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FILED
OCT 27 2004

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Anne Shavin

* * *

In the Matter of the Accusation of)	
)	NO. H-3015 SD
PAUL VIGIL)	
)	OAH NO. L-2004080073
Respondent.)	
_____)	

DECISION

The Proposed Decision dated OCTOBER 6, 2004, 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 November 15, 2004.

IT IS SO ORDERED October 26, 2004.

JEFF DAVI
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

PAUL VIGIL,

Respondent.

Case No. H-3015 SD

OAH No. L2004080073

PROPOSED DECISION

On September 1, 2004, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Truly Sughrue, Real Estate Counsel, represented complainant.

Respondent represented himself.

The matter was submitted on September 20, 2004.

FACTUAL FINDINGS

1. J. Chris Graves, Deputy Real Estate Commissioner of the State of California (hereafter, "Department") filed Accusation No. H-3015 SD in his official capacity on May 21, 2004. Respondent filed a Notice of Defense.

2. In 1990, the Department issued broker license number 00929792 to respondent.

3. In December 2003, in the Superior Court of San Diego County, a jury convicted respondent of four counts of violating Insurance Code section 1871.4, subdivision (a)(1), false or fraudulent statements in depositions for the purpose of obtaining compensation. All the offenses were felonies. On December 11, 2003, the court sentenced respondent to prison for the lower term of two years on each count, with the sentences to run concurrently, suspended execution of the sentence, and placed respondent on probation for five years. The court required respondent to pay a fine of \$238.00 and a restitution fine of \$200.00. On January 7, 2004, the court stayed the fines and ordered a restitution hearing off calendar.

Respondent's convictions involve moral turpitude and are substantially related to the qualifications, functions, or duties of a real estate salesperson. (Cal. Code of Regs., tit. 10, § 2910, subdivision (a)(2), (4), and (8).

4. Respondent appealed the judgment of conviction to the Court of Appeal. In an unpublished decision filed on June 23, 2004, the Court of Appeal affirmed the judgment. The California Supreme Court denied a petition for review on September 2, 2004. The conviction is now final.¹

The Court of Appeal reviewed the transcript of the evidence introduced during trial and summarized the evidence as follows:

On November 13, 1998, Vigil was injured on the job. There is no dispute that he was injured and sustained disability. He applied for and received workers' compensation benefits. Benefits continued until terminated in 2002. In December 1998 and February, March and April 1999, an investigator videotaped Vigil engaged in various activities including kneeling and squatting while working on a telephone box, lifting and cutting boards with a power saw, sweeping a driveway and stairs, raking the yard, picking up what he raked, and climbing and descending stairs. On April 5, 2000, at a deposition, Vigil told the insurer's attorney that since his injury he had not lifted anything heavier than a gallon of milk, had not attempted to use any hand or power tools, required use of a handrail to go up and down stairs, and was unable to perform maintenance tasks on his property.

5. Respondent testified at the hearing and sought to prove that he was factually innocent of the criminal charges. He testified that on the day of his deposition, he was in pain and had taken medication. He was in essence testifying he was not guilty of the offenses of which he was convicted.

However, respondent's criminal convictions are final and no collateral attack upon the convictions can be entertained. The issue of respondent's guilt may not be re-litigated. Respondent's conviction 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.

6. Respondent is presently not working. He last used his broker license a year ago to do a refinancing for himself. His office is in his home. He has no employees and wants to keep his license in case opportunities come his way. Most recently, he has worked in construction. He testified he paid some of the fines imposed by the court.

¹ After the hearing, on September 20, 2004, counsel for complainant submitted a letter with certified copies of the Court of Appeal decision and the Supreme Court's ruling. The letter and attachments were marked Exhibit 4 and admitted into evidence.

LEGAL CONCLUSIONS

1. Cause to suspend or revoke respondent's real estate broker license was established pursuant to Business and Professions Code sections 480(a) and 10177(b), conviction of crimes involving involve moral turpitude and substantially related to the qualifications, functions, and duties of a real estate salesperson by reason of Findings 3 and 4.

2. California Code of Regulations, title 10, section 2911, sets forth the Department's criteria of rehabilitation. Under the applicable criteria, respondent's conviction occurred less than two years ago, he is still on probation, and he has paid some of the fines. He committed the acts which led to the conviction five years ago. Respondent expressed no remorse for his criminal conduct and maintains he is innocent, although a jury found him guilty and the appellate court affirmed the conviction.

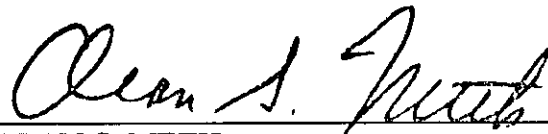
Respondent presented no evidence of rehabilitation.

On four occasions while under oath in a deposition, respondent provided false information. Such conduct has a direct bearing on the duties and responsibilities of a real estate broker. A broker needs to be truthful in his or her dealings with clients and the public, and has to be trusted. Respondent's conduct shows he was not truthful and cannot be trusted. In the absence of any evidence of rehabilitation, the only penalty is revocation of his broker license.

ORDER

Broker license number 00929792 issued by the Department to respondent Paul Vigil is revoked.

DATED: 10-6-04



ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
AUG 17 2004

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

By Shelly Eby

PAUL VIGIL

Case No. H-3015 SD

OAH No. 2004080073

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 WEDNESDAY--SEPTEMBER 1, 2004, 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.

DEPARTMENT OF REAL ESTATE

Dated: AUGUST 17, 2004

By Truly Sughrue
TRULY SUGHRUE, Counsel J.E.

1 TRULY SUGHRUE, Counsel
2 State Bar No. 223266
3 Department of Real Estate
4 P.O. Box 187007
5 Sacramento, CA 95818-7007
6 Telephone: (916) 227-0781

FILED
MAY 21 2004

DEPARTMENT OF REAL ESTATE

Shelly Ely

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 PAUL VIGIL,)
13 Respondent.)

No. H-3015 SD
ACCUSATION

14
15 The Complainant, J. CHRIS GRAVES, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against PAUL VIGIL (hereinafter "Respondent"), is informed and
18 alleges as follows:

19 I

20 The Complainant, J. CHRIS GRAVES, a Deputy Real Estate
21 Commissioner of the State of California, makes this Accusation in
22 his official capacity.

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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) (Code) as a real estate broker.

III

On or about December 11, 2003, in the Superior Court, County of San Diego, Respondent was convicted of four violations of Section 1871.4(a)(1) of the California Insurance Code (Filing a False Insurance Claim), a crime involving moral turpitude which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

IV

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

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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and license rights of Respondent
5 under the Real Estate Law (Part 1 of Division 4 of the Business
6 and Professions Code), and for such other and further relief as
7 may be proper under the provisions of law.

8
9 
10 J. CHRIS GRAVES
Deputy Real Estate Commissioner

11 Dated at San Diego, California,
12 this 7th day of May, 2004