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FILED  
MAR 25 2002

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )  
LEE DAVIS CAUDILL, ) NO. H-2204 SD  
Respondent. )

ORDER DENYING REINSTATEMENT OF LICENSE

On March 28, 1996, a Decision 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 May 1, 1996.

On August 16, 2000, Respondent petitioned for reinstatement of said license and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has failed

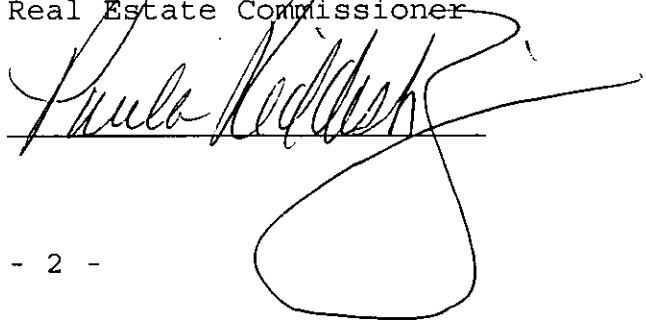
1 to demonstrate to my satisfaction that Respondent has undergone  
2 sufficient rehabilitation to warrant the reinstatement of  
3 Respondent's real estate salesperson license. On or about May 3,  
4 2000, Respondent, in the course of a transaction for which a real  
5 estate license was required, created and submitted for payment  
6 an invoice falsely purporting to have come from BAM Construction  
7 for work done on 211 Escuela Street, San Diego. Respondent  
8 failed to disclose that the invoice had not been prepared by BAM  
9 Construction. "One of the purposes of the Real Estate Act is to  
10 ensure, as far as possible, that real estate brokers and salesmen  
11 will be honest, truthful and of good reputation." (Buckley v.  
12 Savage, 184 Cal. App 2d 18, 31-32). Respondent's actions with  
13 respect to the false invoice raise questions about his honesty  
14 and truthfulness. Consequently, I am not satisfied that  
15 Respondent is sufficiently rehabilitated to receive an  
16 unrestricted real estate salesperson license.

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

20 This Order shall be effective at 12 o'clock noon on  
21 April 15, 2002.

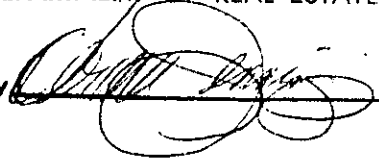
22 DATED: March 18, 2002

24 PAULA REDDISH ZINNEMANN  
25 Real Estate Commissioner

26 Paula Reddish  
27 

FILED  
APR 11 1996  
DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

By 

\* \* \* \* \*

In the Matter of the Accusation of )	No. H-2204 SD
)	
)	
LEE DAVIS CAUDILL, )	L-9511106
)	
)	
Respondent. )	
_____ )	

DECISION

The Proposed Decision dated March 20, 1996, 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.

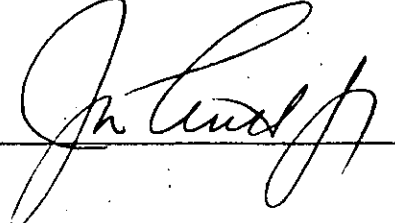
The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

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 May 1, 1996.

IT IS SO ORDERED 3/28, 1996.

JIM ANTT, JR.  
Real Estate Commissioner



BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation	)	
Against:	)	No. H-2204 SD
LEE DAVIS CAUDILL	)	
	)	OAH No. L-9511106
Respondent.	)	
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PROPOSED DECISION

On March 8, 1996, in San Diego, California, Harley D. Mayfield, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Elliott Mac Lennan, Counsel, Department of Real Estate, represented the complainant.

Peter J. Hughes, Attorney at Law, represented respondent.

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

FINDINGS OF FACT

I

J. Chris Graves, a Deputy Real Estate Commissioner of the State of California, filed Accusation No. H-2204 SD in his official capacity on October 31, 1995. Respondent filed his Notice of Defense on November 3, 1995.

II

Respondent is presently licensed as a real estate salesperson under the Real Estate Law (Part I of Division 4 of the California Business and Professions Code). He was originally licensed by the Department of Real Estate as a real estate salesperson on March 7, 1986.

III

On June 29, 1995, in Case No. CDF113223, in the Municipal Court of California, County of San Diego, San Diego Judicial District, respondent pled guilty to one count of

violating Health and Safety Code section 11358 (Cultivation of Marijuana), a felony which was committed on January 26, 1995. Sentence was imposed on July 29, 1995; the court granted respondent 3 years probation, subject to conditions including a fine and community service.

The only evidence of the facts surrounding the offense was respondent's testimony at the hearing. Respondent owned a rental property which he rented to Ed Alvarado, a friend of 20 years. Alvarado was falling on hard times, so respondent allowed Alvarado to grow marijuana on the premises. Respondent received a small amount of the marijuana for his personal use, although not on a regular basis. Respondent's activity with Alvarado was unrelated to his business as a real estate salesperson. Officers served a search warrant at the premises in January, 1995, and arrested Alvarado. Respondent was not present, but came to court voluntarily. He pled guilty at a disposition conference before the date scheduled for the preliminary hearing.

#### IV

Respondent is 45 years old. He started working when he was 12 years old, and has worked ever since. He had a paper route for several years; started as a Taco Bell janitor and worked his way up to night manager, and worked nights at a Mobil station for three years to earn enough money to buy his first car at age sixteen. After graduating from high school he attended Southwest College, but did not get a degree. Some time around 1970 he had two convictions for marijuana-related offenses. He worked at various jobs until 1977 when he started working for a local electronics company. He was successful in two electronics companies, and was a senior buyer in one company when it closed in 1985. At that time, he decided to change careers, and took the necessary courses to become a real estate salesperson.

Respondent has been employed by Coldwell Banker since 1987, and is now a senior account executive. He has continued to work very hard since the offense in this case, and 1995 was his best year ever. On March 7, 1996, respondent was given five awards at a Coldwell Banker awards luncheon, including an award as "Top Buyer Agent 1995". Documents in evidence show numerous other instances where respondent was recognized for outstanding achievement. According to Richard Nesbitt, respondent's supervising broker, the manager of Coldwell Banker's Point Loma office, respondent has won virtually every award available to Coldwell Banker agents, while also helping new and experienced agents as a mentor. Respondent is held in high regard by his peers, by business associates, clients and customers. Several either testified in respondent's behalf at the hearing or wrote letters in his behalf. There have never been any complaints about his integrity. Mr. Nesbitt has no reservations concerning respondent's honesty and trustworthiness.

Respondent's family member attest to his good character, both his sister and her husband testifying to that effect at the hearing. Since the offense respondent has gotten married, and has a child born in February, 1996. Respondent's wife, Giovanna, has known respondent nearly three years. On one occasion before they were married, he started to light a marijuana cigarette in her presence. She left and made it clear to him that she would not tolerate drug use in her life. Since they were married respondent has been a great husband, and does not even drink. She is certain that marijuana will no longer be a part of respondent's life.

Respondent is still on probation, sending periodic payment of fines or other costs, and has had no law enforcement problems since the search warrant was served. He hopes to have his record expunged after he completes probation. Respondent knows that he could lose both his career and family if he were to be involved in marijuana in the future, and it is absolutely not worth it. He is not dependent on marijuana in any way, and is not going to be involved with it.

#### DETERMINATION OF ISSUES

##### I

Cause to suspend or revoke respondent's license pursuant to Business and Professions Code sections 490 and 10177(b) and Code of Regulations Title 10, Chapter 6, section 2910 was established by Finding III.

The offense of cultivating marijuana does not involve moral turpitude as a matter of law, although it may do so as a question of fact. (Board of Trustees v. Judge (1975) 50 Cal.App.3d 920, 923.) As the court in Judge noted, it may vary from a curious school teacher who chances upon and brings home an individual plant in a pot to a person who assiduously cultivates a whole field of marijuana plants in order to sell the crop. (Id. at p. 924.) Although the evidence does not establish how much marijuana Alvarado grew, the only reasonable inference is that it was grown for sale; otherwise, it would not help Alvarado's financial condition. Also, the operation lasted long enough for some to be harvested and provided to respondent from time to time for his personal use. Respondent's own testimony thus establishes that he authorized, aided and abetted the cultivation of and trafficking in marijuana in exchange for rent on the property and a portion of the illegal crop for his own use. On those facts, respondent's crime involved moral turpitude. See Clerici v. Department of Motor Vehicles (1990) 224 Cal.App.3d 1016, 1028.

Respondent's offense is also deemed to be substantially related to the qualifications, functions and duties of a real

estate salesperson pursuant to Code of Regulations, Title 10, section 2910(a)(8), "Doing any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator...." Even though respondent expected no share in Alvarado's marijuana profits, it is clear he expected to get rent for the use of the property to cultivate marijuana and marijuana for his own use for which he would not have to pay. The intended economic benefit was small, but the intent was there.

## II

Although respondent's crime involves moral turpitude and falls within the criteria of "substantially related", the uncontradicted evidence is that he did it only to help his long time friend. Respondent is unlikely to face that sort of situation again. Additionally, respondent's attitude and situation have changed in important respects since the offense. He is now married and has a child. He is aware that any involvement with drugs will not be tolerated. Respondent's testimony, supported by family members and business associates, establishes that he is intelligent and determined not to ruin his life by further involvement with marijuana. The evidence set forth in Finding IV supports findings of rehabilitation criteria in Code of Regulations Title 10, section 2912, subdivisions (f), (i) and (j), even though the conviction occurred less than a year ago.

Respondent's professional performance was excellent before his offense and has become even better since then. The moral lapse which led to respondent's offense has apparently not affected his professional conduct. Nonetheless it seems prudent to impose discipline which may protect the public, and at the same time allow respondent to continue to perform a valuable service to the community as a real estate salesperson. That can be accomplished by revoking respondent's license, but issuing a restricted license.

## ORDER


All licenses and licensing rights of respondent Lee Davis Caudill under the Real Estate Law are revoked; provided, however, a restricted real estate salespersons 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 the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under section 10156.6 of that Code:

1. 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, or in the event respondent's probation granted in the case referred to in Finding III is revoked for any reason.
2. 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.
3. 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 three years have elapsed from the effective date of this decision.
4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:
  - a. That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
  - b. That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.
5. 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 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: March 20, 1996

  
\_\_\_\_\_  
HARLEY D. MAYFIELD  
Administrative Law Judge  
Office of Administrative Hearings

SACTO: *Play*

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

**FILED**  
DEC - 8 1995  
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of )  
)  
LEE DAVIS CAUDILL, )  
)  
Respondent. )

By *[Signature]*

Case No. H-2204 SD  
OAH No. L-9511106

**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 Street, Room 6022, San Diego, California, on March 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.

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: December 8, 1995.

cc Lee Davis Caudill  
Peter J. Hughes, Esq.  
Coldwell Banker Residential  
Brokerage Company  
J. Chris Graves  
Sacto.  
OAH

DEPARTMENT OF REAL ESTATE

*[Signature]*  
ELLIOTT MAC LENNAN, Counsel

*5/10/95  
Ray*

1 ELLIOTT MAC LENNAN, Counsel  
2 Department of Real Estate  
3 107 South Broadway, Room 8107  
4 Los Angeles, California 90012  
5  
6 (213) 897-3937  
7

FILED  
OCT 31 1995  
DEPARTMENT OF REAL ESTATE

By *[Signature]*

8 DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \* \* \*

11 In the Matter of the Accusation of ) No. H-2204 SD  
12 LEE DAVIS CAUDILL, ) ACCUSATION  
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 LEE DAVIS CAUDILL aka Lindley Davis Caudill is informed and  
18 alleges in his official capacity 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) (Code).

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II

Respondent was originally licensed by the Department of Real Estate of the State of California as a real estate salesperson on March 7, 1986.

III

On July 31, 1995, in the Municipal Court of California, San Diego Judicial District, County of San Diego, State of California, respondent was convicted upon a plea of guilty to one count of violating Section 11358 of the California Health & Safety Code (Cultivation of Marijuana) for a felony crime that occurred on April 14, 1995, 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 in Paragraph III constitute cause under Sections 490 and 10177(b) of the Code for the suspension or revocation of all licenses and license rights of respondent under the Real Estate Law.

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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 the license and license rights of respondent LEE DAVIS CAUDILL under the Real Estate Law and for such other and further relief as may be proper under other applicable provisions of law.

Dated at San Diego, California  
this 31st day of October, 1995.

Deputy Real Estate Commissioner

cc: Lee Davis Caudill  
Coldwell Banker Residential Brokerage Company  
Sacto.  
BJK