is a dedicated and motivated worker. He has remained in the employment of the Leon Brothers Commercial Real Estate Company since July 1988, except for the time spent in custody. Leon Brothers hope to keep respondent as an employee, because they find him to be exceptionally well-qualified and trustworthy. Respondent's employers are well-aware of his criminal conviction and incarceration. Respondent is a member of Toastmasters, International.

Respondent has no prior criminal convictions and was not involved with drugs prior to his association with Mr. Pfeffer. He is a body builder and health food enthusiast.

/

VIII

Respondent demonstrates determination, self-discipline and an ability to admit his mistakes. Respondent's remorse is heartfelt and sincere. He has learned a difficult lesson. He has learned it so well, he is unlikely to forget. He deeply regrets his actions and has willingly faced all of the consequences. Respondent readily admits that he made a horrible mistake which will affect him the rest of his life. Since that time he has promised to make himself a better person. He is thankful that he was caught before he became more involved in criminal activities. The entire incident has given respondent the insight and maturity to make something of his life.

DETERMINATION OF ISSUES

I

Cause exists to deny respondent's application for a broker's license pursuant to Business and Professions Code sections 480 and 10177(b) in that respondent was convicted of a felony involving moral turpitude which bears a substantial relationship to the qualifications, functions, or duties of a real estate licensee by reason of Findings III and V.

II

Cause exists for discipline of respondent's salesperson's license pursuant to Business and Professions Code sections 490 and 10177(b) in that respondent was convicted of a felony involving moral turpitude which bears a substantial relationship to the qualifications, functions, or duties of a real estate licensee by reason of Findings III and V.

III

However, in light of the evidence of mitigation, extenuation, and rehabilitation, the public interest will not be adversely effected by allowing respondent to continue working as a real estate salesperson subject to conditions of probation. Respondent's conviction is attenuated by his otherwise exemplary past and his subsequent rehabilitation. The evidence of respondent's remorse and determination to lead a law abiding and productive life is overwhelming. He deserves a second chance. He should not, however, be allowed to work during his probation in a supervisory capacity as a broker.

ORDER

Respondent's application for a real estate broker's license is denied.

not adopted }

Respondent's real estate salesperson's license number 010-8239 is hereby revoked; provided, however, that said revocation is stayed for five years provided the respondent observes the following terms and conditions of probation:


1. Respondent shall obey all laws in addition to rules and regulations pertaining to his subject license practice.
2. Respondent shall submit quarterly written reports to the Department describing his activities in the real estate profession. Further, respondent shall within five days of any arrest by any law enforcement authorities submit to the Department of Real Estate a full and detailed account of such arrest.
3. Respondent, if employed in any area of the real estate profession in California during the period of probation, shall notify his employer of the probation status upon the effective date of the Department's Decision. Thereafter, the employer shall acknowledge understanding of the probationary status of the licensee through a signature on the required quarterly written reports. If respondent applies for new employment in the real estate field during the period of probation, he shall inform any prospective employer of his probationary status with the Department prior to accepting such employment.
4. Respondent shall, within twelve months from the effective date of the Decision, present evidence satisfactory to the Real Estate Commissioner that he has, since the most recent issuance of the original or renewal real estate 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.
5. Respondent shall, within six months from the effective date of the Decision, take and pass the Professional Responsibility Examination administered by the Department of Real Estate including the payment of the appropriate examination fee.
6. Respondent shall complete 50 hours of community service which may include continued work with youth awareness drug programs.

If respondent violates probation in any respect, the Commissioner, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to vacate

*not
Adopted*

stay is filed against respondent during probation, the Commissioner shall have continuing jurisdiction until the matter is final.

Dated: 11-19-90


GREER D. KNOPF
Administrative Law Judge
Office of Administrative Hearings

GDK:ss

502

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

AUG - 1 1990

In the Matter of the Accusation of

BARRY STEVEN HENDLER,

DEPARTMENT OF REAL ESTATE

BY CSM

Case No. H-1798 SD

OAH No. L-50899

Respondent(s)

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 _____
Office of Administrative Hearings, 1350 Front St., Room 6018, San Diego, CA 92101
on the 26th day of September, 19 90, at the hour of 9:00a.m., or as soon thereafter
as the matter can be heard, upon the charges made in 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 upon any express admissions, 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 hearing officer 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 hearing officer directs otherwise.

DEPARTMENT OF REAL ESTATE

By James R Peel
JAMES R. PEEL, Counsel

Dated: August 1, 1990

cc: Barry Steven Hendler
Leon Brothers/San Diego, Inc.
Jerry Michael Suppa, Esq.

Sacto.
OAH
FJF
RE 501 (Rev. 7/87)

Sacto

1 JAMES R. PEEL, Counsel
2 Department of Real Estate
3 107 South Broadway, Room 8107
4 Los Angeles, California 90012
5 (213) 620-4790

FILED

JUN 28 1990

DEPARTMENT OF REAL ESTATE
BY C. Boy

4
5
6
7
8

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

11 In the Matter of the Accusation of) No. H-1798 SD
12 BARRY STEVEN HENDLER,) A C C U S A T I O N
13)
14 Respondent.)

15 The Complainant, J. Chris Graves, a Deputy Real Estate
16 Commissioner of the State of California, for cause of accusation
17 against BARRY STEVEN HENDLER, alleges as follows:

I

19 The Complainant, J. Chris Graves, a Deputy Real Estate
20 Commissioner of the State of California, makes this accusation in
21 his official capacity.

II

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

/

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

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 December 30, 1988, in the U.S. District Court for the District of Colorado, respondent was convicted of distribution of cocaine in violation of 21 USC 841(a)(1) and 18 USC 2, a felony 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 is cause under Sections 490 and 10177(b) of the Business and Professions Code for suspension or revocation of all licenses and license rights under the Real Estate Law.

/

/

/

/

/

/

/

/

/

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 BARRY STEVEN HENDLER
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 as may
7 be proper under other applicable provisions of law.

8 Dated at San Diego, California
9 this 28th day of June, 1990.

10

11

J. CHRIS GRAVES

Deputy Real Estate Commissioner

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26 cc: Barry Steven Hendler
Sacto.

27 FJF
Leon Brothers/San Diego, Inc.