

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

FILED  
JUL 21 1998  
DEPARTMENT OF REAL ESTATE

*Lucie A. Zain*

In the Matter of the Application of )  
DAVID ALLEN COTTON, )  
Respondent. )

NO. H-2396 SD  
L-1998040178

DECISION

The Proposed Decision dated June 22, 1998, 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 application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to Respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy is attached hereto for the information of Respondent.

If and when application is made for a real estate salesperson license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto.

This Decision shall become effective at 12 o'clock noon  
on August 10, 1998.

IT IS SO ORDERED

7/20, 1998.

JIM ANTT, JR.  
Real Estate Commissioner

*Jim Antt, Jr.*

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:	)	Case No. H-2396-SD
	)	
DAVID ALLEN COTTON	)	OAH NO. L-1998040178
	)	
Respondent.	)	
	)	

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PROPOSED DECISION

On May 22, 1998, in San Diego, California, Vallera J. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

James L. Beaver, Real Estate Counsel, represented complainant.

Respondent was present and represented himself.

Evidence was received, the record was closed, and the matter was submitted on May 22, 1998.

FINDINGS OF FACT

I

On October 23, 1996, J. Chris Graves filed Statement of Issues No. H-2396-SD against David Allen Cotton (respondent) in his official capacity as Deputy Real Estate Commissioner of the Department of Real Estate of the State of California (Department).

Respondent filed a Notice of Defense, dated April 7, 1998, requesting a hearing in this matter.

II

Respondent filed an application with the Department for a real estate salesperson license on August 27, 1997 with the knowledge and understanding that any license issued as a result of said application would be subject to the conditions of Business and Professions Code section 10153.4. As of April 9, 1998, the Department had no record that respondent had successfully completed all of the courses required of him pursuant to this statute. No license has been issued to respondent.

### III

On February 10, 1994, in the Superior Court of the State of California, County of San Diego, in the case entitled People of the State of California v. David A. Cotton, Case No. CRN24726, respondent was convicted of violation of Penal Code section 487.1 (Grand Theft of Personal Property) and Penal Code section 664 in conjunction with Penal Code section 487.1 (Attempted Grand Theft of Personal Property), and two counts of Vehicle Code section 28050 (Mileage Other Than True Mileage Drive).

As a consequence of his convictions, the court suspended imposition of respondent's sentence and placed him on three (3) years formal probation on condition that respondent, among other things, serve 270 days in the custody of the Sheriff, pay a fine of \$200.00, pay restitution in the amount of \$1,000.00 and pay a restitution fine of \$100.00.

### IV

On March 22, 1994, in the Municipal Court of the State of California, County of San Diego, San Diego Judicial District, in the case entitled People of the State of California v. David A. Cotton, Case No. M647717CF, respondent was convicted of violation of Civil Code section 1916-3(b) (Loansharking), misdemeanors.

As a consequence of his convictions, the court suspended imposition of respondent's sentence and granted three (3) years summary probation on condition that respondent, among other things, pay restitution.

### V

The crimes of which respondent has been convicted, set forth in Findings III and IV, involve moral turpitude; in addition, pursuant to Title 10, California Code of Regulations, section 2910, these crimes bear a substantial relationship to the qualifications, functions and duties of a real estate salesperson licensee.

### VI

The crimes of which respondent has been convicted, set forth in Findings III and V, arose from the same facts and circumstances, to wit: over the course of a year, between 1991 and 1992, respondent operated a business, making loans with usurious interest rates. He made approximately 50 loans to various members of the public. All of the loans, except one, were less than \$1,000.00. They were made to people who generally could not otherwise obtain the money. The loans were secured by

motor vehicles; respondent provided two options to his customers. The motor vehicle could be stored or leased, at a cost to the customer. If the customer did not repay the loan within a specified time frame, respondent took legal action to obtain the motor vehicle, and, if necessary, title to the motor vehicle as well. Then, he arranged for his employee to prepare the motor vehicle for sale.

The crimes set forth in Finding III arose as a consequence of respondent preparing the motor vehicles for resale. He had an employee who had a financial interest in the resale of the motor vehicle. According to respondent, he did not reset the odometers on either motor vehicle; his employee reset the odometer on one of the motor vehicles. Respondent acknowledged that as the employer, he was responsible for the conduct of his employee. The issue of respondent's guilt may not be re-litigated. Respondent's entry of the plea of guilty in his criminal case is conclusive evidence of guilt upon which the administrative law judge must rely. Arneson v. Fox (1980) 28 Cal.3d 440; 170 Cal.Rptr. 778.

#### VII

Respondent is 45 years of age. He has a Bachelor of Science degree from Pepperdine University, with a major in Biology and a minor in Business. He married in 1987; he and his wife have three daughters, ages 6, 4 and almost 2 years.

#### VIII

By way of rehabilitation, respondent established:

A. it has been over four years since his most recent conviction; with the exception of the convictions set forth in Findings III and IV, he has not been convicted of any other crime;

B. he has complied with the terms and conditions of probation, including payment of fines and restitution in a timely manner, and has successfully completed probation; and all convictions have been expunged;

D. he expressed remorse for his misconduct and the harm that he caused his victims; he acknowledged that he made a mistake and has taken all appropriate actions to correct this mistake; it is unlikely that he will engage in dishonest conduct or criminal activity again;

E. he has engaged in a variety of community and charitable activities, including donating blood and donating time and work to his children's schools; in addition, he is part of a group of divers that has adopted the Encinitas Young Men's

Christian Association (YMCA); the group looks after the maintenance of the diving facility and its equipment; the group has replaced two diving boards at the Encinitas YMCA, at a cost of over \$2,000.00; the group has also been involved with the City of Carlsbad municipal pool; they are in the process of changing the diving tower; respondent acquired the necessary parts and was scheduled to install replacement parts on May 23, 1998;

G. he is an active participant in springboard and platform diving, as a coach, referee, writer and national champion master's diver;

H. he has been licensed by the State of California Contractors' State License Board since 1993; his license is current, in good standing, and no disciplinary action has been taken against it; and

I. he is actively involved with his family and in his church.

#### IX

Respondent has an excellent reputation in his community for honesty and integrity. He offered evidence from a variety of different people who know him and are aware of his conviction. They recognize that he made a mistake, but believe that he has learned from this mistake and, if the Department elects to issue a license to him, that he would be trustworthy.

In addition, he established that James Miller (Miller), a real estate broker for over 40 years, is willing to allow respondent to work under his license; and he and his daughter, Stephanie Yackley (Yackley), a real estate broker for over 12 years, are willing to employ respondent in their real estate business. Their relationship with respondent is based, in large part, on respondent's relationship with Yackley's husband, also a contractor. Miller has supervised over 100 salespeople at one time and now has eight or nine salespeople who work for him; he already has stringent checks and balances in place to assure protection of each client; they have no concerns that respondent will act in anything but an honest, professional manner; Yackley believes that his convictions will cause him to be more cautious, diligent and, as a result, a better agent. It is important to note that these brokers not only wrote letters of support, but appeared at the hearing despite the very recent loss of Miller's wife, Yackley's mother. Neither broker has ever agreed to sponsor an individual with a felony conviction.

## DETERMINATION OF ISSUES

### I

Cause exists to deny the issuance of a real estate license to respondent pursuant to Business and Professions Code section 10177(b) because the evidence established that he has been convicted of crimes involving moral turpitude by reason of Findings III, IV, V and VI.

### II

Cause exists to deny the issuance of a real estate license to respondent pursuant to Business and Professions Code section 480(a) because the evidence established that the crimes of which respondent has been convicted are substantially related to the qualifications, functions and duties of a licensee of the Department by reason of Findings III, IV, V and VI.

### III

It has been over six years since respondent engaged in the misconduct that resulted in his conviction. He now recognizes that his business practice was a mistake, and he will be more diligent in the future. He appears to have a stable marriage and family, is active in his church and respected as a person of honesty and integrity in his community. Finally, he established that he has two experienced, reputable brokers who appear knowledgeable about respondent's past but nevertheless are willing to sponsor him; both are willing to closely supervise respondent and already have checks and balances in place to protect the public.

### IV

Insufficient time has passed to establish that respondent has been completely rehabilitated. However, he has established his fitness to perform the functions of a real estate salesperson under an appropriately restricted license for a reasonable period of time. The public interest would not be adversely affected by the issuance of a appropriately restricted license to respondent, as set forth below.

## ORDER

Respondent David Allen Cotton's application for a real estate salesperson license is denied; provided, however, a restricted, conditional real estate salesperson license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code. The restricted license issued to the 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 said Code:

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

(a) the conviction of respondent (including a plea of nolo contendere) of a crime which is substantially related to respondent's fitness or capacity as a real estate licensee; or

(b) the receipt of evidence 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 this restricted license.

2. 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 attaching to the restricted license until one year has elapsed from the date of issuance of the restricted license to respondent.

3. With the application for license, or with the application for transfer to a new employing broker, respondent shall submit a statement signed by the prospective employing real estate broker on a form approved by the Department which shall certify as follows:

(a) that the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

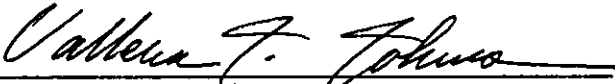
(b) that the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

4. Respondent's restricted real estate salesperson license is issued subject to the requirements of Section 10153.4 of the Business and Professions Code, to wit: within eighteen (18) months of the issuance of the restricted license, respondent shall submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution,

of two of the courses listed in Section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If respondent fails to timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of its issuance. Said suspension shall not be lifted prior to the expiration of the restricted license unless respondent has submitted the required evidence of course completion, and the Commissioner has given written notice to respondent of lifting of the suspension.

2. Pursuant to Business and Professions Code section 10154, if respondent does not satisfy the requirements for an unqualified license under Section 10153.4 of that Code, respondent shall not be entitled to renew the restricted license and shall not be entitled to the issuance of another license which is subject to Business and Professions Code section 10153.4 until four years after the date of the issuance of the preceding restricted license.

Dated: June 22, 1998

  
VALLERA J. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings



FILED  
APR 20 1998

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

*Lucie A. Zain*  
By \_\_\_\_\_

In the Matter of the Application of

DAVID ALLEN COTTON,

}

Case No. H-2396 SD

OAH No. L-1998040178

Respondent

NOTICE OF HEARING ON APPLICATION

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, 1350 Front Street, Room 6022,  
San Diego, CA 92101

on Friday, May 22nd, 1998, at the hour of 9:00 AM,  
or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you. If you object to the place  
of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within  
ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days  
will deprive you of a change in the place of the hearing.

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.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you are  
not present nor represented at the hearing, the Department may act upon your application without taking evidence.

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 and pay for his or her costs.  
The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: April 20, 1998

DEPARTMENT OF REAL ESTATE

By \_\_\_\_\_

JAMES L. BEAVER

*James L. Beaver*  
Counsel

1 JAMES L. BEAVER, Counsel  
2 Department of Real Estate  
3 P. O. Box 187000  
4 Sacramento, CA 95818-7000  
5  
6 Telephone: (916) 227-0789  
7 -or- (916) 227-0788 (Direct)  
8

FILED  
APR 7 1998  
DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

10 In the Matter of the Application of )  
11 )  
12 DAVID ALLEN COTTON, )  
13 )  
14 Respondent. )  
\_\_\_\_\_ )

NO. H-2396 SD

STATEMENT OF ISSUES

15 The Complainant, J. Chris Graves, a Deputy Real Estate  
16 Commissioner of the State of California, for Statement of Issues  
17 against DAVID ALLEN COTTON (hereinafter "Respondent"), alleges as  
18 follows:

19 I

20 Respondent made application to the Department of Real  
21 Estate of the State of California for a real estate salesperson  
22 license on or about August 27, 1997 with the knowledge and  
23 understanding that any license issued as a result of said  
24 application would be subject to the conditions of Section 10153.4  
25 of the California Business and Professions Code.

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II

Complainant, J. Chris Graves, a Deputy Real Estate Commissioner of the State of California, makes this Statement of Issues in his official capacity.

III

On or about February 8, 1994, in the Superior Court of the State of California, County of San Diego, Respondent was convicted of GRAND THEFT OF PERSONAL PROPERTY in violation of Penal Code Section 487.1, and ATTEMPTED GRAND THEFT OF PERSONAL PROPERTY, in violation of Penal Code Section 664 in conjunction with Penal Code Section 487.1, both felonies and crimes involving moral turpitude which bear a substantial relationship under Section 2910, Title 10, California Code of Regulations (herein "the Regulations"), to the qualifications, functions or duties of a real estate licensee.

IV

On or about February 8, 1994, in the Superior Court of the State of California, County of San Diego, Respondent was convicted of two counts of MILEAGE OTHER THAN TRUE MILEAGE DRIVEN, in violation of Vehicle Code Section 28050, both misdemeanors and crimes involving moral turpitude which bear a substantial relationship under Section 2910, Title 10, California Code of Regulations (herein "the Regulations"), to the qualifications, functions or duties of a real estate licensee.

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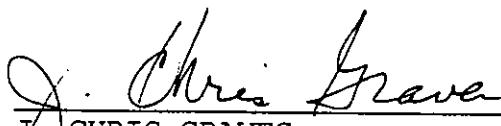
V

On or about March 22, 1994, in the Municipal Court of the State of California, County of San Diego, San Diego Judicial District, Respondent was convicted of three counts of LOANSHARKING in violation of Civil Code Section 1916-3(B), all misdemeanors and crimes involving moral turpitude which bear a substantial relationship under Section 2910, Title 10, California Code of Regulations (herein "the Regulations"), to the qualifications, functions or duties of a real estate licensee.

VI

The crimes of which Respondent was convicted, as alleged in Paragraph III through V, inclusive, above, individually and collectively constitute cause for denial of Respondent's application for a real estate license under Sections 480(a) and 10177(b) of the California Business and Professions Code.

WHEREFORE, the Complainant prays that the above-entitled matter be set for hearing, and upon proof of the charges contained herein, that the Commissioner refuse to authorize the issuance of, and deny the issuance of a real estate salesperson license to Respondent, and for such other and further relief as may be proper in the premises.

  
J. CHRIS GRAVES  
Deputy Real Estate Commissioner

Dated at San Diego, California,  
this 1<sup>st</sup> day of April, 1998.