

FILED

MAY 29 2010

DEPARTMENT OF REAL ESTATE

By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

JOHN O'BRIEN METCALF,

Respondent.

No. H-2557 SD

ORDER GRANTING REINSTATEMENT OF LICENSE

On September 27, 2000, in Case No. H-2557 SD, a Decision was rendered revoking the real estate salesperson license of Respondent effective October 26, 2000. On March 17, 2003 an order was entered herein denying Respondent's petition for reinstatement of Respondent's real estate salesperson license, but granting Respondent the right to issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on August 8, 2003, and Respondent has operated as a restricted licensee since that time.

On February 17, 2009, Respondent petitioned for reinstatement of said real estate salesperson license, and the Attorney General of the State of California has been given notice of the filing of the petition.

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has demonstrated to my satisfaction that Respondent meets the

1 requirements of law for the issuance to Respondent of an unrestricted real estate salesperson
2 license and that it would not be against the public interest to issue said license to Respondent.

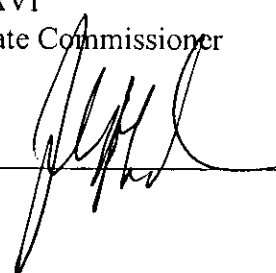
3 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for
4 reinstatement is granted and that a real estate salesperson license be issued to Respondent if
5 Respondent satisfies the following conditions within twelve (12) months from the date of this
6 order:

- 7 1. Submittal of a completed application and payment of the fee for a real
8 estate salesperson license.
- 9 2. Submittal of evidence of having, since the most recent issuance of an
10 original or renewal real estate license, taken and successfully completed the continuing education
11 requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate
12 license.

13 This Order shall become effective immediately.

14 DATED: 5-13-2010

15 JEFF DAVI
16 Real Estate Commissioner

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FILED

FEB 22 2003

DEPARTMENT OF REAL ESTATE

By John Arnold

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
JOHN O'BRIEN METCALF,) NO. H-2557 SD
Respondent.)

ORDER DENYING REINSTATEMENT OF LICENSE

On September 27, 2000, a Decision was rendered herein
revoking the real estate salesperson license of Respondent.

On December 26, 2001, Respondent petitioned for
reinstatement of said real estate salesperson license, and the
Attorney General of the State of California has been given
notice of the filing of said petition.

I have considered the petition of Respondent and the
evidence and arguments in support. Respondent has failed to
demonstrate to my satisfaction that Respondent has undergone
sufficient rehabilitation to warrant the reinstatement of
Respondent's real estate salesperson license. The basis for
disciplinary action in this matter is Respondent's failure to

1 disclose a criminal conviction in his application for a real
2 estate license. It has been slightly more than two years since
3 the effective date of the Decision rendered in this matter.
4 Consequently, Respondent is not able to present any evidence of
5 correction of practices that led to the disciplinary action in
6 this matter. Respondent, therefore, has not demonstrated
7 compliance with Section 2911(j), Title 10, California Code of
8 Regulations. Additional time in a supervised setting is required
9 to establish that Respondent is rehabilitated.

10 I am satisfied, however, that it will not be against
11 the public interest to issue a restricted real estate salesperson
12 license to Respondent.

13 NOW, THEREFORE, IT IS ORDERED that Respondent's
14 petition for reinstatement of his real estate salesperson license
15 is denied.

16 A restricted real estate salesperson license shall
17 be issued to Respondent pursuant to Section 10156.5 of the
18 Business and Professions Code, if Respondent satisfies the
19 following conditions within nine (9) months from the date of
20 this Order:

- 21 1. Submittal of a completed application and payment
22 of the fee for a real estate salesperson license.
- 23 2. Submittal of evidence of having, since the most
24 recent issuance of an original or renewal real estate license,
25 taken and successfully completed the continuing education
26 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
27 for renewal of a real estate license.

1 The restricted license issued to Respondent shall be
2 subject to all of the provisions of Section 10156.7 of the
3 Business and Professions Code and to the following limitations,
4 conditions, and restrictions imposed under authority of Section
5 10156.6 of that Code.

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

11 2. The restricted license issued to Respondent may
12 be suspended prior to hearing by Order of the Real Estate
13 Commissioner on evidence satisfactory to the Commissioner that
14 Respondent has violated provisions of the California Real
15 Estate Law, the Subdivided Lands Law, Regulations of the Real
16 Estate Commissioner, or conditions attaching to the restricted
17 license.

18 3. Respondent shall not be eligible to apply for
19 the issuance of an unrestricted real estate license nor the
20 removal of any of the limitations, conditions, or restrictions
21 of a restricted license until two (2) years have elapsed from
22 the date of the issuance of the restricted license to Respondent.

23 4. Respondent shall submit with any application for
24 license under an employing broker, or any application for
25 transfer to a new employing broker, a statement signed by the
26 prospective employing broker on a form approved by the Department
27 of Real Estate which shall certify:

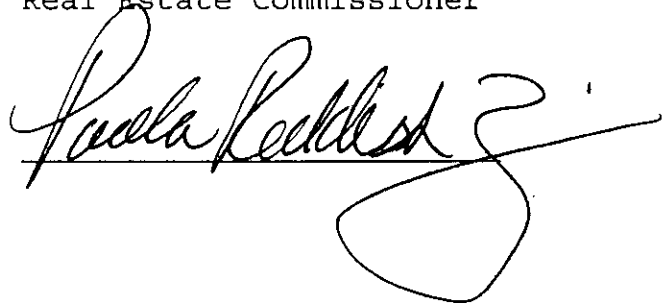
- 1 a. That the employing broker has read the Decision
2 and Order of the Commissioner which granted the
3 right to a restricted license; and
4 b. That the employing broker will exercise close
5 supervision over the performance by the restricted
6 licensee relating to activities for which a real
7 estate license is required.

8 This Order shall be effective at 12 o'clock noon on

9 March 17, 2003.

10 DATED: January 27, 2003.
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12 PAULA REDDISH ZINNEMANN
13 Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
OCT 06 2000

DEPARTMENT OF REAL ESTATE

* * *

In the Matter of the Accusation of)
JOHN BRIEN METCALF,)
Respondent.)

By Shelley Ely
NO. H-2557 SD

OAH NO. L-2000060501

DECISION

The Proposed Decision dated September 5, 2000, 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 October 26, 2000.

IT IS SO ORDERED September 27, 2000.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish Zinnemann

**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Accusation of:

JOHN BRIEN METCALF,

Respondent.

Case No. H-2557 SD

OAH No. L-2000060501

PROPOSED DECISION

On August 29, 2000, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

David B. Seals, Counsel, represented complainant.

Respondent John Brien Metcalf represented himself.

The matter was submitted on August 29, 2000.

FACTUAL FINDINGS

1. J. Chris Graves, Deputy Real Estate Commissioner of the State of California (hereafter, "Department") filed Accusation No. H-2557 SD in his official capacity on December 28, 1999. Respondent filed a Notice of Defense dated February 20, 2000.

2. The Department issued conditional real estate salesperson license number 01261147 to respondent on June 11, 1999, and at all relevant times, the license was in full force and effect.

3. On March 4, 1992, in the Municipal Court of Los Angeles, Van Nuys Judicial District in the case of *People v. John Brien Metcalf, Jr.*, case number 92P01905, respondent was convicted upon his plea of nolo contendere of one count of violating Penal Code section 602(j), trespass with the intent to injure property. The court suspended imposition of sentence and placed him on summary probation for 12 months, and ordered him to pay a fine and assessments in the amount of \$455 or serve 5 days in county jail.

The facts and circumstances of the offense are as follows: On February 8, 1992, respondent entered a Nordstrom's Rack department store in Woodland Hills, California, selected a pair of shoes, and switched the price tag, thereby reducing the cost of the shoes by approximately \$43. The crime involves moral turpitude and is substantially related to the qualifications, functions, and duties of a real estate salesperson.

4. Respondent signed a Salesperson License Application on August 26, 1998, and submitted it to the Department in May 1999. Question number 25 reads:

Have you ever been convicted of any violation of law? (You may omit convictions for drunk driving, reckless driving, and minor traffic citations which do not constitute a misdemeanor or felony offense)

Respondent checked the No box. Respondent's answer was false in that he had been convicted of trespass six years earlier.

5. Respondent testified that at the time of his conviction, his lawyer told him that his conviction would be expunged in five years and as a result, he simply forgot that he had been convicted of a crime when he filled out the application for the real estate license. Respondent's explanation does not excuse his failure to disclose the conviction.

6. Respondent had been living in Los Angeles but moved to San Diego in December 1998. After he obtained his real estate license, he worked with his brother for about six months refinancing loans. His brother closed his office in about December 1999. Respondent has not worked in the field of real estate since that time, and is now a sales representative for a printing company. He has no plans to re-enter the real estate field. He wants to keep his license in case he has a need for it in the future.

Respondent has been licensed as a real estate salesperson for little more than a year. In light of respondent's failure to disclose his conviction, an inadequate explanation for that failure, and the short time he has been licensed, a revocation of his license is not unreasonable. Respondent's conviction in 1992 is relatively recent. The Department should therefore have the right to consider all the circumstances surrounding the conviction and determine whether it is appropriate for respondent to be licensed as a salesperson, and if so, whether the license should be restricted or not. It is inappropriate to make that decision in the context of this case.

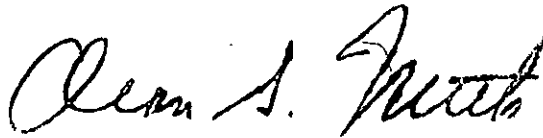
LEGAL CONCLUSIONS

1. Cause to revoke or suspend respondent's real estate salesperson license was established for violation of Business and Professions Code section 498 and 10177(a), obtaining a real estate salesperson license by fraud or material misrepresentation or deceit in an application for a license, by reason of Findings 3 and 4.
2. Cause to revoke respondent's real estate salesperson was established by reason of Findings 3, 4, 5, and 6.

ORDER

All licenses and licensing rights of respondent John Brien Metcalf under the Real Estate Law are revoked.

DATED: September 5, 2000



ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
JUN 21 2000

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

JOHN BRIEN METCALF

By Shelly Ely

Case No. H-2557 SD

OAH No.

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 THE OFFICE OF ADMINISTRATIVE HEARINGS, 1350 FRONT STREET, ROOM 6022, SAN DIEGO, CALIFORNIA 92101 on TUESDAY--AUGUST 29, 2000, at the hour of 9:00 AM, or as soon thereafter as the matter can be heard, upon the Accusation 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.

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

Dated: JUNE 21, 2000

DEPARTMENT OF REAL ESTATE
By David B. Seals
DAVID B. SEALS Counsel

1 LARRY A. ALAMAO, Counsel
2 State Bar No. 47379
3 Department of Real Estate
4 P. O. Box 187000
5 Sacramento, CA 95818-7000
6
7 Telephone: (916) 227-0789
8

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DEPARTMENT OF REAL ESTATE

By Shelley Ely

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11 In the Matter of the Accusation of)
12 JOHN BRIEN METCALF,)
13 Respondent.)
14

No. H-2557 SD

ACCUSATION

15 The Complainant, J. Chris Graves, a Deputy Real Estate
16 Commissioner of the State of California, for cause of accusation
17 against JOHN BRIEN METCALF is informed and alleges as follows:

18 I.

19 Respondent is presently licensed and/or has license
20 rights under the Real Estate Law (Part 1 of Division 4 of the
21 California Business and Professions Code) (Code) as a real estate
22 salesperson.

23 II

24 The Complainant, J. Chris Graves, a Deputy Real
25 Estate Commissioner of the State of California, makes this
26 Accusation against Respondent in his official capacity.

27 ///

1 III

2 Respondent was issued a real estate salesperson
3 license on or about June 11, 1999, following Respondent's
4 application therefor filed on or about May 27, 1999 with the
5 knowledge and understanding that any license issued as a
6 result of said application would be subject to the conditions
7 of Section 10153.4 of the Business and Professions Code.

8 IV

9 In response to Question 25 of said application, to
10 wit: "Have you ever been convicted of any violation of
11 law?", Respondent answered "No".

12 V

13 On or about March 4, 1992, in the Municipal Court,
14 State of California, Los Angeles County, Van Nuys judicial
15 District, Respondent was convicted of violation of Section
16 602(j) of the California Penal Code (Trespass), a crime
17 involving moral turpitude which bears a substantial
18 relationship under Section 2910, Title 10, California Code of
19 Regulations, to the qualifications, functions, or duties of a
20 real estate licensee.

21 VI

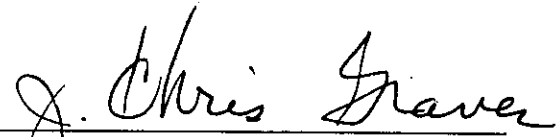
22 Respondent's failure to reveal the conviction set
23 forth above in said application constitutes the procurement
24 of a real estate license by fraud, misrepresentation, or
25 deceit, or by making a material misstatement of fact in said
26 application.

27 ///

VII

The facts alleged above constitute cause under Sections 498 and 10177(a) of the Code for the suspension or revocation of all licenses and license rights of respondent under the Real Estate Law.

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 all licenses and license rights of Respondent under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further relief as may be proper under other provisions of law.


J. Chris Graves
Deputy Real Estate Commissioner

Dated at San Diego, California,
this 3rd day of April, 2000