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MAY 23 2010

DEPARTMENT OF REAL ESTATE

[Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

TROY ROBERT GINDT,

Respondent.

No. H-3080 SD

ORDER GRANTING REINSTATEMENT OF LICENSE

On March 1, 2005, in Case No. H-3080 SD, a Decision was rendered revoking the real estate salesperson license of Respondent effective March 21, 2005, 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 March 24, 2005, and Respondent has operated as a restricted licensee since that time.

On April 1, 2009, Respondent petitioned for the removal of restrictions attaching to Respondent's 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 requirements of law for the issuance to Respondent of an unrestricted real estate salesperson license and that it would not be against the public interest to issue said license to Respondent.

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

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

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

11 This Order shall become effective immediately.

12 DATED: 5-13-2010

13 JEFF DAVIS
14 Real Estate Commissioner
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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
MAR 03 2005

DEPARTMENT OF REAL ESTATE

By *Anne Pham*

* * *

In the Matter of the Accusation of)
TROY ROBERT GINDT) NO. H-3080 SD
Respondent.) OAH NO. L-2004110302

DECISION

The Proposed Decision dated February 7, 2005, 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 MARCH 21, 2005

IT IS SO ORDERED

3-1 2005
JEFF DAVIS
Real Estate Commissioner

Jeff Davis

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

TROY ROBERT GINDT,

Respondent.

Case No. H-3080 SD

OAH No. L2004110302

PROPOSED DECISION

On January 19, 2005, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Truly Sughrue, Counsel, represented complainant.

William R. Winship, Jr., Attorney At Law, represented respondent.

The matter was submitted on January 21, 2005.

FACTUAL FINDINGS

1. J. Chris Graves, Deputy Real Estate Commissioner of the State of California (Department) filed Accusation No. H-3080 SD in his official capacity on October 5, 2004. Respondent filed a timely Notice of Defense.

2. On September 29, 2000, the Department issued salesperson license number 01299789 to respondent.

3. On August 18, 2003, in the Santa Clara County Superior Court, respondent pled guilty to one count of violating Penal Code section 368, subdivision (d), theft or embezzlement of more than \$400 by a person not a caretaker from an elder or dependent adult, and one count of violating Penal Code sections 484-487, subdivision (a), grand theft. In addition, respondent admitted allegations that in the commission of the two offenses, he

intentionally took property exceeding \$150,000 in value in violation of Penal Code section 12022.6, subdivision (a)(2). The indictment alleged the two offenses were committed on or about and between October 22 and 27, 2001.

Respondent had been charged in a six-count indictment with three counts of conspiracy and one count of obtaining money by false pretenses in addition to the theft and embezzlement charges. Those charges were dismissed as part of a plea bargain. Respondent's father, Robert Gindt, was alleged to be respondent's co-conspirator. A condition of the plea was that both respondent and his father make restitution to the victim at the rate of \$4,167.83 a month for seven months, and on the date of sentencing, they pay the victim the remaining sum of \$397,464.55. The plea bargain provided if respondent did not make the required payment, he faced a possible sentence of up to one year in the county jail, while his father faced a possible sentence of up to six years in state prison. If respondent and his father made the restitution payment, the People would move to reduce the charges against respondent to misdemeanors and would not ask the court to impose any further jail time beyond the four days he previously served. If restitution were paid, respondent's father would serve a year in the county jail, with six months straight time followed by work furlough. Both defendants could be ordered to pay the victim's attorney's fees.

On March 1, 2004, the court imposed a sentence on respondent in accordance with the plea agreement based on payment to the victim of the restitution ordered. The court ordered the offenses to be misdemeanors pursuant to Penal Code section 17, suspended imposition of sentence, and placed respondent on probation for three years.

Respondent's conviction involves moral turpitude and is substantially related to the qualifications, functions, or duties of a real estate salesperson. California Code of Regulations, title 10, section 2910, subdivisions (a)(1) and (8).

4. The seriousness of the offense committed against the victim, Charlotte Taylor, an 87-year-old woman, cannot be overstated. Respondent's father, Robert Gindt, was serving his sentence in a work furlough program in Northern California on the date of the hearing. He left the program early in the morning to testify at the hearing. While his testimony is open to considerable skepticism, on the crucial issue — respondent's participation in the criminal acts committed against Mrs. Taylor between October 22 and 27, 2001 — Mr. Gindt's testimony, when considered along with respondent's testimony, the police report, and the transcript of the grand jury proceedings, showed respondent's participation was minimal.

5. Mr. Gindt testified as follows:

Respondent is his only son. He is a real estate developer and as such, he finds and buys property, puts a team together, and develops or re-develops the property. He has been doing this for 25 years. He has built or refurbished apartment buildings and strip centers.

Mr. Gindt became interested in two properties, one in the City of Concord, and one in the City of Martinez. The Concord property was a run-down strip center with housing in the rear. Among the noteholders on the property was Mrs. Taylor, who was the first trustee. Mrs. Taylor had sold the property in 1991 and held the note to the mortgage. Mr. Gindt decided to buy the property in August 1999. He made a minimal down payment and used a "wraparound." He assumed two existing debts, including Mrs. Taylor's note of about \$450,000. Mr. Gindt decided to put title of the property in respondent. Respondent at that time was a college student at USD. Mr. Gindt did this "to get things started for him." According to Mr. Gindt, respondent did not participate in the purchase of the property. He sent respondent all the documents relating to the transaction and had respondent sign and return them.

The property in Martinez was a rundown building that at one time housed an office of the Department of Motor Vehicles. Mr. Gindt again "wrapped to the existing loans" and put title in respondent's name. There were three loans on the property. Respondent signed all the relevant documents. Mr. Gindt again explained he did this because he "wanted to help him get started. He is my son."

In October 2001, Mr. Gindt decided to sell the Concord property. During the course of the sale negotiations, Chicago Title contacted Mrs. Taylor and told her about the impending sale. Mrs. Taylor then called Mr. Gindt's wife and told her she did not want the loan to be paid off and preferred to receive the interest payments. Mr. Gindt then spoke to her and proposed that he transfer the note from the Concord property to the Martinez property. He went to his lawyer and drew up the documents.

On October 27, 2001, respondent and Mr. Gindt went to Mrs. Taylor's home in Santa Clara and executed all the documents relating to the transfer of her interest from the Concord property to the Martinez property. Mr. Gindt acknowledged several problems with the transaction. There was no current appraisal of the Martinez property. Mr. Gindt told Mrs. Taylor that she would be in the second position on the Martinez property; she had been in the first position on the Concord property. As it turned out, she was in the fifth position on the Martinez property and an appraisal would have shown her interest would have been wiped out because there was not enough equity to pay off her note. Mr. Gindt could not explain why he did not obtain an appraisal or a title report.

Mr. Gindt emphasized respondent had nothing to do with either buying the two properties or transferring the note. All respondent did was sign documents as Mr. Gindt directed him to do.

After the transaction on October 27, Mrs. Taylor consulted an attorney and sued Mr. Gindt and respondent for fraud. Upon the conclusion of the civil action, the District Attorney became involved and indicted them. Initially, both he and respondent were charged with felonies. Mr. Gindt pled guilty to two felonies and was incarcerated. Respondent pled to misdemeanors and did not do any jail time.

Mr. Gindt testified he "put his son in this mess and he did not do anything. He was indicted because of what I did. He was an obedient son." Mr. Gindt paid Mrs. Taylor in full, in excess of \$400,000.00. He indicated respondent provided \$90,000.00 which respondent borrowed but he was making the payments on the loan.

Mr. Gindt hoped respondent would become involved in real estate development after he finished college. He had placed about four or five properties in respondent's name. He believed respondent trusted him, freely signed the documents, and looked to him for guidance.

6. Respondent testified as follows:

Between 1997 and 2001, he was a full-time college student at USD, and graduated in May 2001 with a degree in business administration. At the beginning of his senior year in 2000, he applied for a real estate license, and after he received his license, he sought and obtained an internship at a brokerage firm. He took the real estate principles course, and other college courses satisfied the requirements for licensure.

Respondent knew his father was putting properties in his name. The first time was in about 1999, when he was 19 or 20 years old. Mr. Gindt told him they would be good investments and were potentially lucrative. He did not know there were obligations on the properties; he thought of them as assets or investments that would appreciate. Respondent trusted his father and did not question him because he knew of Mr. Gindt's experience in the real estate field. Respondent did not give his father any money with which to purchase these properties and in fact, his father was supporting him while he attended college.

Respondent signed the documents Mr. Gindt sent to him. He knew they placed title to the properties in his name but he did not think twice about it. His father, who lived in the Bay Area, shipped the documents to him in San Diego, and he signed where indicated and sent them back. Respondent was never involved in the acquisition of the properties except to sign the documents. Respondent did not read any of the documents. He acknowledged some of the payments on the Taylor note came from his account, but the property was managed and he did not have a management position.

According to respondent, the first and only time he spoke to Mrs. Taylor was the day they signed the documents transferring the note from the Concord property to the Martinez property. Respondent was told Mrs. Taylor did not want the note paid off. He flew up to the Bay Area with his fiancée, met Mrs. Taylor briefly, and flew home. He did not pay attention to what was going on and did not ask any questions. He testified he did not know what was going on and did not ask his father because he had no reason to doubt him. He never expected there would be problems. He did not know who purchased the Concord property or the amount of the sale, and did not know about any encumbrances on the Martinez property. His father told him the Martinez property would be developed into townhomes.

The first time respondent learned there were problems with the October 27, 2001 transaction was in October 2003 when he was arrested at work. A police officer arrived with an arrest warrant. He believes that in addition to the \$90,000 loan he obtained to help pay the restitution obligation, he paid about \$50,000 in attorneys' fees. Respondent knew about the civil case, having received a copy of the complaint, but when he asked his father and his father's attorney about it, he was assured there was not a problem and he should not worry about it.

Since obtaining his license, respondent has worked for Mortgage and Realty Professionals in La Jolla (MRP). He started as an intern because he wanted to learn about real estate finance. He has done primarily mortgage origination, and recently has started working as an agent doing residential sales.

Respondent does not presently own any properties his father had purchased for him. He has made minor payments on the restitution loan but his father has been taking care of it. Respondent expressed remorse for the damage Mrs. Taylor suffered and he and his father made sure she was repaid. He testified he should have paid more attention to what his father wanted him to sign, but he was a full-time college student and left his affairs to his father. Since the indictment, he has investigated what his father was doing.

7. A Santa Clara County District Attorney investigator interviewed Mrs. Taylor on August 9, 2002. She told him the following:

In 1991, she sold the Concord property to the Silvas and held the mortgage. In August 1999, the Silvas sold the property to Robert Gindt and his son Troy, with Troy assuming a \$450,000 note. Mrs. Taylor did not meet either of them. She trusted the Silvas and did not worry about the sale to the Gindts. She expressed some concern with respondent owning the property for his father, but Mr. Gindt pacified her concerns stating that he was trying to get his son started. After the sale, Mrs. Taylor began receiving monthly payment checks in the mail with respondent's information on them.

Toward the end of 2001, the checks began arriving late and she called respondent. He said he did not deal with it and to call his father. Mrs. Taylor contacted Mr. Gindt who said it was a mistake and he would send the check.

On October 22, 2001, according to Mrs. Taylor, Mr. Gindt called her at home and said he had a buyer for the Concord property. He added that if she received the money, the government would take about \$200,000 and she would receive the difference. He told her if he could transfer the loan to another property as a second deed of trust, the payment would continue at the same rate. At the time, there was approximately \$433,529.29 remaining on the note, and she was receiving \$4,167.81 per month. Mrs. Taylor said at the time she was bed ridden following an operation to remove a cancerous growth in her colon, and was taking Vicodin. She did not recall details of the conversation. Mrs. Taylor told Mr. Gindt of her condition and he told her to contact her accountant. Mrs. Taylor then contacted her accountant and told her to call Mr. Gindt and obtain more information about the property.

On October 26, Mr. Gindt called Mrs. Taylor and told her he would be at her residence the next morning to close the deal. He said the mortgage would be removed to a DMV building in Martinez as a second mortgage and would be paid off in January 2011. The next day, Mr. Gindt, respondent, respondent's girlfriend, and a notary public arrived at her home. Mrs. Taylor's daughter was also present. Mr. Gindt told Mrs. Taylor they were transferring her mortgage from the Concord property to a Martinez property and her mortgage would be in the second position. Mr. Gindt told her he was planning on tearing the building down and constructing a sixteen-unit apartment building in its place. She signed a Deed of Trust and Assignment of Rents and other documents, as did respondent.

Mrs. Taylor told the investigators she was ill during this and needed her daughter's help. She could not read the documents and could not focus because of the pain killers. She described Mr. Gindt as being in a rush and pushing her to sign the papers without reading them. She trusted Mr. Gindt and was never suspicious, although she kept thinking about the fact that nowhere in the paperwork was there any terminology about her being in a second position deed of trust. She normally would have visited the property and possibly contacted an attorney prior to conducting this transaction.

Mrs. Taylor continued to receive payments for the Concord property in the amount of \$4,167.81 instead of \$4,198.75 called for under the new transaction. She contacted Mr. Gindt who said it would begin on December 1. She continued to receive incorrect checks and one indicated it was for the Concord property. The checks had respondent's information on them but Mr. Gindt's address. When she called him in February 2002, Mr. Gindt said the tenant-buyer of the Concord property was still planning to purchase the property but it took a while to get financing.

Over time, Mrs. Taylor began to worry about what happened. She asked a friend to look at the Martinez property, who did and reported it was "a dump and not worth that much." Mrs. Taylor indicated Mr. Gindt had not lived up to the contract; he continued to pay her the lesser monthly amount and each time she called him, he said the deal was not complete and he was paying her anyway. In April, respondent's check bounced, but she received a certified check to replace it.

The investigator also interviewed Gail Isaacson, Mrs. Taylor's accountant. She said after she spoke to Mrs. Taylor, she contacted Mr. Gindt by phone. He told her he had been looking through his portfolio trying to determine which property he should transfer Mrs. Taylor's note to and decided on a property in Martinez. She told the investigator Mr. Gindt said Mrs. Taylor would be in the first position and he would have his attorney forward paperwork to her, including the location of the property and a preliminary title report.

On October 26, according to Ms. Isaacson, Mr. Gindt called her and said he wanted to pay off the note. She said she was leaving on vacation and did not have the time to figure out the payoff amount. She asked him what the hurry was because she had not received the property location or the preliminary title report. Mr. Gindt told her he had a buyer but would

wait and get her the paperwork. After she returned from her vacation and learned from Mrs. Taylor what had occurred on October 27, she called Mr. Gindt who said all the paperwork would be corrected and forwarded to her, but that did not occur and she has not spoken to him.

The investigator reviewed county records and learned that on September 22, 2000, a grant deed was recorded in which Mr. and Mrs. Piscitelli granted the Martinez property to respondent, and there were three deeds of trust on the property. The beneficiary of the first two was SSDR Investment Company, a limited partnership, and totaled \$235,000. The third specifically stated it was inferior and subordinate to the other two and was for the benefit of a trust, and was in the amount of \$100,000.

The investigator conducted a public record search and learned Mr. Gindt was involved as a defendant in six civil actions between 1990 and 1996 and he had been the subject of nine separate liens between 1994 and 2001, four from the IRS and five from the State of California totaling \$1,655,371.00. Mr. Gindt at that time did not own any property but respondent owned the property Mr. Gindt stated was his address. Meanwhile, respondent owned seven pieces of real estate purchased in 2000 and 2001, with total purchase prices in excess of \$4,109,500. Respondent was also the president of "Why Not Development, Inc." out of South Lake Tahoe.

8. Testimony before the grand jury on February 25-27, 2003 revealed the following:

With respect to the Martinez property, a preliminary title report indicated as of August 31, 2002, there were outstanding property taxes owed in the amount of \$10,360.43, and there were trust deeds in the amount of \$130,000 in the first position after taxes, another in the amount of \$105,000 in the second position, another in the amount of \$100,000 in the third position, another in the amount of \$125,000 in the fourth position, and Mrs. Taylor's loan in the fifth position.

An escrow officer with Orange Coast Title testified she had handled several escrows for Mr. Gindt and respondent, including the Martinez property which was then in escrow. She testified Mr. Gindt opened that escrow, although respondent was the owner of that and the other properties and he was her principal. She did not get any information relating to the escrows from respondent, but he was required to sign the paperwork and confirm the information. She testified most of the information on the escrows came from Mr. Gindt. Regarding the Martinez property, on August 27, 2002, when he opened the escrow, Mr. Gindt told her he was attempting to get Mrs. Taylor into the second position and he wanted to know what needed to be done to accomplish that. Later, Mr. Gindt asked her to write a letter describing the contemplated transaction. Mrs. Taylor was not in second position as of August 20, 2002.

A mortgage loan broker for Prudential Mortgage Bankers testified Joe Piscitelli purchased the Martinez property in approximately 1999 and paid about \$290,000 for it.

Piscitelli used Prudential's limited partnerships to finance the purchase. When the Gindts were looking to buy the property, Prudential was willing to make a new loan. The broker did an appraisal and concluded the purchase price of \$350,000 was reasonable and he felt comfortable with that amount, so Prudential did a purchase money first of \$130,000 and a second of \$105,000. He described the property as partially boarded up, and it looked about the same in 2000 when the Gindts purchased it as it did the year before when Piscitelli purchased it. The broker only spoke to respondent about the transaction, never to Mr. Gindt.

9. Mrs. Taylor testified before the grand jury. Her testimony provided more details than her statement to the district attorney investigator, but on the crucial issues — respondent's role in the events between October 22 and 27, 2001 — her testimony was similar to the statements she had made. She testified Mr. Gindt called her on the phone that he had a buyer for the property and he was anxious to sell it, and would be coming out for her to sign the papers. She testified he told her how he was going to develop the Martinez property and put 16 units on it. They discussed paying off the loan and how she would hate to lose her eight percent interest payment, and it was Mr. Gindt who suggested the mortgage be moved to the Martinez property. On October 27, when the Gindts came to her home, it was Mr. Gindt who talked about the sale and how he wanted it to happen quickly. She testified Mr. Gindt gave the documents to her to sign and "did 99 percent of the talking." She testified respondent did not do any of the talking. She testified Mr. Gindt told her he was giving her more money on the Martinez deed of trust, \$495,000, than he owed her on the Concord property (\$433,592.29). She testified she could not remember anything anyone said other than Mr. Gindt.

10. At the beginning of the grand jury proceedings, the deputy district attorney described for the members of the grand jury the nature of the case, the charges, and the evidence she expected would be elicited. She described respondent's role in the case as the purchaser of the Concord property who made mortgage payments to Mrs. Taylor. Other than that reference, she did not mention respondent, and all the criminal acts were committed by Mr. Gindt.

She explained to the grand jury there were six charges in the indictment but they were all centered on the same conduct, and they were six different ways of charging the defendants. She indicated if the grand jury indicted the defendants on all six charges, and the defendants were convicted of all six after a trial, they would be sentenced under only one of them. She said the heart of the case was a theft by false pretenses.

11. Christopher Scelfo is a broker and a partner of MRP, which focuses on residential transactions, with some resales and but mostly mortgages. He testified he met respondent when respondent applied for an internship position when respondent was a student at USD. He has worked with and supervised respondent every day since then. He testified he trusted respondent to do the work needed and that respondent knew what he was doing. He indicated his clients thought very highly of respondent. He believes respondent to be trustworthy and honest, and has never seen anything that suggested respondent would commit fraud, theft, or a misrepresentation. He was present when respondent was arrested

and at first thought it was a practical joke. Mr. Scelfo posted respondent's bail. He expects to continue to supervise respondent. He was not concerned about respondent's conduct in the Taylor case because of respondent's relationship with his father.

12. Miguel Patterson is the president of MRP and has known respondent since he started with the company five years ago. He works with respondent every day. He testified respondent was by far one of their top agents for producing numbers. He described respondent as ethical and honest, and one of the few people who has never received a complaint. He wants to keep respondent as an agent. He noted respondent committed the offense when he was younger, and he is considerably older now. He pointed out respondent was family oriented and would willingly sign something for his father because he just trusted him.

13. James Long is a notary public who works for a number of companies including MRP. He testified he has come across respondent daily for the last three to five years and has seen him interact with clients and other professionals. In his opinion, respondent is very honest. He indicated respondent always made sure information was correct, and gave an example of a time when respondent caught a mistake regarding closing costs and had the documents changed even though the borrower had already signed the loan documents.

14. Daniel Benitez is a loan officer with MRP and has seen respondent every day for the last five years, since their desks are adjacent to each other. He does the same work as respondent. He hears respondent talk to clients and sees him interact with other professionals. He testified respondent had very high morals and integrity, and was very dependable. He indicated respondent explained things well to his clients, and is thorough and professional. He has never heard any complaints or criticisms about respondent.

15. Lauren Moore testified she is a loan processor for MRP and originates loans. She has known respondent for five years, and helped to train him when he started. She testified he quickly excelled and got into an origination position, and she processed his files. In her opinion, respondent is very forthright and dedicated to his clients. Her clients trust him. She described him as a man of his word and a wonderful person. She noted respondent cut his fee because a client of his was presently serving in Iraq.

16. John S. Morken, an attorney, wrote he has known respondent since respondent was in high school and that respondent's father contracted for several properties in Northern California and placed the investments in respondent's name. He indicated respondent had resided continuously in Southern California. He wrote respondent's father negotiated the contracts and had respondent sign them, and did not believe respondent ever made any representations to buyers or sellers of the properties. He termed respondent's involvement in the transactions as "minor." Mr. Morken thought the case against respondent should have been dismissed, and his father told him he, not respondent, was responsible for the transactions. He described respondent as forthright and considerate, and believed respondent

had grown into an honest and reliable person who should be a credit to the real estate industry.

17. Christian E. Picone, an attorney, works for Berliner Cohen, a law firm that represented Mr. Gindt in the criminal case, wrote a letter in support of respondent. After the case criminal case ended, the firm helped respondent in some remaining minor issues. He wrote respondent's involvement in the case was primarily due to the acts of his father, and even though Mr. Gindt eventually fixed the problem, it was too late for the District Attorney. He called respondent's involvement

"... secondary as he was working for his father relying on his father's judgment and his father's real estate attorneys to place deeds of trust on property with appropriate security. It is my belief that [respondent] at no time was aware that the property was undervalued for the amount of the encumbrance placed on the property. Further, if [respondent] had been aware of the over encumbrance, he would not have agreed to place the deed of trust onto the property at issue. [Respondent] was really a secondary party in the case and in many ways was not a necessary party. The disposition of his case clearly signifies that, specifically, a plea of no contest to a no jail, no fine misdemeanor in Santa Clara County."

Mr. Picone wrote he has engaged respondent to help him refinance his home, and he relied on respondent's business judgment and understanding of the market. He indicated he was exceptionally pleased with respondent's diligence and his work ethic, and pointed out respondent explained what he believed was the best course of action in light of the options available. He wrote he has saved significantly more money than he expected. He described respondent as a knowledgeable, professional and hard working young man who provided excellent service, and he would highly recommend respondent to others looking to refinance real estate. He felt respondent was an asset and he has learned from this ordeal that he has to verify information on his own and cannot rely on others regardless of who they are. He believed respondent was a better person and a better real estate agent because of the ordeal.

LEGAL CONCLUSIONS

1. Business and Professions Code section 490 provides in part:

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. . .

2. Business and Professions Code Section 10177 provides in pertinent part:

The commissioner may suspend or revoke the license of a real estate licensee... who has done any of the following . . .

(b) Entered a plea of guilty [to] . . . a felony or a crime involving moral turpitude . . .

3. Cause to suspend or revoke respondent's real estate salesperson license was established pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), conviction of offenses that are substantially related to the qualifications, functions, and duties of a real estate salesperson, by reason of Findings 3 through 10.

4. California Code of Regulations, title 10, section 2912 sets forth the Department's criteria of rehabilitation. The evidence in light of those criteria shows respondent was convicted of two misdemeanors that involved the theft or embezzlement of a large amount of money from a sick and elderly woman. Respondent was sentenced less than a year ago, and will remain on probation for another two years. He has paid restitution. If respondent had committed the acts committed by his father, there is no question but that his license would be revoked.

The question presented in this case is respondent's role in the criminal conduct. The crime occurred between October 22 and 27, 2001, when Mrs. Taylor transferred her interest in a deed of trust from one piece of property respondent owned to another. Respondent's father testified at length at the hearing and took responsibility for the offense. Respondent also testified Mr. Gindt was the one who arranged the transaction, and his role was limited to signing the papers which effectuated the transaction. It is noteworthy that the investigator's report and the transcript of the grand jury proceedings corroborate the view that respondent's role in this crime was limited. Further, the sentence the court imposed on respondent, no jail time for the two misdemeanor offenses, compared to a one-year custody sentence for a felony conviction for respondent's father, suggests the court agreed respondent's role was minimal.

It is understandable that respondent, a 20-year-old college student in 1999, would rely on his father in his business affairs, particularly as they involved Mr. Gindt's business of real estate development, and therefore would readily sign documents which transferred ownership of real property into his name. However, by October 2001, when respondent was a college graduate, a licensed real estate salesperson, and an agent working for a real estate broker originating home loans, the excuse that he was young, inexperienced, and relying upon his father no longer flies. As a loan officer, respondent certainly knew about deeds of trust, position, preliminary title reports, appraisals, and other matters involved in this case. Yet he did nothing to ensure that he, as the owner of the Concord and Martinez properties, acted lawfully.

From a criminal point of view, respondent's criminal acts were minor acts of commission. He signed papers that effectuated the transfer of Mrs. Taylor's interest from the Concord property to the Martinez property. He made no misrepresentations to her as did his father. From a real estate licensee point of view, however, respondent's acts were those of

omission, and those are more serious. He should have known what was going on, he should have paid more attention to the details, and he should have made sure his father was acting legally and appropriately when they went to Mrs. Taylor's home and found her ill, taking medication, and seemingly unable to understand what was transpiring. He did nothing.

Respondent's two employing brokers testified on his behalf as did two of co-workers. All spoke highly of him. All believe he is an honest and ethical real estate agent. Letters from two attorneys corroborate that. It has been five years since respondent first began participating in real estate investments with his father, and it is apparent he has grown up since then. From the testimony of his brokers and co-workers, it appears respondent learned a great deal from the situation in which his father put him.

Looking at all the evidence, respondent's performance as a real estate licensee for the last four years, and his reliance on his father, outweigh respondent's criminal acts and real estate omissions, and justify a decision to allow respondent to retain his license. It must be made clear, however, that respondent's efforts to blame his father entirely are unavailing. Respondent's father pled to the more serious charges, received a one-year custody sentence, and is paying restitution. Respondent has yet to face the consequences of his actions, or rather his omissions. Thus, it is appropriate to issue a restricted real estate license, but a significant suspension must be included as well a requirement that he take and pass the Professional Responsibility Examination.

ORDER

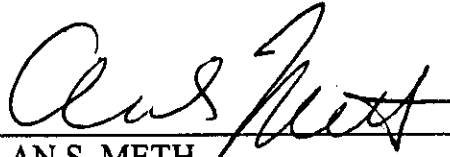
All licenses and licensing rights of respondent Troy Robert Gindt under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. 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 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 is substantially related 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 this 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 attaching to the restricted license until two (2) years have elapsed from the effective date of this Decision.
4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker, on a form approved by the Department of Real Estate which shall certify:
 - (a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
 - (b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.
5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commission 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 respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
6. Any restricted real estate license issued to respondent pursuant to this Decision shall be suspended for 90 days from the date of issuance of said restricted license.

7. 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: 2/7/05



ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings

RECEIVED
MAR 1 2005

OFFICE OF ADMINISTRATIVE HEARINGS
MAR 1 2005

FLA 6

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

FILED
NOV 23 2004

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

By Anne Skar

TROY ROBERT GINDT

} Case No. H-3080 SD

} OAH No. 2004110302

Respondent

**CONTINUED
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, SUITE 6022, SAN DIEGO, CA 92101** on **WEDNESDAY, JANUARY 19, 2005**, at the hour of **1:30 P.M.**, 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: NOVEMBER 23, 2004

By Truly Sughrue / as
TRULY SUGHRUE, Counsel

TS/as

FLAG

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

FILED
OCT 28 2004

DEPARTMENT OF REAL ESTATE

By *Anne Sharron*

In the Matter of the Accusation of

TROY ROBERT GINDT

} Case No. H-3080 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, SUITE 6022, SAN DIEGO, CA 92101** on **TUESDAY, DECEMBER 21, 2004**, at the hour of **1:30 P.M.**, 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.

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DEPARTMENT OF REAL ESTATE

Dated: OCTOBER 28, 2004

By *Truly Sughrue*
TRULY SUGHRUE, Counsel

TS/as

FILED

OCT - 5 2004

DEPARTMENT OF REAL ESTATE

By Gene Graves

TRULY SUGHRUE, Counsel
State Bar No. 223266
Department of Real Estate
P.O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-0781

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

TROY ROBERT GINDT,

Respondent.

No. H- 3080SD

ACCUSATION

The Complainant, J. CHRIS GRAVES, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against TROY ROBERT GINDT (hereinafter "Respondent"), is informed and alleges as follows:

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The Complainant, J. CHRIS GRAVES, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in 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 salesperson.

III

On or about March 1, 2004, in the Superior Court, County of Santa Clara, Respondent was convicted of a violation of Section 368(d) (Theft or Embezzlement of More Than \$400 by a Person Not a Care Taker from an Elder or Dependent Adult) and Section 484-487(a) (Grand Theft of Personal Property Over \$400) of the California Penal Code, crimes 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.

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9 
10 J. CHRIS GRAVES
11 Deputy Real Estate Commissioner

12 Dated at San Diego, California,
13 this 3rd day of August 2004
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