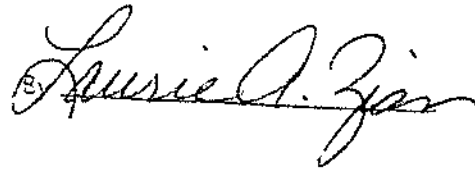


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FILED
MAR 10 1998
DEPARTMENT OF REAL ESTATE



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of))	
PHILIP BRENT GORMAN,)	NO. H-2146 SD
Respondent.)	
_____)	

ORDER GRANTING REINSTATEMENT OF LICENSE

On June 14, 1995, a Decision was rendered herein revoking the real estate broker license of Respondent, but granting Respondent the right to the issuance of a restricted real estate broker license. A restricted real estate broker license was issued to Respondent on September 1, 1995, and Respondent has operated as a restricted licensee without cause for disciplinary action against Respondent since that time.

On January 11, 1997, Respondent petitioned for reinstatement of said real estate broker license and the Attorney General of the State of California has been given notice of the filing of said petition.

1 I have considered Respondent's petition 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 broker
6 license and that it would not be against the public interest to
7 issue said license to him.

8 NOW, THEREFORE, IT IS ORDERED that Respondent's
9 petition for reinstatement is granted and that a real estate
10 broker license be issued to Respondent, if Respondent satisfies
11 the following conditions within six (6) months from the date of
12 this Order:

13 1. Submittal of a completed application and payment of
14 the fee for a real estate broker 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: 3/4, 1998.

22
23 JIM ANTT, JR.
24 Real Estate Commissioner

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FILED
AUG - 1 1995
DEPARTMENT OF REAL ESTATE

By *[Signature]*

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	No. H-2146 SD
PHILIP BRENT GORMAN,)	L-9503015
Respondent.)	

ORDER STAYING EFFECTIVE DATE

On June 14, 1995, a Decision was rendered in the above-entitled matter to become effective August 3, 1995.

IT IS HEREBY ORDERED that the effective date of the Decision of June 14, 1995, is stayed for a period of 30 days.

The Decision of June 14, 1995, shall become effective at 12 o'clock noon on September 1, 1995.


DATED: August 1, 1995.

JIM ANTT, JR.
Real Estate Commissioner

By: *[Signature]*
RANDOLPH BRENDIA
Regional Manager

FILED
JUL 14 1995
DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By 

* * * * *

In the Matter of the Accusation of) No. H-2146 SD
)
) L-9503015
PHILIP BRENT GORMAN,)
)
)
Respondent.)
_____)

DECISION

The Proposed Decision dated April 24, 1995, 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.

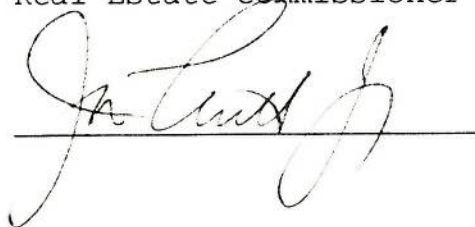
The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on August 3, 1995.

IT IS SO ORDERED 6-14, 1995.

JIM ANTT, JR.
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation)	
of:)	
)	No. H-2146 SD
PHILIP BRENT GORMAN,)	
)	OAH No. L-9503015
Respondent.)	
<hr/>		

PROPOSED DECISION

On April 14, 1995, in San Diego, California, James Ahler, Administrative Law Judge, Office of Administrative Hearings, heard this matter.

Elliott Mac Lennan, Counsel, represented the Department of Real Estate (hereafter the Department).

Bruce Sulzner, Attorney at Law, represented respondent Philip Brent Gorman (hereafter respondent), who was present throughout the hearing.

Evidence was received, argument was given, the record was closed, and the matter was submitted.

FINDINGS OF FACT

I

On January 2, 1979, the Department issued respondent a real estate broker's license. Respondent's license has remained in effect since.

Respondent's real estate broker's license will expire on January 1, 1999, unless suspended or revoked.

II

On February 15, 1995, J. Chris Graves, Deputy Real Estate Commissioner, signed the Accusation in his official capacity.

III

On January 31, 1994, respondent was convicted, on his plea of guilty, of Aiding and Abetting Bankruptcy Fraud, a

felony, in violation of Title 18, United States Code, sections 2 and 152, in the United States District Court for the Southern District of California, in People of the United States of America v. Philip B. Gorman, bearing Case No. 93-1362-T.

Respondent was placed on three years probation, was ordered to perform two hundred hours of community work as directed by his probation officer, pay a special assessment of \$50, and comply with the standard conditions of the United States Probation Department.

IV

Respondent's criminal conviction arose out of a real estate transaction involving Richard Carroll (hereafter Carroll).

Carroll initially retained respondent to market Carroll's unimproved real property. Although the property was substantial and quite valuable, it did not sell during the six months respondent held the listing. The property was withdrawn from the market and respondent's listing lapsed.

During the period respondent held the listing, respondent and Carroll became close friends. Respondent and his wife sponsored Carroll's children at St. James Catholic Church in Del Mar. Respondent and Carroll became partners in a joint venture involving the rehabilitation and sale of several residences having cracked slabs. The joint venture was known as JBS Development, and both respondent and Carroll had authority to sign checks drawn on JBS Development's account.

After the listing lapsed, Carroll found a buyer for his property. Carroll and the buyer reached agreements on all terms including a sales price of \$6,000,000. Carroll asked respondent to complete the necessary paperwork and close the transaction. At the time, respondent was aware Carroll was in bankruptcy and that Nate Jones, an attorney, was handling the bankruptcy on Carroll's behalf.

Respondent did not list the property before attending to the paperwork and closing the transaction, as was his custom. He did not do so because, he testified, he believed Carroll was his friend. Respondent and Carroll agreed respondent's commission would be five percent of the \$6,000,000 sale, with approximately \$30,000 to be paid directly to respondent on the close of escrow and the remaining commission of approximately \$270,000 to be deposited into JBS Development's account. Later, and before escrow closed, respondent agreed to the deposit of his entire \$300,000 commission into JBS Development's account.

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Even though he was an experienced licensed real estate broker, it never occurred to respondent that the manner in which the commission was structured might defraud Carroll's creditors in bankruptcy. Respondent trusted Carroll, a sophisticated investor with whom respondent was engaged in an ongoing joint venture which respondent's commission funded. Respondent first learned the transaction might be amiss when Carroll summoned respondent to his office and told him there was a "major problem" and respondent "might need an attorney." Respondent retained an attorney and, according to respondent, he then first learned Carroll had not disclosed to his creditors that JBS Development received respondent's \$300,000 commission.

Respondent received no monetary compensation for his services rendered in the sale of Carroll's unimproved real property. Respondent received no direct benefit from aiding and abetting Carroll's bankruptcy fraud, although he did have access to the funds in JBS Development's account and he intended such funds would be used to promote his and Carroll's joint venture.

In describing his criminal conduct, respondent testified he was "kind of a lackey" whose conviction was the result of his "failure to attend to details" and who "let Richard run the show." Respondent's felony conviction arose directly out of his activities as a licensed real estate broker.

V

It is well established that crimes involving the obstruction of justice involve moral turpitude. See, B. Witkin, 1 Cal.Proc. (Third Edition), Attorneys, section 378, p. 428. Witkin notes:

Obvious examples of crimes involving moral turpitude are solicitation of perjury (In re Allen (1959) 52 Cal.2d 762); theft (In re Rothrock (1940) 16 Cal.2d 499); and conspiracy to obstruct justice (In re Craig (1938) 12 Cal.2d 93). (See also In re Jones (1971) 5 Cal.3d 390, citing the text [subornation of perjury and offering false evidence]; In re Hanley (1975) 13 Cal.3d 448, 451 [bribing a witness not to testify]; In re Kristovich (1976) 18 Cal.3d 468 [perjury conviction of public administrator for swearing to false names of buyers at probate sales; 3-month actual suspension despite absence of pecuniary harm]; Montag v. State Bar (1982) 32 Cal.3d 721, 725 [perjury in testimony before grand jury].)

The crime of Aiding and Abetting Bankruptcy Fraud is no different and involves moral turpitude.

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VI

A real estate broker is required to be truthful and forthright in transactions involving the financing and sale of real property. A real estate broker must prepare and maintain accurate records of such transactions. A real estate broker must be of good moral character and not himself engage in fraudulent acts or assist others in committing fraudulent acts. A real estate broker must attend to details to ensure the transaction for which he provides professional services is not a fraudulent one.

The crime of Aiding and Abetting Bankruptcy Fraud bears a substantial adverse relationship to the qualifications, functions, and duties of a real estate broker.

VII

Respondent grew up in California. He is now fifty-three years old. Respondent graduated from Chico High School in 1959. He attended Chico State College for two years and then transferred to San Diego State College. Respondent graduated from San Diego State with a Bachelor of Arts degree in Social Science and a Master of Arts degree in Education.

Respondent was a member of the United States Army Reserves.

Respondent is married to Christina, a high school teacher. Respondent and his wife have an eleven year old daughter. Respondent's mother-in-law resides with his family in their Del Mar home where respondent's family has lived since 1978.

Respondent was a junior high and high school teacher after graduating from college. Respondent became a licensed real estate salesperson in 1965 after completing an educational program and passing the necessary tests. Respondent worked full time as a teacher and part time as a real estate salesperson from 1965 through 1976. Respondent's income as a teacher was not sufficient to meet his family's needs and he had no desire to be a school administrator.

In 1976, respondent abandoned the teaching profession and entered the real estate field on a full time basis. Respondent was a real estate salesperson from 1976 through 1979. In 1979, the Department issued respondent a real estate broker's license.

Respondent was associated with various concerns from 1979 to 1992. Respondent has been employed as a mortgage broker

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by TenBrook & Associates since 1992. Respondent's supervisor, Timothy TenBrook, is aware of respondent's felony conviction.

VIII

During his criminal prosecution, respondent was preoccupied with his personal situation and became depressed. He felt sorry for himself. Respondent had difficulty sleeping and functioning. Respondent sought counseling for his depression, as he previously sought counseling for marital problems.

Respondent has some insight into the circumstances resulting in his criminal conviction. He understands his misguided friendship with Carroll and his failure to put his professional responsibilities before his personal friendship was his undoing. Respondent does not fully appreciate that while he did not directly profit from the Carroll transaction, his conduct permitted Carroll to defraud the bankruptcy court and resulted in injury to Carroll's creditors.

IX

Respondent has no other criminal convictions. His license has never been disciplined. Respondent is embarrassed and ashamed of his felony conviction. Whether respondent recognizes his conduct was wrong is not as clear. While the circumstances leading to respondent's criminal conviction were somewhat unique, in the absence of discipline there is no guarantee respondent will not disregard his professional obligations as a result of a misguided sense of loyalty to his friends in the future. A substantial suspension coupled with conditions attached to a restricted license should serve to remind respondent his professional responsibilities are paramount.

DETERMINATION OF ISSUES

I

Cause exists to suspend or revoke respondent's real estate broker's license pursuant to both Business and Professions Code section 490 and Business and Professions Code section 10177(b), based on respondent's felony conviction of Aiding and Abetting Bankruptcy Fraud, a crime involving moral turpitude. Respondent's criminal conviction is substantially and adversely related to the qualifications, functions, and duties of a real estate broker; and, respondent's felony conviction was, in fact, directly the result of his licensed activities as a real estate broker, based on Findings of Fact III and IV, V, and VI.

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II

Other than his criminal conviction, respondent has led a responsible life and has been law abiding. Respondent is ashamed and remorseful concerning his conviction and, based on Findings of Fact VII, VIII, and IX, it would not be against the public interest for the Department to issue respondent a restricted real estate broker's license following a substantial suspension to impress upon respondent his obligation to act professionally in all transactions.

ORDER

All real estate licenses and licensing rights of respondent under the Real Estate Law are hereby revoked; provided, however, that a restricted real estate broker's license shall be issued to respondent pursuant to Business and Professions Code section 10156.6 if respondent makes application for such a restricted license and pays to the Department of Real Estate the appropriate fee for that restricted license within nine (9) months of the effective date of the Order herein. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and shall also be restricted for a period of four (4) years from the effective date of this decision on the following terms and conditions pursuant to Business and Professions Code section 10156.6:

1. Respondent's restricted real estate broker's license is suspended for a period of six (6) months from effective date of its issuance.
2. Respondent shall obey all federal and state laws, and he shall obey all provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner and all other conditions attaching to the restricted license.
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 any other condition attaching to the restricted license.

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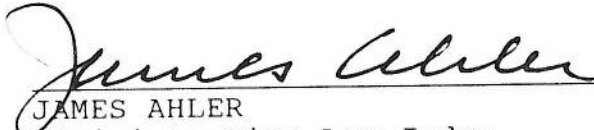
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4. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate broker's license or for the removal of any of the conditions, limitations, or restrictions imposed on his restricted license until one (1) year has elapsed from the effective date of this Decision.
5. Respondent shall notify the Commissioner in writing if he is arrested for any alleged violation of law within ten (10) working days of such an arrest by writing the Commissioner a letter, which shall be return receipt requested, setting forth the date he was arrested, the allegations underlying his arrest, the arresting agency, the court or agency before whom the charges are pending, and the identification number assigned to the proceeding.
6. Respondent shall, within six (6) months of the effective date of the issuance of any 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.
7. Respondent shall, within twelve (12) months of the effective date of the Decision, present evidence satisfactory to the Commissioner that he has, since the most recent issuance of an original or a renewal real estate license, taken and successfully completed all continuing education requirements imposed by the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order suspension of the restricted license until 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: April 24, 1995.



JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings

1 ELLIOTT MAC LENNAN, Counsel
2 Department of Real Estate
3 107 South Broadway, Room 8107
4 Los Angeles, California 90012

5 (213) 897-3937

FILED
FEB 15 1995
DEPARTMENT OF REAL ESTATE

By 

8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * * *

11 In the Matter of the Accusation of)
12 PHILIP BRENT GORMAN,) No. H-2146 SD
13 Respondent.) A C C U S A T I O N
14 _____)

15 The Complainant, J. Chris Graves, a Deputy Real Estate
16 Commissioner of the State of California, for cause of accusation
17 against PHILIP BRENT GORMAN is informed and alleges in his
18 official capacity as follows:

19 I

20 PHILIP BRENT GORMAN (respondent) is presently licensed
21 and/or has license rights under the Real Estate Law (Part 1 of
22 Division 4 of the California Business and Professions Code)
23 (Code).

24 II

25 Respondent was originally licensed by the Department of
26 Real Estate of the State of California as a real estate broker on
27 January 2, 1979.

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III

On January 31, 1994, in the United States District Court for the Southern District of California, case number 93-1362-T, respondent was convicted upon plea of guilt of violating one count of 18 United States Code:

<u>Sections</u>	<u>Count</u>	<u>Violation</u>
2 & 152	1	Aiding and Abetting Bankruptcy Fraud

The above-listed violation is a felony crime which by its facts and circumstances involves moral turpitude and is substantially related under Section 2910, Chapter 6, Title 10 of the California Code of Regulations to the qualifications, functions or duties of a real estate licensee.

IV

The facts as alleged constitute cause under Sections 490 and 10177(b) of the Code for the suspension or revocation of the license and license rights of respondent under the Real Estate Law.

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1 WHEREFORE, Complainant prays that a hearing be conducted
2 on the allegations made by the Accusation and, that upon proof
3 thereof, a decision be rendered imposing disciplinary action
4 against the license and license rights of respondent PHILIP BRENT
5 GORMAN under the Real Estate Law (Part 1 of Division 4 of the
6 Business and Professions Code) and for such other and further
7 relief as may be proper under other applicable provisions of law.
8 Dated at San Diego, California
9 this 15th day of February, 1995.

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12 J. CHRIS GRAVES
 Deputy Real Estate Commissioner
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24 cc: Philip Brent Gorman
25 Sacto.
 RJM
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