

FILED
MAY 25 2001

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Shelly Ely

* * *

In the Matter of the Accusation of)
WILLIAM JAMES MAUVAIS,)
Respondent.)
_____)

NO. H-3562 SAC
OAH NO. N-2001010283

DECISION

The Proposed Decision dated May 4, 2001, 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 June 14, 2001.

IT IS SO ORDERED May 15,, 2001.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

WILLIAM JAMES MAUVAIS,

Respondent.

Case No. H-3562 SAC

OAH No. N2001010283

PROPOSED DECISION

Administrative Law Judge Catherine B. Frink, State of California, Office of Administrative Hearings, heard this matter in Sacramento, California, on March 29, 2001.

Larry A. Alamao, Assistant Chief Counsel, represented the complainant.

Respondent was present and represented himself.

Evidence was received, the hearing was closed, and the record was held open for the submission of additional evidence. On April 5, 2001, the Office of Administrative Hearings received copies of toxicology reports for the year 2000, which were marked collectively as Exhibit I and received in evidence as administrative hearsay only. On April 17, 2001, the Office of Administrative Hearings received, via fax, a letter dated April 7, 2001 from Sandy Cordoza, Association Executive for the Yolo County Association of Realtors, which was appended to Exhibit C in evidence as administrative hearsay. Thereupon the record was closed and the matter was submitted on April 17, 2001.

FACTUAL FINDINGS

1. The Complainant, Charles W. Koenig, a Deputy Real Estate Commissioner of the State of California, filed the Accusation in his official capacity on January 11, 2001.
2. William James Mauvais ("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 as a real estate broker. Respondent's license will expire on May 10, 2004, unless renewed.

3. On December 3, 1998, in the Superior Court of California, County of Sacramento, respondent was convicted of a violation of Health and Safety Code section 11378, Possession for Sale of Controlled Substance, a felony.

The circumstances underlying the conviction are as follows. After responding to a tip from an unnamed informant concerning a narcotics transaction, respondent was stopped by Sacramento police officers on July 30, 1998 at about 8:15 p.m. while driving a silver Plymouth with a missing license plate sticker. At the time, respondent was driving with a revoked California driver's license and was arrested. Respondent had a passenger in the car with him. Officers searched the passenger and found hypodermic needles and a small ziplock baggie that was later determined to contain crystal methamphetamine. Officers searched the vehicle and found \$3,000 in cash stuffed beside the driver's seat and the dashboard. A police search of the trunk of the vehicle revealed a black backpack containing hypodermic needles, an unspecified quantity of methamphetamine and a scale.

At hearing, respondent testified that he had borrowed the car to get something to eat. He claims that there was identification in the backpack containing the contraband showing that the backpack did not belong to respondent, but that respondent was held responsible for all items in the car because he was the driver. Respondent further testified that he was not using illegal drugs during this period of time in his life.

4. The conviction set forth in Finding 3 is a crime involving "moral turpitude" within the meaning of Business and Professions Code section 10177(b). "Moral turpitude" is an elusive concept incapable of precise general definition. It includes any "immoral" act, not necessarily a crime. Golde v. Fox (1979) 98 Cal.App.3d 167, 181. Possession of drugs for sale is a crime necessarily involving moral turpitude. People v. Castro (1985) 38 Cal.3d 301, 317; Golde v. Fox, supra, 98 Cal.App.3d at p. 176.

5. The criminal act set forth in Finding 3 bears a substantial relationship to the qualifications, functions, and duties of a real estate licensee, as defined in Title 10, California Code of Regulations ("10 CCR") section 2910(a)(8), doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

6. As a consequence of the conviction set forth in Finding 3, imposition of sentence was suspended, and respondent was placed on formal probation for five (5) years, subject to various terms and conditions. Respondent was ordered to serve 210 days in the Sacramento County Jail, with credit for time served of five days. Work Furlough was recommended. Respondent was ordered to register as a convicted drug offender and to submit to warrantless searches. He was ordered to participate in a drug rehabilitation program under the direction of the probation officer, and to submit to random drug testing. Respondent was further ordered not to possess a pager or cellular phone. He was ordered to pay fines, fees and costs of more than \$1,000, and to comply with other standard terms and conditions.

Respondent was permitted to pay the court-ordered costs, fees and fines in installments. Respondent completed all payments on July 3, 2000. Respondent began random drug testing in January 1999. All test results have been negative. A Petition for Violation of Probation was filed with the court on March 10, 1999, and a warrant was issued for respondent's arrest. Respondent's criminal probation was revoked and reinstated on April 22, 1999, with the imposition of an additional 90 days in the county jail. Respondent was incarcerated from June 7 through August 12, 1999, then was given work furlough until October 1, 1999. At that time, respondent was returned to jail because someone at the house where respondent was living was drinking alcohol, in violation of the terms of respondent's work furlough (respondent did not personally consume alcohol). Respondent was released from incarceration on December 9, 1999. Respondent completed a 12-week drug education program through The Effort, Inc. on June 26, 2000. Thereafter, he has returned to the program several times for follow-up meetings. Respondent will remain on felony criminal probation until December 3, 2003.

7. The evidence did not establish that respondent was convicted of any criminal offense on August 9, 1999, as alleged in Paragraph IV of the Accusation. Rather, on October 16, 1997, in the Superior Court of California, County of Yolo, respondent was convicted of a violation of Penal Code section 496(a), receiving stolen property, a felony, and Health and Safety Code section 11377(a), possession of a controlled substance, a felony.

The facts and circumstances underlying the convictions are that, on June 25, 1997, respondent and a female companion were stopped by a Yolo County Sheriff's deputy because the car respondent was driving had an expired registration. When the deputy contacted respondent's companion, he discovered drug paraphernalia, and a search of the vehicle revealed a large amount of methamphetamines and library books belonging to the University of California at Davis. Additional drugs, drug paraphernalia and two scales were discovered in the trunk of the vehicle. At the time of his arrest, respondent was on drug diversion from a previous drug arrest in 1996.

8. As a consequence of the convictions set forth in Finding 7, imposition of sentence was suspended, and respondent was placed on formal felony probation for three (3) years, subject to various terms and conditions. Respondent was ordered to serve two (2) days in the county jail, with credit for time served of two days. In lieu of serving additional jail time, respondent was given the option of entering and completing a residential drug treatment program; submit to random drug testing; register as a convicted drug offender; submit to warrantless searches; pay costs, fees and fines, which respondent testified were in the amount of approximately \$4,000; and comply with other standard terms and conditions.

Respondent violated his criminal probation, in that he sustained the criminal conviction set forth in Finding 3 above, failed to register as a convicted drug offender and failed to notify the Yolo County probation department of his new address when he moved to Sacramento in 1999. Consequently, by court order dated August 9, 1999, respondent's probation was revoked, reinstated and extended to October 15, 2002.

Respondent is currently making installment payments to Yolo County to satisfy the court's order imposing fines, fees and costs. Respondent has paid about \$1,000, and believes he still owes about \$3,000. Respondent will remain on criminal probation for this offense until October 15, 2002.

9. Respondent grew up in Dixon, California and graduated from the University of California at Davis in 1977 with a degree in Agricultural Economics and Business Management. Respondent became employed as a real estate salesperson in 1978. In 1980, respondent began working for his parents at Mauvais Real Estate, Inc. in Davis. Respondent obtained his real estate broker license in 1984. Respondent became an officer of El Macero Real Estate, Inc. in April of 1984. In December of 1989, respondent and a partner founded California Properties of Davis, Inc., dba California Properties. In 1993, California Properties took on three new partners. Within six months, two of the partners had filed a lawsuit against the partnership that sent respondent and the corporation into bankruptcy after more than two years of litigation.

The stress of the litigation and financial hardship led to the dissolution of respondent's marriage. Respondent ceased working in the field of real estate in 1995. Respondent became involved in a dispute with his ex-wife over custody of their two children. He became depressed and withdrawn, and began using illegal drugs, particularly methamphetamine, or "crank." Respondent was arrested for possession of drugs in 1996 and was placed in a diversion program. Respondent began drug treatment at John H. Jones Community Clinic in early 1997. Respondent was sober for some period of time, but he had a relapse and was arrested again in June of 1997, as reflected in Finding 7 above.

As a consequence of his drug addiction and arrest, respondent's ex-wife forbade respondent from having contact with his daughter on the Fourth of July in 1997. That experience was devastating to respondent, and he decided that he needed to change his life. Respondent stopped using drugs and alcohol, and has been clean and sober since July 4, 1997. Respondent voluntarily enrolled in a seven-day in-patient drug rehabilitation program, Beamer Street, through the Yolo County Tobacco and Alcohol office during the last week of July 1997. Thereafter, respondent participated in an out-patient drug rehabilitation program at the John H. Jones Community Clinic from August 15, 1997 through March of 1998. At the same time, respondent attended Alcoholics Anonymous ("AA") and Narcotics Anonymous ("NA") meetings, including 120 meetings in 90 days. Respondent became chairman of an AA meeting on the U.C. Davis campus for a term of one year. Respondent continues to attend AA twice a week.

10. Respondent remarried in December 1999. In addition to respondent's two children from his first marriage, now ages 8 and 6, respondent has a two-year-old daughter with his second wife. When respondent's youngest daughter was an infant, she was placed in foster care by Child Protective Services ("CPS"), in part due to respondent's drug problems. As part of a family reunification process, respondent attended a 12-week parent education program, which he successfully completed on February 15, 2000. In addition,

respondent has received counseling through CPS on various issues related to parenting and to his drug addiction. Respondent has also been drug-tested on a random basis by CPS, all with negative results. Respondent's desire to spend time with his older children and be reunited with his youngest child has been a significant motivating factor in the maintenance of his sobriety. As of November 2000, respondent's baby daughter has been returned to the family home with periodic supervision/home maintenance. Respondent has a court date scheduled in April of 2001 during which respondent hopes that the home maintenance program will be terminated.

11. Respondent became employed by David R. Miller Construction in the spring of 1999. Respondent is Mr. Miller's only employee. Hearsay evidence suggests that respondent is well-regarded by his employer. Respondent is facing surgery for carpal tunnel syndrome, and he is not sure he will be able to continue employment in the construction industry, particularly as a laborer. Respondent is considering applying to the Contractors' State License Board for a home improvement salesman's certification, and he is concerned that the revocation of his real estate license would hinder his ability to obtain this certification.

12. Respondent's father passed away in 1999. Thereafter, respondent and his wife moved in with respondent's mother to help her with her home. Respondent's mother, Ann Mauvais, is the broker of record for Mauvais Real Estate, Inc. She is 78 years of age, and she operates Mauvais Real Estate out of her home. If respondent is permitted to retain a real estate license, he intends to assist his mother with her real estate business, with the goal of eventually taking over the operation.

13. Respondent was a member of the Yolo County Board of Realtors from 1979 to 1995. During that time, respondent served as chairman of the Davis division of the Board and as a voting member of the Board. Respondent either chaired or co-chaired the Board's annual golf tournament, a fundraiser for scholarships for local high school students, and he also participated in the scholarship selection committee. Respondent has coached high school football, both in a paid and volunteer capacity, as well as youth basketball and girls softball. Respondent is currently coaching a girls softball team and a boys little league farm baseball team.

14. Pursuant to Business and Professions Code section 482(b), the Department has developed criteria to evaluate the rehabilitation of a licensee after a criminal conviction, which are set forth in Title 10, California Code of Regulations, section 2912. In this case, just over two years have passed since respondent's most recent conviction, as set forth in Finding 3, and he is currently in compliance with the terms of his supervised probation, including the payment of fines and fees. However, it is noted that respondent was found to be in violation of his criminal probation, and was on probation for a prior criminal offense at the time of his most recent conviction. Respondent has nearly three years remaining on his criminal probation; he has not obtained early termination of probation, nor has he obtained expungement of his criminal conviction.

Respondent has completely abstained from the use of alcohol and drugs since July 4, 1997, a period of more than three and one-half years of sobriety. He has undergone both residential treatment and out-patient treatment for substance abuse, and has taken additional courses in drug education. He is currently attending AA regularly, and has had counseling through CPS. Respondent appears to be dedicated to his recovery.

Respondent no longer associates with the individuals who influenced him in engaging in the activities that led to his criminal conviction. Respondent has taken courses in parenting and drug education in furtherance of his rehabilitation.

Respondent has a stable family life at the present time, and he is meeting his parental and familial obligations. Respondent has regained the trust of his ex-wife and is actively involved in the lives of his two older children. He has been reunited with his youngest child and is likely to be released from CPS supervision in the near future. Respondent and his wife live with respondent's mother and provide assistance to her.

Respondent is presently a volunteer in youth sports but is not otherwise currently engaged in significant and conscientious involvement in community, church or privately sponsored programs designed to provide social benefits or to ameliorate social problems.

There has been a major change in respondent's attitude from the time he committed the acts leading to his conviction. Respondent has taken significant steps to alter his behavior and to take responsibility for his conduct. He has developed coping skills and support systems to reduce the likelihood of relapse. The financial and emotional stresses that led to respondent's depression and ultimate use of drugs have been resolved.

LEGAL CONCLUSIONS

1. Business and Professions Code section 490 states as follows:

"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. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

2. Business and Professions Code section 10177(b) states as follows:

"The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

"...

"(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information."

3. Business and Professions Code section 10101 states as follows:

"The accusation provided for by Section 11503 of the Government Code shall be filed not later than three years from the occurrence of the alleged grounds for disciplinary action unless the acts or omissions with which the licensee is charged involves fraud, misrepresentation or a false promise in which case the accusation shall be filed within one year after the date of discovery by the aggrieved party of the fraud, misrepresentation or false promise or within three years after the occurrence thereof, whichever is later, except that in no case shall an accusation be filed later than 10 years from the occurrence of the alleged grounds for disciplinary action."

4. Clear and convincing evidence to a reasonable certainty established cause for discipline of respondent's license and licensing rights pursuant to Business and Professions Code sections 490 and 10177(b) by reason of Findings 3, 4 and 5.

5. No cause for discipline of respondent's license and licensing rights pursuant to Business and Professions Code sections 490 and/or 10177(b) was established by reason of Finding 7. The conviction set forth in Finding 7 occurred more than three years prior to the filing of the Accusation herein. Thus, pursuant to Business and Professions Code section 10101, the conviction cannot be a separate basis for disciplinary action. However, the facts set forth in Finding 7 and 8 are considered as factors in aggravation herein, particularly the fact that respondent was already on criminal probation at the time he was convicted of the crime set forth in Finding 3, as well as respondent's violation of his criminal probation as set forth in Finding 8.

6. Respondent has made progress in his rehabilitation, for which he is to be commended and encouraged. He has been clean and sober for more than three years, and has undergone substance abuse treatment. He is committed to his recovery. He is currently gainfully employed in the construction industry. He is meeting his financial obligations and family responsibilities.

On the other hand, respondent's criminal conviction is relatively recent, and he was already on criminal probation at the time of his most recent conviction. Respondent violated the terms of his criminal probation, causing the term of his probation to be extended. Respondent still has almost three years remaining on his felony criminal probation. His failure to fully comply with the terms of his criminal probation is troubling, and suggests that respondent may not be good candidate for a restricted license. Under all of the facts and circumstances herein, the evidence did not establish that respondent can remain licensed by the Department, with or without restrictions, without harm to the public.

ORDER

All licenses and licensing rights of respondent William James Mauvais under the Real Estate Law are REVOKED pursuant to Legal Conclusions 4 and 6.

Dated: 5-04-01

Catherine B Frink

CATHERINE B. FRINK
Administrative Law Judge
Office of Administrative Hearings

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

FILED
FEB 23 2001

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

WILLIAM JAMES MAUVAIS

By Shelly Ely

Case No. H-3562 SAC

OAH No. N2001020283

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, SUITE 340/360, SACRAMENTO, CALIFORNIA 95814 on THURSDAY--MARCH 29, 2001, 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: FEBRUARY 23, 2001

By Larry Alamao
LARRY ALAMAO, Counsel

1 LARRY A. ALAMAO, Counsel
2 State Bar No. 47379
3 Department of Real Estate
4 P. O. Box 187000
5 Sacramento, CA 95818-7000
6 Telephone: (916) 227-0789

FILED
JAN 25 2001

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13 WILLIAM JAMES MAUVAIS,) NO. H-3562 SAC
14 Respondent.) ACCUSATION
15)

16 The Complainant, Charles W. Koenig, a Deputy Real
17 Estate Commissioner of the State of California, for cause of
18 Accusation against WILLIAM JAMES MAUVAIS (hereinafter
19 referred to as Respondent), is informed and alleges as
20 follows:

21 I

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

25 II

26 Respondent is presently licensed and/or has license
27 rights under the Real Estate Law (Part 1 of Division 4 of

1 the Business and Professions Code) (Code) as a real estate
2 broker.

3 III

4 On or about December 3, 1998, in the Superior
5 Court, Sacramento County, Respondent was convicted of a
6 violation of Section 11378 of the California Health and
7 Safety Code (Possession for sale of Controlled Substance), a
8 crime involving moral turpitude which is substantially
9 related under Section 2910, Title 10, California Code of
10 Regulations to the qualifications, functions or duties of a
11 real estate licensee.

12 IV

13 On or about August 9, 1999, in the Superior Court,
14 Yolo County, Respondent was convicted of a violation of
15 Section 496(a) of the California Penal Code (Receiving Stolen
16 Property), a crime involving moral turpitude which is
17 substantially related under Section 2910, Title 10,
18 California Code of Regulations to the qualifications,
19 functions or duties of a real estate licensee and of a
20 violation of Section 11377(a) of the California Health and
21 Safety Code (Possession of Controlled Substance).

22 V

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

27 ///

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
6 Business and Professions Code), and for such other and
7 further relief as may be proper under the provisions of law.

8
9 
10 CHARLES W. KOENIG
11 Deputy Real Estate Commissioner

12 Dated at Sacramento, California,
13 this 17th day of January, 2001.