

FILED
DEC 13 1995
DEPARTMENT OF REAL ESTATE

By C. Bay

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of) No. H-1962 SA
JAMES DICKSON AU,) L-9504140
Respondent.)

DECISION AFTER REJECTION

The matter came on for hearing before Robert A. Nehr, Administrative Law Judge of the Office of Administrative Hearings in Los Angeles, California, on June 9, 1995.

Chris Leong, Counsel, represented the Complainant.

JAMES DICKSON AU was present and represented himself. Evidence was received, the hearing was closed and the matter was submitted.

On July 19, 1995, the Administrative Law Judge submitted a Proposed Decision which I declined to adopt as my decision herein. Pursuant to Section 11517(c) of the Government Code of the State of California, Respondent was served with notice of my determination not to adopt the Proposed Decision of the Administrative Law Judge along with a copy of said Proposed

1 Decision. Respondent was notified that the case would be
2 decided by me upon the record, the transcript of proceedings
3 held on June 9, 1995, and upon any written argument offered by
4 Respondent and his counsel Patrick C. Stacker, Esq.

5 Argument has been submitted by Respondent.

6 I have given careful consideration to the record in
7 this case, including the transcript of the proceedings of
8 June 9, 1995 and argument submitted by Respondent. The
9 following shall constitute the Decision of the Real Estate
10 Commissioner in this proceeding:

11 FINDINGS OF FACT

12 I have determined that the Findings of Fact in
13 Paragraphs I through IX of the Proposed Decision of the
14 Administrative Law Judge, dated July 19, 1995, are appropriate
15 and they are adopted as the Findings of Fact of the Real Estate
16 Commissioner in this proceeding.

17 DETERMINATION OF ISSUES

18 I have determined that Paragraphs I and II of the
19 Determination of Issues in the Proposed Decision of the
20 Administrative Law Judge, dated July 19, 1995, are appropriate
21 and are adopted as the Determination of Issues of the Real
22 Estate Commissioner in this proceeding.

23 ORDER

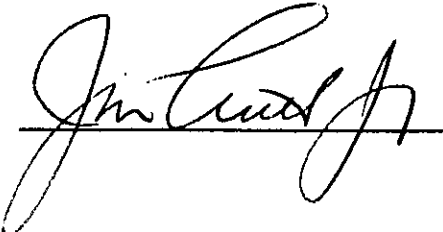
24 I have determined that the Order in the Proposed
25 Decision of the Administrative Law Judge, dated July 19, 1995,
26 is appropriate.

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1 This Decision shall become effective at 12 o'clock
2 noon on January 2, 1996.

3 IT IS SO ORDERED 11-28-95.

4 JIM ANTT, JR.
5 Real Estate Commissioner

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IV

The facts giving rise to said conviction are that respondent entered the Price Club with the intent to buy a car seat for a baby shower, and to steal an electric drill. He opened the box containing the car seat, secreted the drill in the box and re-sealed the box. He went through a check out line, paid for the car seat and was apprehended.

V

He entered his plea within three (3) days; and respondent was placed on court probation for three (3) years subject to various terms and conditions including a fine totaling \$880. At this time, he should be on probation until October 1996.

VI

Respondent is 56 years old and emigrated to this country in the 1950's to study engineering. He obtained a B.S. in Electrical Engineering from Purdue University and also a Masters Degree. He worked for Reliance Electric in Indiana, and in California for Thompson Ramo Woolridge and Rockwell. While employed at Hughes Aircraft in the late 1970's, he began selling residential real estate for Century 21 and in 1989 went into real estate full time. He got his broker's license in 1991 and began doing business as Coastline Realty and Investments, in Huntington Beach and also does property management.

VII

Respondent is embarrassed by his conviction. At first he testified that due to being ashamed, he did not have a lawyer; however, when it was pointed out that the record shows he had a public defender, he agreed that he had been represented at the time of his plea.

VIII

Unfortunately, due to respondent's embarrassment, he has kept the conviction secret. No substantial evidence of rehabilitation was introduced, other than the passage of 18 months, without further problems. Presumably, the fine was paid.

No mitigating circumstances were introduced, respondent unquestionably had adequate funds to buy the stolen drill. Little understanding of his conduct is apparent; and due to his inability to be open and forthright about the conviction, he cannot be allowed to operate unsupervised as a broker.

IX

Respondent has no prior criminal convictions and probably will not repeat the conduct; however, due to the recentness of the above events, those dealing with him and for whom he provides services, or those who employ him have a right to know of his conviction. He should be able to operate as a supervised salesperson; provided that shares his past record with those employing and relying on him.

* * * * *

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

I

Cause for disciplinary action against the real estate broker's license of respondent James Dickson Au, exists under the provisions of Sections 490 and 10177(b) of the Business and Professions Code, by reason of Finding III.

II

Taking into account respondent's total record, and all competent evidence of rehabilitation, the public interest can be adequately protected by revoking his broker's license and restricting the respondent's right to a real estate salesperson's license.

* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The real estate broker's license and licensing rights of James Dickson Au, are hereby revoked; provided however, a restricted real estate salesperson's 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 sixty (60) days from the effective date of the Decision herein. The restricted license issued to respondent shall be subject to all 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:

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1. Said restricted license may be suspended prior to hearing by order of the Real Estate Commissioner in the event of respondent's conviction, including conviction by plea of nolo contendere, of a crime which bears a significant relation to respondent's fitness or capacity as a real estate licensee, or his failure to fully comply with his probation in Case No. 93M1145.

2. Said restricted license may be suspended prior to hearing by order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate law; the subdivided Lands Law, Regulations of the Real Estate Commissioner or the conditions attaching to this restricted license.

3. 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 three (3) years have elapsed from the date of issuance of the restricted license to respondent:

4. Respondent shall submit with his application for said restricted license under an employing broker, or any application in the future for transfer to a new employing broker; a statement signed by the prospective employing broker which shall certify:

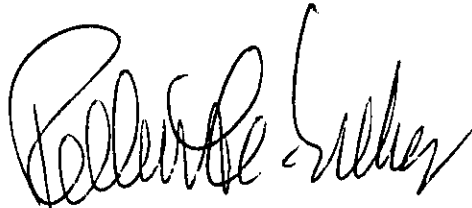
- a. That he has read the Decision of the Commissioner which granted the right to a restricted license; and
- b. That he will exercise close supervision over the performance by the restricted licensee of activities for which a real estate license is required.

5. 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 the suspension of the restricted license until the respondent passes the examination.

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6. Respondent shall, within twelve (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 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.

DATED: 19 July 95



ROBERT A. NEHER
Administrative Law Judge
Office of Administrative Hearings

RAN:btm

SAC

FILED
AUG - 8 1995
DEPARTMENT OF REAL ESTATE

By C. Bay

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
JAMES DICKSON AU,) NO. H-1962 SA
Respondent.) L-9504140

NOTICE

TO: JAMES DICKSON AU, Respondent

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated July 19, 1995, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated July 19, 1995, is attached for your information.

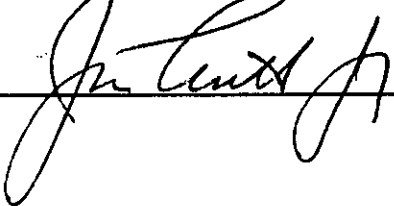
In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on June 7, 1995, and any written argument hereafter submitted on behalf of respondent and complainant.

1 Written argument of respondent to be considered by me
2 must be submitted within 15 days after receipt of the transcript
3 of the proceedings of June 7, 1995, at the Los Angeles office of
4 the Department of Real Estate unless an extension of the time is
5 granted for good cause shown.

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

11 DATED: 8/2/95

12 JIM ANTT, JR.
13 Real Estate Commissioner

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

I

Cause for disciplinary action against the real estate broker's license of respondent James Dickson Au, exists under the provisions of Sections 490 and 10177(b) of the Business and Professions Code, by reason of Finding III.

II

Taking into account respondent's total record, and all competent evidence of rehabilitation, the public interest can be adequately protected by revoking his broker's license and restricting the respondent's right to a real estate salesperson's license.

* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

adopted { The real estate broker's license and licensing rights of James Dickson Au, are hereby revoked; provided however, a restricted real estate salesperson's 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 sixty (60) days from the effective date of the Decision herein. The restricted license issued to respondent shall be subject to all 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:

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1. Said restricted license may be suspended prior to hearing by order of the Real Estate Commissioner in the event of respondent's conviction, including conviction by plea of nolo contendere, of a crime which bears a significant relation to respondent's fitness or capacity as a real estate licensee, or his failure to fully comply with his probation in Case No. 93M1145.

2. Said restricted license may be suspended prior to hearing by order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate law; the subdivided Lands Law, Regulations of the Real Estate Commissioner or the conditions attaching to this restricted license.

3. 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 three (3) years have elapsed from the date of issuance of the restricted license to respondent:

4. Respondent shall submit with his application for said restricted license under an employing broker, or any application in the future for transfer to a new employing broker; a statement signed by the prospective employing broker which shall certify:

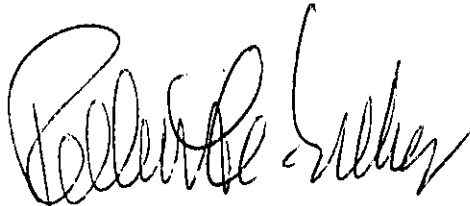
- a. That he has read the Decision of
the Commissioner which granted the
right to a restricted license; and
- b. That he will exercise close supervision
over the performance by the restricted
licensee of activities for which a
real estate license is required.

5. 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 the suspension of the restricted license until the respondent passes the examination.

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adopted { 6. Respondent shall, within twelve (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 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.

DATED: 19 July 95



ROBERT A. NEHER
Administrative Law Judge
Office of Administrative Hearings

RAN:btm

Joe

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)

Case No. H-1962 SA

JAMES DICKSON AU,)

OAH No. L-9504140

Respondent(s)

FILED
MAY - 3' 1995
DEPARTMENT OF REAL ESTATE

NOTICE OF HEARING ON ACCUSATION

To the above-named Respondent(s):

By C. Leong

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 314 W. First Street, Los Angeles, CA 90012 on FRIDAY, JUNE 9, 1995, at the hour of 1:30 P.M., 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: May 3, 1995

By

Chris Leong
CHRISTOPHER K.D. LEONG, Counsel

cc: James Dickson Au
✓ Sacto.
OAH

CEB

RE 501 (La Mac 11/92)

1 CHRISTOPHER K.D. LEONG, Counsel
2 Department of Real Estate
3 107 South Broadway, Room 8107
4 Los Angeles, California 90012

5 (213) 897-3937

FILED
MAR - 1 1995
DEPARTMENT OF REAL ESTATE

By C. Bay

8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * * *

11 In the Matter of the Accusation of) No. H-1962 SA
12 JAMES DICKSON AU,) A C C U S A T I O N
13 Respondent.)
14 _____)

15 The Complainant, Thomas McCrady, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against JAMES DICKSON AU (hereinafter "Respondent"), is informed
18 and 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 against Respondent in his official capacity.

23 II

24 Respondent is presently licensed and/or has license
25 rights under the Real Estate Law, Part 1 of Division 4 of the
26 Business and Professions Code (hereinafter "the Code") as a real
27 estate broker.

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III

On or about October 8, 1993, in the Los Angeles Municipal Court, Downey Judicial District, Respondent was convicted of violation of Section 459 PC (Second degree commercial burglary), a crime involving moral turpitude which is substantially related under Section 2910, Title 10, Chapter 6, California Code of Regulations, to the qualifications, functions or duties of a licensee.

IV

Respondent's criminal conviction as alleged above, in Paragraph III, is cause under Sections 10177(b) and 490 of the Code for the suspension or revocation of all licenses and license rights of Respondent under the Real Estate Law.

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 JAMES DICKSON AU, 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 1st day of March, 1995.

THOMAS MCCRADY

Deputy Real Estate Commissioner

cc: James Dickson Au
Sacto.
SR