

FILED

MAR 02 2001

DEPARTMENT OF REAL ESTATE

By

[Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of)
ROBERT JOSEPH PENROSE,)
Respondent.)

No. H-3017 SAC

ORDER GRANTING UNRESTRICTED LICENSE

On October 7, 1994, a Decision was rendered herein denying Respondent's application for a real estate salesperson license, 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 November 3, 1994, and respondent has operated as a restricted licensee without cause for disciplinary action against him since that time.

On May 30, 2000, Respondent petitioned for the removal of restrictions attaching to his real estate salesperson license.

I have considered Respondent's petition and the evidence submitted in support thereof including Respondent's

1 record as a restricted licensee. Respondent has demonstrated to
2 my satisfaction that he meets the requirements of law for the
3 issuance to him of an unrestricted real estate salesperson
4 license and that it would not be against the public interest to
5 issue said license to him.

6 NOW, THEREFORE, IT IS ORDERED that Respondent's
7 petition for removal of restrictions is granted and that a real
8 estate salesperson license be issued to Respondent if Respondent
9 satisfies the following conditions within nine months from the
10 date of this Order:

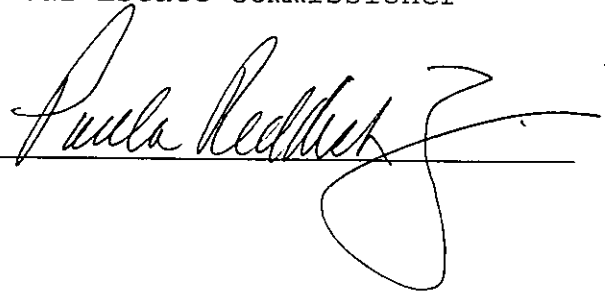
11 1. Submittal of a completed application and payment of
12 the fee for a real estate salesperson license.

13 2. Submittal of evidence of having, since the most
14 recent issuance of an original or renewal real estate license,
15 taken and successfully completed the continuing education
16 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
17 for renewal of a real estate license.

18 This Order shall become effective immediately.

19 DATED: January 30, 2001.

20 PAULA REDDISH ZINNEMANN
21 Real Estate Commissioner

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23
24
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DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

STATE OF CALIFORNIA

★ ★ ★

In the Matter of the Application of)
) NO. H-3017 SAC
 ROBERT JOSEPH PENROSE,)
) OAH NO. N-9406171
 Respondent.)

On October 7, 1994, a Decision was rendered in the above-entitled matter to become effective November 10, 1994.

On October 25, 1994, Respondent requested that the Decision of October 7, 1994, become effective immediately. As part of his request, Respondent has waived his rights to seek reconsideration or judicial review of the Decision of October 7, 1994.

IT IS HEREBY ORDERED that the effective date of the
Decision of October 7, 1994, is advanced to become effective
immediately.

DATED: October 25, 1994

JOHN R. LIBERATOR
Interim Commissioner

John R. Liberton

FILED
OCT 21 1994

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

* * *

By Kathleen Contreras

In the Matter of the Application of)
ROBERT JOSEPH PENROSE,)
Respondent.)

NO. H-3017 SAC

N-9406171

DECISION

The Proposed Decision dated September 23, 1994, 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 November 10, 1994.

IT IS SO ORDERED October 7, 1994.

JOHN R. LIBERATOR
Interim Commissioner

John R. Liberator

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement	)	
of Issues Against:	)	No. H-3017 SAC
	)	
ROBERT JOSEPH PENROSE,	)	OAH No. N-9406171
	)	
Respondent.	)	

PROPOSED DECISION

On September 1, 1994, in Sacramento, California, Catherine B. Frink, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Larry A. Alamao, Counsel, represented the complainant.

Respondent was present and was represented by Richard W. Freeman, Jr., Attorney at Law, 50 Old Courthouse Square, 5th Floor, P.O. Box 4601, Santa Rosa, California 95402.

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 Statement of Issues solely in his official capacity.

II

Robert Joseph Penrose ("respondent") made application to the Department of Real Estate ("the Department") for a real estate salesperson license on or about March 3, 1994.

III

On January 10, 1989, in the Municipal Court, County of Sonoma, respondent was convicted of a violation of Penal Code section 470 (forgery). The facts and circumstances surrounding the conviction are that respondent was employed at Tri-Star General performing construction work during the summer of 1987. Respondent took the job to earn money for college, which he was planning to attend in the fall. In July 1987, respondent and a friend took a Tri-Star General company check from his employer. Respondent filled out the check in the amount of \$600, and his friend cashed the check at a bank. Respondent spent some of the money and put the remainder in the bank. Thereafter, respondent told his father what he had done. Respondent repaid the money to his employer. After formal misdemeanor charges were filed in January 1988, respondent was referred to Project Intercept, a diversion program. Respondent did not successfully complete the diversion program, which was terminated on October 24, 1988; respondent thereafter pled no contest to the violation of Penal Code section 470 in January 1989.

The crime of which respondent was convicted involved moral turpitude and was substantially related to the qualifications, functions and duties of a real estate licensee under Title 10, California Code of Regulations, section 2910(a)(1), in that the circumstances underlying the crime involved the fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person; Title 10, California Code of Regulations, section 2910(a)(2), in that the crime involved forging or altering an instrument, i.e., the check; and Title 10, California Code of Regulations, section 2910(a)(8), in that the crime involved the doing of an unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator.

IV

As a consequence of his conviction, imposition of sentence was suspended and respondent was placed on informal probation for 18 months, subject to various terms and conditions, including 15 days in county jail and payment of restitution to the victim. Respondent was permitted to serve his jail time by performing work release. Respondent completed his criminal probation and obtained dismissal of the charge pursuant to Penal Code section 1203.4 by order of the Municipal Court of the County of Sonoma on August 30, 1994.

V

On March 22, 1990, in the Municipal Court, County of Sonoma, respondent was convicted of a violation of Penal Code section 484g(a) (Using Access Card Without Consent). The facts

and circumstances surrounding the conviction are that respondent and a friend attempted to use a stolen credit card to purchase items of clothing at Macy's department store on January 17, 1990. Respondent had previously contacted a friend who worked as a cashier at Macy's and told her he and a friend were coming to the store with the stolen credit card. Respondent offered to buy items for the Macy's cashier if she would help them use the credit card, and the cashier agreed. The cashier rang up the items which totaled \$520 plus 32:50 in sales tax. However, the credit card purchase was not approved, because the card had been reported stolen. Respondent and his friend left without taking the items. Respondent had previously used the stolen credit card on January 16, 1990, to purchase items of clothing from Jay Jacobs clothing store.

The crime of which respondent was convicted involved moral turpitude and was substantially related to the qualifications, functions and duties of a real estate licensee under Title 10, California Code of Regulations, section 2910(a)(8), in that the crime involved the doing of an unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator.

VI

As a consequence of his conviction, imposition of sentence was suspended and respondent was placed on formal probation for 18 months subject to various terms and conditions. Respondent was ordered to serve 10 days in county jail; perform 40 hours of volunteer community service in lieu of a \$355 fine; pay restitution in the amount of \$402; and to pay court costs of \$50. Respondent was permitted to serve his jail time through the work release program. Respondent returned the clothing to Jay Jacobs prior to his conviction; he completed all terms of his criminal probation and obtained a dismissal of the charges pursuant to Penal Code section 1203.4 by order of the Municipal Court of the County of Sonoma on August 24, 1993.

VII

Respondent is the youngest of four children. Respondent's parents were divorced when respondent was six years old; the children resided with their mother. When respondent was in high school, his three older siblings had already left home for college and careers. Both before and after graduating from high school in 1987, respondent associated with friends who encouraged and contributed to respondent's criminal misconduct. Respondent was employed part-time at Sandy's Take & Bake Pizza in Santa Rosa from 1988 until mid-1990, a period of about 2 1/2 years. Respondent worked the counter cash register; he often assisted with closing at the end of the work day and was responsible for balancing the cash register. Hearsay evidence

suggests that respondent frequently worked alone or without his employer's supervision, and that his performance was satisfactory.

After his second criminal conviction, respondent determined to change his lifestyle. Respondent concentrated on his studies at Santa Rosa Junior College and transferred to Chico State University for the fall semester 1990. Respondent joined a fraternity and made new friends; he no longer associates with the individuals who were involved in his prior criminal conduct. Respondent renewed his ties with his brother and sisters, and obtained financial assistance from his eldest sister and brother-in-law to finish college. Respondent graduated from Chico State in May 1993 with a Bachelor of Arts in Economics. Respondent is currently residing with his sister and her family in Sacramento.

After graduation from college, respondent became employed at Executive West Funding Corporation ("Executive West"), a real estate mortgage broker, as an errands clerk; respondent delivers documents, answers telephones and performs other office duties. Respondent's brother-in-law, Pat Driver, is the president and qualifying broker for Executive West. Mr. Driver is willing to exercise close supervision over respondent's activities as a loan officer if he is licensed by the Department.

Respondent has taken and passed all courses required for licensure as a real estate salesperson.

VIII

Respondent has satisfied several of the criteria of rehabilitation promulgated by the Department at Title 10, California Code of Regulations, sections 2911. More than four years had elapsed since respondent's most recent conviction, and respondent's criminal convictions were expunged in August 1993 and August 1994. Respondent paid restitution to the victims of his criminal misconduct and paid all fines ordered as part of his criminal probation in 1990. Respondent pursued additional education after his most recent conviction, having obtained his college degree and having successfully passed coursework and the examination for real estate licensure. Respondent has re-established close ties with his family and has developed new and different social and business relationships from those which existed at the time of the conduct that led to his criminal convictions. Respondent's own testimony as well as the testimony of family members demonstrate that respondent has tried to change the focus of his life, by finishing his education and pursuing gainful employment. The evidence did not establish that respondent is involved in social, community or church-related activities.

IX

While respondent has made substantial progress in his rehabilitation, there are aspects of respondent's criminal conduct which are disturbing. Both of the crimes involve theft or attempted theft, and the earlier conviction involved check forgery. In his capacity as a real estate licensee, respondent acts in a fiduciary capacity for clients and must uphold high standards of honesty and integrity. On the other hand, respondent appears to have made a sincere effort since 1990 to change his life, with notable success.

The evidence established that respondent may be granted a restricted real estate salesperson license without harm to the public. As a condition of said restricted license, respondent will be required to complete a course in professional responsibility, in order to remind him of his ethical obligations to his clients, the real estate profession, and the public.

DETERMINATION OF ISSUES

I

Cause for denial of respondent's application for a real estate salesperson license pursuant to Business and Professions Code sections 480(a) and 10177(b) was established by reason of Findings III and V.

II

The matters set forth in Findings IV and VI-IX are considered in making the Order below.

ORDER

The application of respondent Robert Joseph Penrose for issuance of a real estate salesperson license is denied pursuant to Determination of Issues I. However, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156 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 three years have 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 of Real Estate 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 shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department, including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of respondent's license until respondent passes the examination.

Dated: September 22, 1994

Catherine B. Frink

CATHERINE B. FRINK
Administrative Law Judge
Office of Administrative Hearings

FILED
JUL - 7 1994

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Laurie A. Zia

In the Matter of the Application of

ROBERT JOSEPH PENROSE,

Case No. H-3017 SAC

OAH No. N-9406171

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, 501 J Street, Suite 220
(Second Floor Hearing Rooms), Sacramento, CA 95814

on Thursday, August 11th, 1994, at the hour of 1:30 PM,
or as soon thereafter as the matter can be heard, upon the Statement of Issues 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.

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. 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.

DEPARTMENT OF REAL ESTATE

Dated: July 7, 1994

By David A. Peters
DAVID A. PETERS Counsel
for LARRY A. ALAMAO, Counsel

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

5 Telephone: (916) 227-0789

FILED
JUN 20 1994

DEPARTMENT OF REAL ESTATE

By Laurie A. Zia

7 BEFORE THE DEPARTMENT OF REAL ESTATE

8 STATE OF CALIFORNIA

9 * * *

10 In the Matter of the Application of) No. H-3017 SAC
11 ROBERT JOSEPH PENROSE,) STATEMENT OF ISSUES
12 Respondent.)
13 _____)

14 The Complainant, Charles W. Koenig, a Deputy Real Estate
15 Commissioner of the State of California, for Statement of Issues
16 against ROBERT JOSEPH PENROSE (hereinafter "Respondent"), alleges
17 as follows:

18 I

19 Respondent, pursuant to the provisions of Section
20 10153.3 of the Business and Professions Code, made application to
21 the Department of Real Estate of the State of California for a
22 real estate salesperson license on or about March 3, 1994.

23 II

24 Complainant, Charles W. Koenig, a Deputy Real Estate
25 Commissioner of the State of California, makes this Statement of
26 Issues in his official capacity and not otherwise.

27 ///

III

On or about January 10, 1989, in the Municipal Court, County of Sonoma, Respondent was convicted of a violation of Section 470 of the California Penal Code (Forgery), a crime involving moral turpitude and 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

On or about March 22, 1990, in the Municipal Court, County of Sonoma, Respondent was convicted of a violation of Section 484g(a) of the California Penal Code (Using Access Card Without Consent), a crime involving moral turpitude and 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.

V

The crimes of which Respondent was convicted, as alleged in Paragraphs III and IV above, 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.

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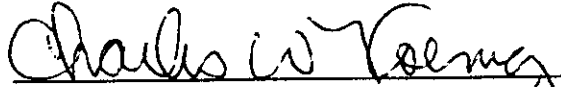
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1 WHEREFORE, the Complainant prays that the above-entitled
2 matter be set for hearing and, upon proof of the charges contained
3 herein, that the Commissioner refuse to authorize the issuance of,
4 and deny the issuance of, a real estate salesperson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

7
8 
9 CHARLES W. KOENIG
Deputy Real Estate Commissioner

10 Dated at Sacramento, California
11 this 17th day of June, 1994.