

FILED

FEB 22 2003

DEPARTMENT OF REAL ESTATE

By Juan Bruno

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
JOHN KIRKPATRICK McCOY,) NO. H-3357 SAC
Respondent.)

ORDER GRANTING REINSTATEMENT OF LICENSE

On September 23, 1998, a Decision After Rejection was rendered herein revoking the real estate broker license of Respondent, 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 January 22, 1999.

On January 23, 2002, Respondent petitioned for reinstatement of said real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

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

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

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

11 1. Submittal of a completed application and payment
12 of the fee for a real estate broker 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 3. Submittal of proof satisfactory to the Commissioner
19 of having taken and completed the trust fund accounting and
20 handling course specified in paragraph (3), subdivision (a) of
21 Section 10170.5 of the Business and Professions Code.

22 This Order shall be effective immediately.

23 DATED: February 14, 2003.

24 PAULA REDDISH ZINNEMANN
25 Real Estate Commissioner
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27

FILED
NOV 19 1998

DEPARTMENT OF REAL ESTATE

Shelly Ely

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
JOHN KIRKPATRICK MCCOY,) No. H-3357 SAC
Respondent.) OAH No. N-1998050113

ORDER DENYING RECONSIDERATION

On September 23, 1998, a Decision after Rejection was rendered in the above-entitled matter. The Decision is to become effective November 20, 1998.

On October 19, 1998, Respondent petitioned for reconsideration of the Decision of September 23, 1998.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of September 23, 1998 and reconsideration is hereby denied.

IT IS HEREBY ORDERED 11/18, 1998.

JIM ANTT, JR.
Real Estate Commissioner

Jim Antt, Jr.

FILED
OCT 21 1998

DEPARTMENT OF REAL ESTATE

Shelly Ely

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
JOHN KIRKPATRICK McCOY)
Respondent.)

NO. H-3357 SAC

ORDER STAYING EFFECTIVE DATE

On September 23, 1998, a Decision was rendered in the above-entitled matter to become effective October 21, 1998.

On October 19, 1998, Respondent petitioned for reconsideration of the Decision of September 23, 1998.

IT IS HEREBY ORDERED that the effective date of the Decision is stayed for a period of thirty (30) days. The Decision of September 23, 1998, shall become effective at 12 o'clock noon on November 20, 1998.

DATED: 10/21, 1998.

JIM ANTT, JR.
Real Estate Commissioner

Jim Antt Jr.



FILED
OCT 1 1998

DEPARTMENT OF REAL ESTATE

Shelly Ely

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
JOHN KIRKPATRICK MCCOY,)	NO. H-3357 SAC
Respondent.)	OAH NO. N-1998050113

DECISION AFTER REJECTION

The matter was heard before Muriel Evens, Administrative Law Judge, Office of Administrative Hearings, State of California, on June 18, 1998, at Sacramento, California.

David B. Seals, Counsel, represented the Complainant.

William Wallace, Attorney at Law, represented the Respondent, JOHN KIRKPATRICK MCCOY.

On July 6, 1998, the Administrative Law Judge submitted a Proposed Decision which I declined to adopt as my Decision herein. Pursuant to Section 11517(c) of the Government Code of the State of California, Respondent was served with notice of my determination not to adopt the Proposed Decision of the



1 Administrative Law Judge along with a copy of said Proposed
2 Decision. Respondent was notified that the case would be decided
3 by me upon the record, the transcript of proceedings held on
4 June 18, 1998 and upon written argument offered by Respondent.

5 Written argument was submitted by Respondent JOHN
6 KIRKPATRICK MCCOY.

7 I have given careful consideration to the record in this
8 case including the transcript of proceedings of June 18, 1998.

9 The following shall constitute the Decision of the Real
10 Estate Commissioner in this proceeding:

11 FINDINGS OF FACT

12 I

13 Complainant, Charles W. Koenig, a Deputy Real Estate
14 Commissioner, made the Accusation in his official capacity.

15 II

16 Respondent is licensed as a real estate broker. His
17 license expires April 16, 1999.

18 III

19 On or about February 27, 1996, respondent accepted a
20 check in the amount of \$1,000 from Harris Rentals (buyer) as a
21 deposit on the real property located at 708-722 North Sutter
22 Street, Stockton.

23 IV

24 On or about April 24, 1996, respondent accepted a check
25 in the amount of \$4,000 from buyer as a deposit on the real
26 property located at 6032 Gettysburg Place, Stockton.

27 ///



1 V

2 Neither purchase was completed nor was either check
3 forwarded to the sellers for a deposit. Respondent also failed to
4 place either the \$1,000 check or the \$4,000 check or any portion
5 thereof in a trust fund account (respondent had no trust account),
6 but instead cashed both checks within one day of their receipt by
7 him.

8 VI

9 On August 15, 1996, buyer was granted a default judgment
10 against respondent in small claims court for \$5,045. The judgment
11 represented the amount of the deposits plus court costs. On
12 December 12, 1997, the Real Estate Commissioner paid \$5,496.73
13 from the Real Estate Recovery Account to buyer, based on the small
14 claims judgment. This resulted in a suspension of respondent's
15 real estate license. On January 11, 1998, respondent repaid the
16 Real Estate Recovery Fund in full and his license was restored.

17 VII

18 Respondent did not tell the seller in either situation
19 that respondent did not in fact have a deposit in hand for the
20 properties.

21 VIII

22 Respondent was having financial difficulties in 1996 and
23 1997, in part due to medical problems. He used the deposit for his
24 own purposes, although he states the buyer had agreed to that. The
25 buyer had not agreed to "loan" respondent the deposits. Respondent
26 has been a broker since 1978 and was a salesperson from 1969 until
27 he received his broker's license.



1 DETERMINATION OF ISSUES

2 I

3 Cause for discipline of respondent's license for
4 violation of Business and Professions Code sections 10176(e) and
5 (i) and 10177(d), and Title 10, California Code of Regulations
6 sections 2831 and 2832 was established by Findings V-VII.

7 II

8 Respondent's failure to appreciate his obligation as a
9 fiduciary and his dishonest dealing demonstrate that the public
10 will not be adequately protected if Respondent is allowed to
11 practice without supervision.

12 ORDER

13 All licenses and licensing rights of respondent under
14 the Real Estate Law are revoked; provided, however, a restricted
15 real estate salesperson license shall be issued to respondent
16 pursuant to Section 10156.5 of the Business and Professions Code
17 if respondent makes application therefor and pays to the
18 Department of Real Estate the appropriate fee for the restricted
19 license within 90 days from the effective date of this Decision.
20 The restricted License issued to respondent shall be subject to
21 all of the provisions of Section 10156.7 of the Business and
22 Professions Code and to the following limitations, conditions and
23 restrictions imposed under authority of Section 10156.6 of that
24 Code:

25 1. The restricted license issued to respondent may be
26 suspended prior to hearing by Order of the Real Estate
27 Commissioner in the event of respondent's conviction or plea of



1 nolo contendere to a crime which is substantially related to
2 respondent's fitness or capacity as a real estate licensee.

3 2. The restricted license issued to respondent may be
4 suspended prior to hearing by Order of the Real Estate
5 Commissioner on evidence satisfactory to the Commissioner that
6 respondent has violated provisions of the California Real Estate
7 Law, the Subdivided Lands Law, Regulations of the Real Estate
8 Commissioner or conditions attaching to the restricted license.

9 3. Respondent shall not be eligible to apply for the
10 issuance of an unrestricted real estate license nor for the
11 removal of any of the conditions, limitations or restrictions of a
12 restricted license until three years have elapsed from the
13 effective date of this Decision.

14 4. Respondent shall submit with any application for
15 license under an employing broker, or any application for transfer
16 to a new employing broker, a statement signed by the prospective
17 employing real estate broker on a form approved by the Department
18 of Real Estate which shall certify:

19 (a) That the employing broker has read the Decision
20 of the Commissioner which granted the right to a restricted
21 license; and

22 (b) That the employing broker will exercise close
23 supervision over the performance by the restricted licensee
24 relating to activities for which a real estate license is
25 required.

26 5. Respondent shall, within nine months from the
27 effective date of this Decision, present evidence satisfactory to



1 the Real Estate Commissioner that respondent has, since the most
2 recent issuance of an original or renewal real estate license,
3 taken and successfully completed the continuing education
4 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
5 for renewal of a real estate license. If respondent fails to
6 satisfactorily this condition, the Commissioner may order the
7 suspension of the restricted license until the respondent presents
8 such evidence. The Commissioner shall afford respondent the
9 opportunity for a hearing pursuant to the Administrative Procedure
10 Act to present such evidence.

11 6. Respondent shall, within six months from the
12 effective date of this Decision, take and pass the Professional
13 Responsibility Examination administered by the Department
14 including the payment of the appropriate examination fee. If
15 respondent fails to satisfactorily this condition, the
16 Commissioner may order suspension of respondent's license until
17 respondent passes the examination.

18 This Decision shall become effective at 12 o'clock noon
19 on October 21, 1998.

20 DATED: 9/23, 1998.

21
22 JIM ANTT, JR.
23 Real Estate Commissioner

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FILED
JUL 24 1998

DEPARTMENT OF REAL ESTATE

Shelly Ely

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	
	)	NO. H-3357 SAC
JOHN KIRKPATRICK MCCOY,	)	
	)	L-1998050113
Respondent.	)	

NOTICE

TO: Respondent JOHN KIRKPATRICK MCCOY.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated July 6, 1998, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated July 6, 1998, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on June 18, 1998, and any written argument hereafter submitted on behalf of Respondent and Complainant.

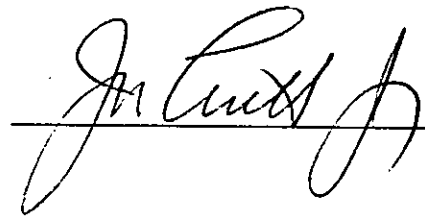
1 Written argument of Respondent to be considered by me
2 must be submitted within 15 days after receipt of the transcript
3 of the proceedings of June 18, 1998, at the Sacramento office of
4 the Department of Real Estate unless an extension of the time is
5 granted for good cause shown.

6 Written argument of Complainant to be considered by me
7 must be submitted within 15 days after receipt of the argument of
8 Respondent at the Sacramento office of the Department of Real
9 Estate unless an extension of the time is granted for good cause
10 shown.

11 DATED: _____

7/20/98

12 JIM ANTT, JR.
13 Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation	)	
Against:	)	File No. H-3357 SAC
	)	
JOHN KIRKPATRICK MCCOY,	)	OAH No. N-1998050113
	)	
	)	
Respondent.	)	
_____	)	

PROPOSED DECISION

On June 18, 1998, in Sacramento, California, Muriel Evens, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

David Seals, counsel, represented the complainant.

William Wallace, Attorney at Law, represented respondent John Kirkpatrick McCoy.

Evidence was received, the record was closed and the matter was submitted.

FINDINGS OF FACT

1. Complainant, Charles W. Koenig, a Deputy Real Estate Commissioner, made the Accusation in his official capacity.
2. Respondent is licensed as a real estate broker. His license expires April 16, 1999.
3. On or about February 27, 1996, respondent accepted a check in the amount of \$1,000 from Harris Rentals (buyer) as a deposit on the real property located at 708-722 North Sutter Street, Stockton.

4. On or about April 24, 1996, respondent accepted a check in the amount of \$4,000 from buyer as a deposit on the real property located at 6032 Gettysburg Place, Stockton.

5. Neither purchase was completed nor was either check forwarded to the sellers for a deposit. Respondent also failed to place either the \$1,000 check or the \$4,000 check or any portion thereof in a trust fund account (respondent had no trust account), but instead cashed both checks within one day of their receipt by him.

6. On August 15, 1996, buyer was granted a default judgment against respondent in small claims court for \$5,045. The judgment represented the amount of the deposits plus court costs. On December 12, 1997, the Real Estate Commissioner paid \$5,496.73 from the Real Estate Recovery Account to buyer, based on the small claims judgment. This resulted in a suspension of respondent's real estate license. On January 11, 1998, respondent repaid the Real Estate Recovery Fund in full and his license was restored.

7. Respondent admits he did not tell the seller in either situation that respondent did not in fact have a deposit in hand for the properties.

8. Respondent was having financial difficulties in 1996 and 1997, in part due to medical problems. He used the deposit for his own purposes, although he states the buyer had agreed to that. The buyer denied he had agreed to "loan" respondent the deposits.

There was no evidence of any other complaints against respondent. He has been a broker since 1978 and was a salesperson from 1969 until he received his broker's license.

DETERMINATION OF ISSUES

Cause for discipline of respondent's license for violation of Business and Professions Code sections 10176(e) and (i) and 10177(d), and Title 10, California Code of Regulations sections 2831 and 2832 was established by Findings 5-7.

ORDER

All licenses and licensing rights of respondent under the Real Estate Law are revoked; provided, however, a restricted real estate broker 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 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 that Code:

NOT ADOPTED

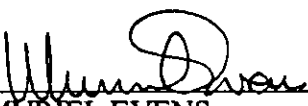
Not Admitted

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 the 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 of a restricted license until three years have elapsed from the effective date of this Decision.
4. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner 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 the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
5. 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.
6. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

Not Answered

Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of respondent and periodic summaries of salient information concerning each real estate transaction in which the respondent engaged during the period covered by the report.

DATED: 7/6/98



MURIEL EVENS
Administrative Law Judge
Office of Administrative Hearings

FILED
MAY 15 1998

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Kathleen Contreras

In the Matter of the Accusation of

JOHN KIRKPATRICK McCOY,

Case No. H-3357 SAC

OAH No. N-1998050113

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, 560 J Street,

Suites 340/360, Sacramento, California 95814

on June 18, 1998, 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: May 14, 1998

By

David B. Seals
DAVID B. SEALS

Counsel

1 DAVID B. SEALS, Counsel
2 Department of Real Estate
3 P. O. Box 187000
Sacramento, CA 95818-7000

4 Telephone: (916) 227-0789

FILED
APR 21 1998
DEPARTMENT OF REAL ESTATE

By Jean Curran

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 JOHN KIRKPATRICK MCCOY,) NO. H-3357 SAC
13 Respondent.) ACCUSATION
14 _____)

15 The Complainant, Charles W. Koenig, a Deputy Real Estate
16 Commissioner of the State of California for cause of Accusation
17 against JOHN KIRKPATRICK MCCOY (hereinafter "Respondent") is
18 informed and alleges as follows:

19 I

20 The Complainant, Charles W. Koenig, a Deputy Real Estate
21 Commissioner of the State of California, makes this Accusation in
22 his official capacity.

23 II

24 Respondent is licensed and/or have license rights under
25 the Real Estate Law, Part 1 of Division 4 of the California
26 Business and Professions Code (hereinafter "Code") as a real
27 estate broker.

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III

On or about February 27, 1996, Respondent accepted a check in the amount of \$1,000 from Harris Rentals (hereinafter "Buyer") as a deposit on the real property located at 708-722 North Sutter Street, Stockton.

IV

On or about April 24, 1996, Respondent accepted a check in the amount of \$4,000 from Buyer as a deposit on the real property located at 6032 Gettysburg Place, Stockton.

V

Neither purchase was completed nor was either check forwarded to the sellers for a deposit. Respondent also failed to place either the \$1,000 check or the \$4,000 check or any portion thereof in a trust fund account (Respondent had no trust account) but instead cashed both checks within one day of their receipt by him.

VI

Harris Rentals has requested that Respondent return the \$5,000 but has not been successful in obtaining any of the funds.

VII

The acts and/or omissions of Respondent described above are grounds for the revocation or suspension of Respondent's licenses under Sections 10176(e) and (i) of the Code, and Section 10145(a) of the Code and Sections 2831 and 2832, Title 10, California Code of Regulations in conjunction with Section 10177(d) of the Code.

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

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12 
13 CHARLES W. KOENIG
14 Deputy Real Estate Commissioner

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16 Dated at Sacramento, California,
17 this 13th day of April, 1998.
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