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BY Sandra B. Chona

* * *

In the Matter of the Application of)
)
 DAVID ROTTENBERG,) NO. H-1805 SD
)
) L-51223
 Respondent.)
)

DECISION

The Proposed Decision dated December 13, 1990, 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 with the following exception:

Conditions "C" and "E" of the Order of the Proposed Decision are not adopted and shall not be part of the Decision.

The application for a real estate broker license is denied, but the right to a restricted real estate broker 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 broker 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 February 13, , 1991.

IT IS SO ORDERED January 15, 1991.

JOHN R. LIBERATOR
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Application of:	)	
	)	Case No. H-1805-SD
DAVID ROTTENBERG	)	
	)	OAH NO. L-51223
	)	
Respondent.	)	
	)	

PROPOSED DECISION

On October 15, 1990, in San Diego, California, Vallera J. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter. Timothy C. Newlove, Staff Counsel, represented complainant. Respondent was present and represented himself. Evidence was received, the record was closed and the matter was submitted.

FINDINGS OF FACT

I

On July 19, 1990, J. Chris Graves, Deputy Real Estate Commissioner (Commissioner), of the Department of Real Estate (Department) of the State of California, filed Statement of Issues, Case No. H-1805 SD, in his official capacity against David Rottenberg (respondent). The Notice of Defense was filed by respondent on July 27, 1990.

II

On August 15, 1989, respondent filed an application with the Department for the issuance of a real estate broker's license. From March 4, 1977, through March 3, 1981, respondent held real estate broker's license number 532119. No evidence was submitted that previous disciplinary action has been taken against that license.

III

On April 6, 1988, the Supreme Court of the State of California (Supreme Court) suspended respondent from the practice of law upon a Decision by the State Bar Court which found, inter alia, that as a practicing attorney, respondent willfully committed acts involving moral turpitude and dishonesty.

The facts and circumstances surrounding the suspension of respondent from the practice of law are that respondent was admitted to practice law in the State of California on June 18, 1974. On October 25, 1977, respondent became an attorney of record on behalf of the plaintiffs, in the case entitled Kenneth McHenry et.al. v. The Big "O", Inc. et.al., Los Angeles Superior Court Case No. C 162 216.

By December 28, 1977, respondent knew that two of the defendants in the McHenry case had died. Between that date and May 18, 1981, the date of trial, respondent took no action to substitute the personal representative of the deceased defendants' estates, although respondent knew that he could not proceed to trial without doing so. About September 1981, respondent asked David Kitsis (Kitsis), a disbarred attorney in his employ in a non-legal capacity since July 1979, to serve as a personal representative of the estate of one of the deceased defendants. Respondent failed to disclose to the defendants' attorney, Saul Nadel (Nadel), that Kitsis was his employee. When Nadel objected to the appointment of Kitsis, respondent informed Nadel of the background of Kitsis but suppressed the fact that Kitsis was his employee. In fact, respondent had Kitsis retain Nadel as his attorney.

The Supreme Court determined, by and through its adoption of the decision of the State Bar Court, that the appointment of Kitsis was collusion between respondent and Kitsis to extend the five-year statute of limitations. As part of this collusion, on or about June 16, 1981, respondent caused to be prepared and requested that Kitsis sign a letter addressed to Nadel, instructing him to extend the five-year statute of limitations. When Nadel refused to extend the statute of limitations, respondent sent a letter to Nadel discharging him as the attorney for the estate. The letter purportedly bore the signature of Kitsis. On the same date, respondent filed a stipulation to extend the five year statute which purportedly bore the signature of Kitsis. The signature on the stipulation was not that of Kitsis.

Respondent's office practice at the time of these events was for declarations and pleadings to be typed in rough draft form, reviewed and revised by the author, then typed in final form. If the author was not then available, the signature of the author was affixed by a member of respondent's staff. Kitsis was aware of this policy and participated in it.

The Supreme Court further determined that: (1) the documents that purportedly bore the signature of Kitsis did not, in fact, bear his signature; (2) there was no emergency that warranted signing of the documents by a person other than Kitsis; and (3) there was no reason to sign the documents without an indication that they were not signed by Kitsis.

It was the determination of the Supreme Court that by filing the documents and suppressing the fact that Kitsis was his employee, respondent willfully failed and refused to employ such means as are consistent with truth and willfully sought to mislead a judge or judicial officer by an artifice or false statement of fact or law.

Finally, the Supreme Court determined that an aggravating factor in respondent's case was previous discipline by the state bar. In the previous case, entitled In the Matter of David Rottenberg, 80-0-139 LA, the record shows that respondent willfully undertook representation of conflicting interests without obtaining the consent of the parties concerned.

As a consequence of the foregoing, the Supreme Court suspended respondent from the practice of law for five years. Execution of the suspension was stayed, and respondent was placed on probation for five years on condition that he be actually suspended for the first two years of his probation and that respondent comply with certain conditions of probation. The conditions were contained in the resolution adopted by the Review Department on October 8, 1987. They include these terms:

(1) That respondent comply with the provisions of the State Bar Act and Rules of Professional Conduct of the State Bar of California.

(2) That during the period of probation, respondent report not later than January 10, April 10, July 10 and October 10 of each year or part thereof during which his probation was in effect, in writing, to the Office of the Clerk, State Bar Court, Los Angeles. Respondent's report was to state that it covered the preceding calendar quarter or applicable portion thereof, certified by affidavit or under penalty of perjury; and that he had complied with all provisions of the State Bar Act and Rules of Professional Conduct since the effective date of said probation.

(3) That respondent was to be referred to the Department of Probation, State Bar Court, for assignment of a probation monitor referee. Respondent was ordered to promptly review the terms and conditions of his probation with the probation monitor referee to establish a manner and schedule of compliance, consistent with these terms of probation. During the period of probation, Respondent was to furnish such reports concerning his compliance as might be requested by the probation monitor referee. Respondent was ordered to cooperate fully with the probation monitor to enable him/her to discharge his/her duties pursuant to rule 511, Rules of Procedure of the State Bar.

(4) That, during the period of probation, respondent was to maintain with the Office of the Clerk, State Bar Court,

Los Angeles, his current office or other address for State Bar purposes and his residence address. Within 10 days after any change of any of his addresses, respondent was obligated to notify the state bar office of the change of address.

(5) That, except to the extent prohibited by the attorney-client privilege and the privilege against self-incrimination, respondent was to answer fully, promptly and truthfully to the Presiding Referee of the State Bar Court, his designee or to any probation monitor referee assigned under these conditions of probation at the respondent's office or an office of the state bar any inquiry or inquiries directed to him personally or in writing by said Presiding Referee, designee, or probation monitor referee relating to whether respondent is complying or has complied with these terms of probation.

(6) That the period of probation commenced as of the date on which the order of the Supreme Court became effective.

(7) That at the expiration of the probationary period, if respondent complied with the terms of probation, said order of the Supreme Court suspending respondent from the practice of law for a period of five years was to be satisfied and the suspension terminated.

The Supreme Court further ordered respondent: (1) to take and pass the Professional Responsibility Examination given by National Conference of Bar Examiners prior to the expiration of his period of actual suspension, and (2) to comply with the provisions of Rule 955, California Rules of Court, and to take the actions specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Order.

IV

The evidence established that respondent has been married to the same woman for almost 25 years. He has two daughters who both attend college in northern California. They are both on the Dean's list at their respective schools.

Respondent has engaged in numerous business activities, has maintained local offices and has employed many other people. He has been a homeowner, taxpayer and contributor to charitable, political and Jewish causes.

In association with Jewish Family Services of San Diego, respondent has "adopted" an immigrant Jewish family that has emigrated from the Soviet Union to San Diego. Respondent is charged with the responsibility of helping this family to obtain

employment, to locate schooling and housing if needed, and to generally assimilate into the American culture.

V

By way of rehabilitation, respondent established that he has complied with the terms and conditions of his probation, including but not limited to, filing the reports required by the Supreme Court and taking and passing the Professional Responsibility Examination prior to the end of the two year suspension period. However, prior to the termination of the probationary period, respondent resigned from the state bar of California. Since his suspension from the practice of law by the Supreme Court, there have been eight additional investigations of respondent. In all matters, respondent was vindicated.

It has been 11 years since the incident occurred which resulted in respondent's suspension. Respondent cooperated fully with the investigation conducted by the State Bar Court.

But for the suspension from the practice of law by the Supreme Court, the evidence did not establish that respondent has been convicted or charged with any other offense or crime.

DETERMINATION OF ISSUES

I

Cause exists to deny the issuance of the license of respondent pursuant to Business and Professions Code section 480(a)(3) by reason of Finding III.

II

Respondent established, by a preponderance of the evidence, that he met the Department criteria for rehabilitation set forth in California Administrative Code, title 10, section 2911. Therefore he has been rehabilitated and has met the Department's qualifications for issuance of a real estate broker's license.

III

The matters set forth in Findings IV and V have been considered in making the following order. The public interest would not be adversely affected by the issuance to respondent of a restricted real estate broker's license as set forth below.

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ORDER

I

The application of respondent, David Rottenberg, for issuance of an unrestricted real estate broker's license is denied; provided, however, a restricted real estate broker's license shall be issued to respondent pursuant to Business and Professions Code section 10156.5 if respondent makes application therefor within thirty (30) days from the effective date of this decision. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

- A. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two (2) years have elapsed from the date of issuance of the restricted license to respondent.
- B. The restricted license issued to respondent may be suspended prior to hearing by Order of the 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.
- C. Respondent shall, within 12 months from the effective date of this decision, present evidence satisfactory to the Commissioner that respondent 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 until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
- D. Respondent shall report in writing to the Department as the Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect, such information concerning respondent's activities for which a real estate license is required as the Commissioner shall

*Not
adopted*

deem to be appropriate to protect the public interest.

Such reports may include, but shall not be limited to, periodic independent accounting of trust funds in the custody and control of respondent and periodic summaries of salient information concerning each real estate transaction in which the respondent engaged during the period covered by the report.

- not adopted*
- E. Respondent shall, within six (6) months from the date of issuance of this 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 this restricted license until respondent passes the examination.

Dated: December 13, 1990

Vallera J. Johnson
Vallera J. Johnson
Administrative Law Judge
Office of Administrative Hearings

VJJ:ss

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**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

SEP 14 1990

DEPARTMENT OF REAL ESTATE

BY James B. [Signature]

In the Matter of the Application of

DAVID ROTTENBERG,

Case No. H-1805 SD

OAH No. L-51223

Respondent

NOTICE OF HEARING ON APPLICATION

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., RM. 6018, SAN DIEGO, CA 92101

on the 15th day of OCTOBER, 19 90, at the hour of 9:30 a.m., or as soon thereafter as the matter can be heard, upon the Statement of Issues 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 based upon any express admission or other evidence including affidavits, without any notice to you.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you are not present nor represented at the hearing, the Department may act upon your application without taking evidence.

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

Dated: September 14, 1990

By

[Signature]

Counsel

c: David Rottenberg
Sacto.

OAH

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Jan

FILED

JUL 19 1990

DEPARTMENT OF REAL ESTATE
BY *Lans B. Oron*

1 TIMOTHY L. NEWLOVE, Counsel
2 Department of Real Estate
3 107 South Broadway, Room 8107
4 Los Angeles, CA 90012
5 (213) 620-4790
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8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * *

11 In the Matter of the Application of) NO. H-1805 SD
12 DAVID ROTTENBERG,)
13)
14 Respondent.)
15 _____)

STATEMENT OF ISSUES

16 The Real Estate Commissioner, in conformity with Section
17 10152, Division 4, Business and Professions Code of the State of
18 California, requires further proof of the honesty and truthfulness
19 of DAVID ROTTENBERG, in connection with his application for a real
20 estate broker license filed on August 15, 1989 and in relation
21 thereto, will consider the following:

22 I

23 On April 6, 1988, the Supreme Court of the State of
24 California suspended respondent DAVID ROTTENBERG from the
25 practice of law upon a Decision by the State Bar Court which
26 found, inter alia, that as a practicing attorney-at-law,
27 respondent willfully committed acts involving moral turpitude and
dishonesty.

II

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The conduct of respondent which was the subject of his
3 suspension from the practice of law, as described in Paragraph I
4 hereinabove, is conduct which, if performed by a person licensed
5 as a real estate broker or real estate salesperson by the
6 California Department of Real Estate under Part 1 of Division 4 of
7 the California Business and Professions Code, would be grounds for
8 the suspension or revocation of said license.

9

III

10 The above-described Decision by the California Supreme Court
11 and respondent's conduct which was the basis of said Decision
12 constitute grounds for denying his application for a real estate
13 license under Section 480(a)(3) of the Business and Professions
14 Code of the State of California.

15

16 These proceedings are brought under the provisions of Section
17 10100, Division 4 of the Business and Professions Code of the
18 State of California and Sections 11500 through 11528 of the
19 Government Code.

20 Dated at San Diego, California

21 this 19th day of July, 1990.

22

J. CHRIS GRAVES

23

Deputy Real Estate Commissioner

24

25

126 cc: David Rottenberg
27 Sacto.
FJF