

By Laurie A. Zier

* * *

DECISION AFTER REJECTION

1 Administrative Law Judge along with a copy of said Proposed
2 Decision. Respondent was notified that the case would be decided
3 by me upon the record, the transcript of proceedings held on
4 June 27, 1989, and upon any written argument offered by
5 Respondent.

6 Respondent submitted written argument on September 19,
7 1989.

8 I have given careful consideration to the record in this
9 case including the transcript of proceedings of June 27, 1989, and
10 Respondent's argument submitted September 19, 1989.

11 The following shall constitute the Decision of the Real
12 Estate Commissioner in this proceeding:

13 FINDINGS OF FACT

14 I

15 Charles W. Koenig, Deputy Real Estate Commissioner of
16 the State of California, filed the Accusation. Charles W. Koenig
17 acted in his official capacity.

18 II

19 Respondent is licensed as a real estate broker in the
20 State of California. The license will expire on May 24, 1992.

21 III

22 On or about September 16, 1988, in the Municipal Court
23 of California, Santa Clara County Judicial District, Respondent
24 plead nolo contendere to violation of Sections 484-487.1 of the
25 California Penal Code. Respondent did not deny that he was
26 convicted of theft, but did deny that he was aware that the checks
27 he cashed had been embezzled from insurance companies.

1 Respondent claims that a friend with whom he had a prior romantic
2 relationship convinced him to cash three (3) insurance checks made
3 out to Respondent totalling \$14,100.00.

4 Respondent received a portion of the proceeds of the
5 three checks in payment for prior loans made to Respondent's
6 friend.

7 Respondent unconvincingly contends he innocently and
8 naively cashed the checks made out in his name totalling
9 \$14,100.00 in the belief he could trust his friend.

10 Despite Respondent's claimed innocence, he plead nolo
11 contendere, paid \$14,100.00 in restitution, and remained on
12 probation at the time of the hearing.

13 Respondent is 56 years old and does not have a prior
14 criminal or disciplinary record.

15 DETERMINATION OF ISSUES

16 I

17 The standard of proof applied at the hearing was clear
18 and convincing proof to a reasonable certainty.

19 II

20 Cause for discipline of Respondent's license was
21 established for violation of Business and Professions Code,
22 Sections 490 and 10177(b) by reason of Finding III.

23 ORDER

24 All real estate licenses and licensing rights issued to
25 respondent GILBERT RAY FAUKNER by the Department of Real Estate
26 are revoked; provided, however, a restricted real estate
27 salesperson license shall be issued to Respondent pursuant to

1 Section 10156.5 of the Business and Professions Code ("Code") if
2 Respondent makes application therefor within sixty (60) days from
3 the effective date of this decision. The restricted license
4 issued to Respondent shall be subject to all the provisions of
5 Section 10156.7 of the Business and Professions Code and to the
6 following limitations, conditions and restrictions imposed under
7 authority of Section 10156.6 of the Code:

8 A. The license shall not confer any property right in the
9 privileges to be exercised, and the Real Estate Commissioner
10 may by appropriate order suspend the right to exercise any
11 privileges granted under this restricted license in the event
12 of:

13 (1) The conviction of Respondent (including a plea of nolo
14 contendere) to a crime which bears a significant relation
15 to Respondent's fitness or capacity as a real estate
16 licensee; or

17 (2) The receipt of evidence that Respondent has violated
18 provisions of the California Real Estate Law, the
19 Subdivided Lands Law, Regulations of the Real Estate
20 Commissioner or conditions to this restricted license.

21 B. Respondent shall not be eligible to apply for the issuance of
22 an unrestricted real estate license nor the removal of any of
23 the conditions, limitations or restrictions attaching to the
24 restricted license until one (1) year has elapsed from the
25 date of issuance of the restricted license to Respondent.

26 ///

27 ///

1 C. With the application for license, or with the application for
2 transfer to a new employing broker, Respondent shall submit a
3 statement signed by the prospective employing broker which
4 shall certify:

5 (1) That the broker has read the decision of the Commissioner
6 which granted the right to a restricted license to
7 Respondent; and

8 (2) That the broker will exercise close supervision over the
9 performance by the restricted licensee of activities for
10 which a real estate license is required.

11 D. Respondent shall, within six (6) months from the effective
12 date of the restricted license, take and pass the Professional
13 Responsibility Examination administered by the Department
14 including the payment of the appropriate examination fee. If
15 Respondent fails to satisfy this condition, the Commissioner
16 may order suspension of the restricted license until
17 Respondent passes the examination.

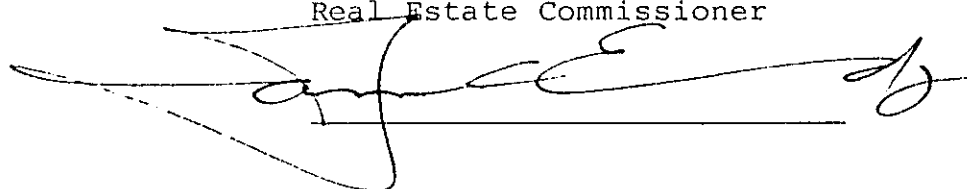
18 E. Respondent shall, within six (6) months from the effective
19 date of this decision, present evidence satisfactory to the
20 Real Estate Commissioner that Respondent has, since the most
21 recent issuance of an original or renewal real estate license,
22 taken and successfully completed the continuing education
23 requirements of Article 2.5 of Chapter 3 of the Real Estate
24 Law for renewal of a real estate license. If Respondent fails
25 to satisfy this condition, the Commissioner may order the
26 suspension of the restricted license until the Respondent
27 presents such evidence. The Commissioner shall afford
28 Respondent the opportunity for a hearing pursuant to the
29 Administrative Procedure Act to present such evidence.

1 F. The restricted license may be suspended or revoked for a
2 violation by Respondent of any of the conditions attaching
3 to the restricted license.

4 The right to reinstatement of a revoked or suspended
5 real estate license or to the reduction of a penalty is
6 controlled by Section 11522 of the Government Code. A copy of
7 Section 11522 and a copy of the Commissioner's Criteria of
8 Rehabilitation are attached hereto for the information of
9 respondent.

10 This Decision shall become effective at 12 o'clock
11 noon on December 5, 1989.

12 IT IS SO ORDERED 10-27, 1989.

13 JAMES A. EDMONDS, JR.
14 Real Estate Commissioner
15 
16
17
18
19
20
21
22
23
24
25
26
27

FILED
JUL 24 1989

DEPARTMENT OF REAL ESTATE

By Laurie A. Zain

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
GILBERT RAY FAUKNER,)
Respondent.)

NO. H-2383 SAC
OAH NO. N-33189

NOTICE

TO: GILBERT RAY FAUKNER, Respondent
and
BRADLEY K. BOLYARD, his Counsel

YOU ARE HEREBY NOTIFIED that the Proposed Decision
herein dated June 29, 1989, of the Administrative Law Judge is
not adopted as the Decision of the Real Estate Commissioner. A
copy of the Proposed Decision dated June 29, 1989, 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 27, 1989, and any written argument hereafter submitted

1 on behalf of respondent and complainant.

2 Written argument of respondent to be considered by
3 me must be submitted within 15 days after receipt of the
4 transcript of the proceedings of June 27, 1989, at the
5 Sacramento office of the Department unless an extension of the
6 time is granted for good cause shown.

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

12 DATED: July 18, 1989

13 JAMES A. EDMONDS, JR.
14 Real Estate Commissioner

15 By: John R. Liberator
16 JOHN R. LIBERATOR
17 Chief Deputy Commissioner
18
19
20
21
22
23
24
25
26
27

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation	)	
Against	)	No. H-2383 SAC
	)	
GILBERT RAY FAUKNER,	)	OAH NO. N-33189
	)	
	)	
Respondent.	)	
	)	

PROPOSED DECISION

On June 27, 1989, in Sacramento, California, Keith A. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

David A. Peters, Staff Counsel, represented complainant.

Bradley K. Bolyard, Attorney at Law, represented respondent.

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

FINDINGS OF FACT

I

Complainant, Charles W. Koenig, a Deputy Real Estate Commissioner of the State of California, made and filed the accusation in his official capacity and not otherwise.

II

Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code as a real estate broker.

III

On or about September 16, 1988, in the Municipal Court of California, Santa Clara County Judicial District, respondent plead nolo contendere to sections 484-487.1 of the California Penal Code. Respondent did not deny that he was convicted of theft, but explained that he was unaware the checks he had cashed for a friend that he had a prior romantic relationship with and trusted, had been embezzled by

this friend from insurance companies. Apparently, this friend had owed the respondent some money and by cashing the checks he was able to retain some of the proceeds in payment of prior loans.

IV

Respondent is 56 years old and does not have a prior criminal or disciplinary record. The checks were cashed sometime in March of 1985 and it took three years for the matter to be investigated, come to trial and sentencing. Respondent made restitution in the amount of \$14,100 at the time of sentencing. Respondent is currently on probation, which will terminate sometime this fall.

DETERMINATION OF ISSUES

Cause for discipline of respondent's license was established for violation of Business and Professions Code sections 490 and 10177(b) by reason of Finding III.

ORDER

NOT ADOPTED

All real estate licenses and licensing rights issued to respondent Gilbert Ray Faulkner by the Department of Real Estate are revoked; provided, however, a restricted real estate license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor within thirty 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. 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 bears a significant relation to respondent's fitness or capacity as a real estate licensee.
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 (3) years have elapsed from the date of issuance of the restricted license to respondent.

4. Respondent shall, within six 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.

*NOT
ADOPTED*

Dated: June 29, 1989

Keith A. Levy
KEITH A. LEVY
Administrative Law Judge
Office of Administrative Hearings

FILED
FEB 22 1989

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

Laurie A. Zain

In the Matter of the Accusation of

GILBERT RAY FAUKNER,

Case No. H-2383 SAC

OAH No. _____

Respondent(s)

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 the Office
of Administrative Hearings, 501 J Street, Suite 220 (Second Floor Hearing Rooms),
Sacramento, CA 95814
on the 27th day of June, 19 89, at the hour of 9:00 AM, or as soon thereafter
as the matter can be heard, upon the charges made in the Accusation 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 upon any express admissions, 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 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: 02/22/89

By *David A. Peters*
DAVID A. PETERS Counsel

1 DAVID A. PETERS, Counsel
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

FILED
DEC 20 1988

DEPARTMENT OF REAL ESTATE

By *Laurie A. Zyan*

5 (916) 739-3607
6
7

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

12 GILBERT RAY FAUKNER,)

13 Respondent.)

NO. H-2383 SAC

ACCUSATION

14

15 The Complainant, Charles W. Koenig, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against GILBERT RAY FAUKNER (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 Business and Professions Code (hereinafter "Code") as a real
23 estate broker.

24

II

25 The Complainant, Charles W. Koenig, a Deputy Real Estate
26 Commissioner of the State of California, makes this Accusation
27 against respondent in his official capacity.

1 III

2 On or about September 16, 1988, in the Municipal Court
3 of California, Santa Clara County Judicial District, respondent
4 was convicted of violation of Section 484-487.1 of the California
5 Penal Code (Grand Theft), a crime involving moral turpitude which
6 is substantially related under Section 2910, Title 10, California
7 Code of Regulations to the qualifications, functions or duties of
8 a real estate licensee.

9 IV

10 The facts alleged above constitute cause under Sections
11 490 and 10177(b) of the Code for suspension or revocation of all
12 licenses and license rights of respondent under the Real Estate
13 Law.

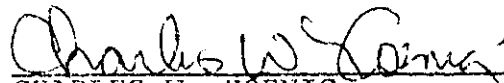
14 WHEREFORE, Complainant prays that a hearing be conducted
15 on the allegations of this Accusation and that upon proof thereof,
16 a decision be rendered imposing disciplinary action against all
17 licenses and license rights of respondent under the Real Estate
18 Law (Part 1 of Division 4 of the Business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

21

22

23

24


CHARLES W. KOENIG
Deputy Real Estate Commissioner

25 Dated at Sacramento, California

26 this 14th day of December, 1988.

27