

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

FILED
AUG 23 2005

DEPARTMENT OF REAL ESTATE

In the Matter of the Application of)
FRANCIS BENJAMIN LEE,) NO. H-3134 SD
Respondent.) OAH NO. L-2005040153

DECISION

The Proposed Decision dated July 27, 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 application for a real estate salesperson license is denied. There is no statutory restriction on when application may again be made for this license. If and when application is again made for this license, all competent evidence of rehabilitation presented by Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto for the information of Respondent.

This Decision shall become effective at 12 o'clock noon
on SEP 13 2005.

IT IS SO ORDERED

8-10-05.
JEFF DAVI
Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
against:

FRANCIS BENJAMIN LEE,

Respondent.

Case No. H-3134 SD

OAH No. L2005040153

PROPOSED DECISION

On June 6, 2005, in San Diego, California, Greer D. Knopf, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

James L. Beaver, Real Estate Counsel, the Department of Real Estate, appeared on behalf of complainant J. Chris Graves, Deputy Real Estate Commissioner, Department of Real Estate, State of California.

Francis Benjamin Lee, respondent, appeared at the hearing and represented himself.

The matter was submitted on June 6, 2005.

FACTUAL FINDINGS

1. Statement of Issues number H-3134 SD, dated January 14, 2005, was filed by complainant, J. Chris Graves on January 24, 2005 in his official capacity as Deputy Real Estate Commissioner, Department of Real Estate, State of California against respondent Francis Benjamin Lee. The Statement of Issues alleges respondent applied for a license as a real estate salesperson and that he has been convicted of crimes involving moral turpitude that are substantially related to the qualifications, functions, and duties of a licensee. On March 22, 2005, respondent filed a notice of defense requesting a hearing in this matter. The proceeding herein followed.

2. On June 13, 2003, respondent submitted an application to the Department of Real Estate ("the Department") for licensure as a real estate salesperson. Respondent signed his application certifying the truth and accuracy under penalty of perjury. In his application, respondent answered "Yes" to the question, "Have you ever been convicted of any violation of law?" Questions 25 and 27 of the application required respondent to disclose details about any such convictions, such as the date of the conviction, the type of conviction, the arresting agency, the code name and specific section violated, the disposition of the case and the case number. Respondent disclosed on his application that he had been convicted of crimes in 1997, 2000, 2001, and 2003.

3. On May 21, 1997, in the Municipal Court, County of Alameda, State of California, respondent was convicted of a violation of Penal Code section 484, subdivision (a) for petty theft. This crime was a misdemeanor that involved dishonesty and moral turpitude and is substantially related to the qualifications, functions and duties of a real estate licensee under California Code of Regulations, title 10, section 2910. This conviction arose from respondent's shoplifting of a video tape from a record store while he was in college. Respondent was sentenced to one day in County Jail, two years probation and ordered to stay out of the store in question. Respondent completed his probation in 1999.

4. On October 24, 2000, in the Superior Court, County of Marin, State of California, respondent was convicted of a violation of Vehicle Code section 23152, subdivision (b) for driving under the influence of alcohol. This offense was a misdemeanor that involved dishonesty and moral turpitude and is substantially related to the qualifications, functions, and duties of a real estate licensee under California Code of Regulations, title 10, section 2910. The court sentenced respondent to three years probation, ordered to complete a first offender drinking driver program and ordered to pay fines and restitution in the amount of \$1,145.00. Respondent's driver's license was also suspended for 90 days.

5. On January 16, 2001, in the Superior Court, County of Marin, State of California, respondent was convicted of a violation of Vehicle Code section 23152, subdivision (a) for driving under the influence of alcohol. This offense was a misdemeanor that involved dishonesty and moral turpitude and is substantially related to the qualifications, functions, and duties of a real estate licensee under California Code of Regulations, title 10, section 2910. Respondent was still on probation for the 2000 conviction for driving under the influence of alcohol when he committed this offense. The court sentenced respondent to 15 days in the custody of the County Sheriff, 18 months probation, and fines and restitution. Respondent was also ordered to complete a post-conviction drinking driver program and his driver's license was restricted for one year. Respondent's driver's license has now been fully reinstated.

6. On April 11, 2003, in the Superior Court, County of Marin, State of California, respondent was convicted of a violation of Penal Code section 490.5 for petty theft. This offense was a misdemeanor that involved dishonesty and moral turpitude and is substantially related to the qualifications, functions, and duties of a real estate licensee under California Code of Regulations, title 10, section 2910. The court sentenced respondent to one year

probation and 20 hours of community service as well as fines and restitution. Respondent has completed this sentence.

7. Respondent testified at the hearing and made it clear that he takes no responsibility and has no remorse for his repeated criminal conduct. Respondent offered one absurd excuse after another for each incident that lead to his four separate convictions. His excuses were attempts to deflect responsibility for his own actions. Respondent demonstrated an arrogant attitude that further reinforced his failure to accept responsibility and his lack of remorse. Respondent has completed his criminal sentences, but he failed to establish he is genuinely working towards rehabilitation. Many of respondent's statements at the hearing as well as his demeanor indicate he does not believe he really did anything wrong, although he stands convicted of four crimes over a six-year period of time. Most troubling is respondent's attempt to minimize the significance of his criminal activity in the face of a pattern of disregard for the law. The Department must be able to rely on its licensees to demonstrate honesty and integrity. Respondent failed to demonstrate that he is sufficiently rehabilitated since his criminal convictions and has failed to establish he has respect for the law. He should not be entrusted with a real estate license at this time. It is not in the public interest to grant respondent's application for a license as a real estate salesperson.

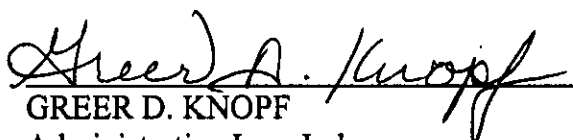
LEGAL CONCLUSIONS

Cause exists to deny respondent's application for a license as a real estate salesperson pursuant to Business and Professions Code sections 480, subdivision (a) and 10177, subdivision (b) in that respondent was convicted of crimes that involved moral turpitude and were substantially related to the qualifications, functions and duties of a real estate licensee as set forth in Findings 2-7.

ORDER

The application of Francis Benjamin Lee for a license as a real estate salesperson is hereby denied.

DATED: 7-27-05


GREER D. KNOPF
Administrative Law Judge
Office of Administrative Hearings

1 JAMES L. BEAVER, Counsel (SBN 60543)
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FILED
JAN 24 2005

DEPARTMENT OF REAL ESTATE

[Signature]

7 BEFORE THE DEPARTMENT OF REAL ESTATE

8 STATE OF CALIFORNIA

9 * * *

10 In the Matter of the Application of)
11 FRANCIS BENJAMIN LEE,)
12 Respondent.)

No. H-3134 SD

STATEMENT OF ISSUES

13
14 The Complainant, J. Chris Graves, a Deputy Real Estate
15 Commissioner of the State of California, for Statement of Issues
16 against FRANCIS BENJAMIN LEE (hereinafter "Respondent"), alleges
17 as follows:

18 I

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

22 II

23 Respondent made application to the Department of Real
24 Estate of the State of California for a real estate salesperson
25 license on or about June 13, 2003.

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27 ///

1 III

2 On or about May 21, 1997, in the Municipal Court of
3 the State of California, County of Alameda, Respondent was
4 convicted of the crime of Petty Theft in violation of Penal Code
5 Section 484(a), a misdemeanor and a crime involving moral
6 turpitude which bears a substantial relationship under Section
7 2910, Title 10, California Code of Regulations (herein "the
8 Regulations"), to the qualifications, functions or duties of a
9 real estate licensee.

10 IV

11 On or about October 24, 2000, in the Superior Court of
12 the State of California, County of Marin, Respondent was
13 convicted of the crime of Driving With Blood Alcohol Over .08%
14 in violation of Vehicle Code Section 23152(b), a misdemeanor and
15 a crime involving moral turpitude which bears a substantial
16 relationship under Section 2910 of the Regulations to the
17 qualifications, functions or duties of a real estate licensee.

18 V

19 On or about January 16, 2001, in the Superior Court of
20 the State of California, County of Marin, Respondent was
21 convicted of the crime of Driving Under The Influence Of Alcohol
22 in violation of Vehicle Code Section 23152(a), a misdemeanor and
23 a crime involving moral turpitude which bears a substantial
24 relationship under Section 2910 of the Regulations to the
25 qualifications, functions or duties of a real estate licensee.

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27 ///

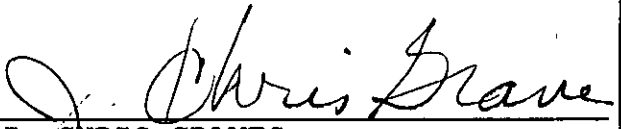
1 VI

2 On or about April 11, 2003, in the Superior Court of
3 the State of California, County of Marin, Respondent was
4 convicted of the crime of Petty Theft From Merchant in violation
5 of Penal Code Section 490.5, a misdemeanor and a crime involving
6 moral turpitude which bears a substantial relationship under
7 Section 2910 of the Regulations to the qualifications, functions
8 or duties of a real estate licensee.

9 VII

10 Respondent's criminal convictions described in
11 Paragraphs III through VI, inclusive, above, individually and
12 collectively constitute cause for denial of Respondent's
13 application for a real estate license under Sections 480(a) and
14 10177(b) of the California Business and Professions Code.

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

21
22 
23 J. CHRIS GRAVES
Deputy Real Estate Commissioner

24 Dated at San Diego, California,
25 this 14th day of January, 2005.