

1 to demonstrate to my satisfaction that Respondent has undergone
2 sufficient rehabilitation to warrant the reinstatement of
3 Respondent's real estate broker license. Included among the
4 terms and conditions contained in the Decision rendered in this
5 matter is the following:

6 "5. Respondent shall not be eligible to apply for
7 the issuance of an unrestricted license nor for the
8 removal of any of the conditions, limitations or
9 restrictions of a restricted license until four (4)
years have elapsed from the effective date of this
Decision."

10 The Decision in this matter became effective on November 18,
11 1997. The four year period will not expire until November 18,
12 2001.

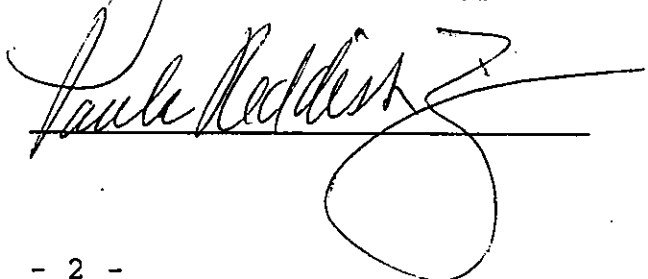
13 Consequently, by virtue of the terms and conditions
14 contained in the Decision, Respondent is not sufficiently
15 rehabilitated to receive an unrestricted real estate broker
16 license.

17 NOW, THEREFORE, IT IS ORDERED that Respondent's
18 petition for reinstatement of his real estate broker license is
19 denied.

20 This Order shall become effective at 12 o'clock
21 noon on September 7, 2000.

22 DATED: August 9, 2000

23
24 PAULA REDDISH ZINNEMANN
25 Real Estate Commissioner

26 
27

FILED
OCT 30 1997
DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By *K. Stuberholts*

* * * * *

In the Matter of the Accusation of)

No. H-2011 SA

L-9505272

ROBERT MILTON PRESTWOOD,)

Respondent (s).)

DECISION

The Proposed Decision dated September 24, 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.

This Decision shall become effective at 12 o'clock noon on November 18, 1997.

IT IS SO ORDERED

10/21/97

JIM ANTT, JR.
Real Estate Commissioner

J. Antt, Jr.

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
ROBERT MILTON PRESTWOOD,)
)
 Respondent.)
)
)
)
)
)

Case No. H-2011 SA
OAH No. L-9505272

PROPOSED DECISION

This matter came on regularly for hearing before H. Stuart Waxman, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California on September 11, 1997.

Complainant, Thomas McCrady, was represented by Marjorie P. Mersel, Real Estate Counsel.

Respondent, Robert Milton Prestwood ("Respondent"), was present and was represented by Jan A. Zemanek, Attorney at Law.

At the hearing, Complainant amended Paragraph III of the Accusation to read as follows:

The conduct of Respondent, set forth above, consists of making a material misrepresentation, fraud and/or dishonest dealing, and is grounds for the suspension or revocation of Respondent's real estate salesperson (sic) license and license rights under Sections 10177(a), (d) and (g) and 10176(i) of the Code.

Complainant also amended Paragraph V of the Accusation to read as follows:

The material misrepresentations, fraud and dishonest dealing of Respondent, as set forth above, is still further cause to suspend or revoke his license and license rights pursuant to Sections 10176(a) and (i) and 10177(d) and (g) of the Code.

Oral and documentary evidence was received and the matter was submitted for decision.

During the hearing, Respondent made several hearsay objections to testimony concerning his conversations with Department of Real Estate employees and/or representatives at the time he attempted to renew his salesperson's license. The objections were taken under submission and are overruled.

Because Complainant failed to give Respondent a 10-day notice of intent to introduce the Declaration of Diane Chesley (Complainant's Exhibit 4 with attachments), the Declaration was admitted and considered as hearsay evidence pursuant to Government Code section 11514. Respondent's hearsay objection to Exhibit 4 is sustained.

Respondent's Motion to Dismiss was marked as Respondent's "L." The motion is denied.

FINDINGS OF FACT

The Administrative Law Judge makes the following Findings of Fact:

1. The Accusation was made by Thomas McCrady, Complainant, who is a Deputy Real Estate Commissioner of the State of California, acting in his official capacity.

2. Respondent was issued a license as a real estate salesperson in 1989. (The exact date was not disclosed by the evidence.) The license terminated on September 14, 1993 upon the issuance of his broker's license.

3. Respondent was issued a license as a real estate broker by the Department of Real Estate ("Department") on September 14, 1993. That license expired on September 13, 1997. The evidence did not disclose whether the license has been renewed.

4. On May 3, 1993, Respondent entered the Department of Real Estate office in Santa Ana with an application for renewal of his salesperson's license. The application did not bear the signature of Respondent's employing broker. He explained to Deputy Real Estate Commissioner, Charles Villanti, that it was his last day to renew the license without having to pay a late fee. Mr. Villanti questioned his supervisor as to whether the application could be accepted without the broker's signature. She answered negatively and respondent then left the office with the application.

5. Approximately five (5) minutes later, Respondent returned to the office with an application on which he had forged the signature of Walter P. Nikowitz, his employing broker. He claimed he found the signed application in his car.

6. Mr. Villanti telephoned Mr. Nikowitz who told him he had not pre-signed the application and had not given permission to Respondent to sign for him. Mr. Villanti then asked Mr. Nikowitz to fax his signature to the office. A comparison of the two signatures verified the forgery. Mr. Nikowitz terminated Respondent's employment the same day.

7. In March of 1993, while Respondent was still in Nikowitz's employ, he was approached by a potential client named Diane Chesley. Ms. Chesley stated she wished to refinance a three-unit apartment building which she owned. She came to his office and told him the information he needed to complete the application. She also provided him with an appraisal on the property which had been performed by her cousin. The appraisal bore the signature of three brokers.

8. Respondent filled in a Form 1003 loan application based upon the information Ms. Chesley had provided. At the time he completed the application, Respondent was aware that independent sources would be called upon to verify the information contained on the form. The information Ms. Chesley provided included her representation that she lived on the property which was to be refinanced. Ms. Chesley signed and initialed the appropriate boxes on the application.

9. A subsequent credit check revealed a seventeen thousand, five hundred dollar (\$17,500) judgment against Ms. Chesley. Respondent telephoned Ms. Chesley and told her he would be unable to procure the loan for her because of that judgment. Ms. Chesley stated the judgment was against someone else who had the same name and that she would provide documentation to prove it. Respondent kept Ms. Chesley's file open but Ms. Chesley did not send the documentation.

10. After his termination from Mr. Nikowitz's office, Respondent took a position at Tri-County Mortgage ("Tri-County"), owned by Wendy Poteet and her husband. Mr. Nikowitz transferred the Chesley file, which contained only the application, credit check and the appraisal, to Tri-County. Tri-County loan processors ran another credit check and obtained tax records and employment verification. The credit check disclosed the same judgment which Respondent had earlier discovered. Respondent was not involved in the process of verifying the information on the application or obtaining documentation to support the application. In fact, other than again informing Ms. Chesley that he could not get her the loan with the judgment against her, he had no further involvement with the file. All documentation, except for the original application, the first credit check and the appraisal, was obtained by Tri-County's loan processors.

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11. Much of the financial information Ms. Chesley had provided turned out to be false. In addition, Ms. Chesley later told Ms. Poteet she was not living on the property. However, Ms. Chesley claimed just the opposite in a note she wrote to the loan processor.

12. On August 19, 1993, after receiving his broker's license, Respondent sent a letter to Ms. Poteet resigning from Tri-County and stating his intentions to serve as a broker at another mortgage company. In the letter he listed the fourteen (14) loans which he had in process at Tri-County (including Ms. Chesley's) and requesting Ms. Poteet not to deal directly with his clients. Ms. Poteet did not comply. Instead, she contacted the clients, informed them that Respondent had overcharged them and renegotiated their loans in order to keep them at Tri-County. Eleven (11) of the fourteen (14) clients stayed with Tri-County.

13. On September 13, 1993, after Respondent filed a lawsuit against Tri-County, Ms. Poteet wrote to the Department, stating she had terminated Respondent on August 31, 1993, and accusing Respondent of fraud, misleading advertising and misleading clients on their interest rates.

DETERMINATION OF ISSUES

Pursuant to the foregoing Findings of Fact, the Administrative Law Judge makes the following determination of issues:

As to the License Renewal Application

1. Cause exists to suspend or revoke Respondent's real estate broker's license because of misrepresentation, fraud and deceit, pursuant to the provisions of Business & Professions Code sections and 10176(i) and 10177(a), as set forth in Findings 4, 5 and 6.

Respondent claims he did not have the application with him when he entered the Department office the first time, and that he obtained it from his car after he was told he needed it to renew his license. The testimony of Mr. Villanti and his supervisor, that he had the unsigned application with him the first time and returned five minutes later with it signed, is the more credible on this issue.

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While forging a broker's name on a renewal application could easily justify a license revocation, that degree of discipline seems overly harsh in this case. There is no dispute as to whether Mr. Nikowitz was Respondent's employing broker. Therefore, it may be inferred that Mr. Nikowitz would have signed the application had he been given the opportunity to do so. Respondent's motivation for his conduct was the distance he would have to travel, to and from Mr. Nikowitz's office, simply to obtain a signature, coupled with the fact that Respondent would have to pay a late fee if he did not submit the application that day. While that motivation does not serve as an excuse for Respondent's dishonest conduct, it is more indicative of someone trying to "cut corners" than of someone of ignoble character. Therefore, the public interest can best be served by the issuance of a properly-conditioned and temporarily-suspended restricted license.

As to the Chesley Loan Application

2. Cause does not exist to suspend or revoke Respondent's real estate broker's license because of misrepresentation, fraud and dishonest dealing, pursuant to the provisions of Business & Professions Code sections 10176(i) and 10177(d) and (g), as set forth in Findings 7, 8, 9, 10, 11, 12 and 13.

It was Complainant's burden to prove the allegations in the Accusation by clear and convincing evidence. Ettinger v. Board of Medical Quality Assurance (1982) 135 Cal.App.3d 853, 856, 185 Cal.Rptr. 601. His failure to produce either Diane Chesley or Wendy Poteet at trial, coupled with his failure to provide Respondent with the statutory 10-day notice for admission of Diane Chesley's declaration, was fatal his ability to prevail on this aspect of the case.

Further, Respondent had no motive to falsify the information on the application since he was aware the information would be verified through independent sources. Even if he had placed false information on the application, he would not have submitted the file containing the falsified application to Tri-County since he already knew Ms. Chesley would not qualify for the loan because of the judgment against her.

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent, Robert Milton Prestwood, under the Real Estate Law are revoked; provided, however, a restricted real estate broker 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 the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of 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 that Code:

1. Any restricted real estate license issued to Respondent pursuant to this Decision shall be suspended for one hundred eighty (180) days from the date of issuance of said restricted license.

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

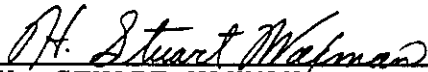
3. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

4. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate 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.

Respondent shall, within six months from the effective date of this Decision, 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 Respondent's license until Respondent passes the examination.

5. 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 four (4) years have elapsed from the effective date of this Decision.

DATED: September 24, 1997



H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings

Handwritten initials/signature

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
JUN - 6 1997
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of
ROBERT MILTON PRESTWOOD,

By *[Signature]*

Case No. H-2011 SA

OAH No. L-9505272

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 _____
Office of Administrative Hearings, 107 South Broadway, Second Floor
Los Angeles, CA 90012

on September 11, 1997 at the hour of 9:00 a.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.

Dated: June 6, 1997

DEPARTMENT OF REAL ESTATE
By *[Signature]*
Counsel

cc: Robert Milton Prestwood
Jan A. Zemanek, Esq.
Sacto
OAH
RE 501 (1/92)

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
AUG 21 1996
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

ROBERT MILTON PRESSWOOD,

Respondent

By R. Melicholt

Case No. H-2011 SA

OAH No. 9505272

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, 314 West First Street, Los Angeles

on November 8, 1996, at the hour of 9:00 a.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.

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DEPARTMENT OF REAL ESTATE

Dated: August 21, 1996

By Marjorie P. Messel
Counsel

cc: Robert Milton Presswood
Jan A. Zemanek, Esq.
Sacto OAH

Sacto
Zemanek

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

FILED
JUN 16 1995

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of)

Case No. H-2011 SA

ROBERT MILTON PRESTWOOD,

OAH No. L-9505272

By Reguel P. Peralta

Respondent (s)

NOTICE OF HEARING ON ACCUSATION

To the above-named Respondent (s):

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, October 6, 1995, at the hour of 9:00 A.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: June 16, 1995

By Marjorie P. Merse
MARJORIE P. MERSEL, Counsel

cc: Robert Milton Prestwood
Jan A. Zemanek, Esq.
Sacto.
OAH

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RE 501 (La Mac 11/92)

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1 MARJORIE P. MERSEL, Counsel
Department of Real Estate
2 107 South Broadway, Room 8107
Los Angeles, California 90012
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FILED
MAY 02 1995
DEPARTMENT OF REAL ESTATE

4 (213) 897-3937
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By *Raquel B. Pera*

8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * * *

11 In the Matter of the Accusation of) No. H-2011 SA
12)
13 ROBERT MILTON PRESTWOOD,) ACCUSATION
14)
Respondent(s).)
_____)

15 The Complainant, Thomas McCrady, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against ROBERT MILTON PRESTWOOD (hereinafter "Respondent"), is
18 informed and alleges as follows:

19 I

20 Respondent is presently licensed and/or has license
21 rights under the Real Estate Law (Part 1 of Division 4 of the
22 California Business and Professions Code, hereinafter "Code") as
23 a real estate salesperson. As described in the First Cause of
24 Accusation, he was employed by real estate broker Walter P.
25 Nikowitz. As described in the Second Cause of Accusation, he was
26 employed by real estate broker Wendy Marie Poteet, dba Tri County
27 Mortgage.

1 FIRST CAUSE OF ACCUSATION

2 II

3 On or about May 3, 1993, Respondent submitted and
4 completed a Salesperson Renewal Application Form (RE 209) which
5 he implicitly represented was signed by Walter P. Nikowitz. In
6 truth and in fact, this application was not signed by Nikowitz.
7 This was a material fact which was known, or should have been
8 known, by Respondent.

9 III

10 The conduct of Respondent, set forth above, consists of
11 making a material misrepresentation, fraud and/or dishonest
12 dealing, and is grounds for the suspension or revocation of
13 Respondent's real estate salesperson license and license rights
14 under Sections 10177(a) and 10176(i) of the Code.

15 SECOND CAUSE OF ACCUSATION

16 IV

17 While employed by Tri County Mortgage, Respondent, for
18 or in expectation of compensation, solicited for and thereafter
19 commenced to negotiate a loan secured by a lien on real property
20 on behalf of Diane Chesley during the first part of 1993. After
21 meeting Chesley in Huntington Harbour, California, and after
22 obtaining from Chesley what was true information concerning her
23 finances and assets, Respondent submitted to his employer bogus
24 information about Chesley's income, net rental income, life
25 insurance and personal property, also falsely indicating that

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1 Chesley would be residing on the property that would serve as
2 security for the proposed loan. When Respondent's employer
3 learned of the acts and omissions of Respondent, he was
4 terminated, and Tri County declined to take further action to
5 obtain the desired loan for Chesley.

6 V

7 The material misrepresentations, fraud and dishonest
8 dealing of Respondent, as set forth above, is still further cause
9 to suspend or revoke his license and license rights pursuant to
10 Sections 10176(a) and (i) of the Code.

11 WHEREFORE, Complainant prays that a hearing be
12 conducted on the allegations of this Accusation and that upon
13 proof thereof, a decision be rendered imposing disciplinary
14 action against license and license rights of Respondent, ROBERT
15 MILTON PRESTWOOD, under the Real Estate Law (Part 1 of Division 4
16 of the Business and Professions Code) and for such other and
17 further relief as may be proper under other applicable provisions
18 of law.

19 Dated at Santa Ana, California
20 this 2nd day of May, 1995.

21
22 THOMAS McCRADY
23 Deputy Real Estate Commissioner
24

25 cc: Robert Milton Prestwood
26 Sacto.
27 CEV