

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED

DEC 27 2007

DEPARTMENT OF REAL ESTATE

\* \* \*

In the Matter of the Accusation of )  
MICHAEL W. ERB, )  
Respondent. )

By SEE  
NO. H-4386 SAC  
N-2007090535

DECISION

The Proposed Decision dated November 21, 2007, 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 JAN 16, 2008.

IT IS SO ORDERED December 26, 2007.

JEFF DAVI  
Real Estate Commissioner

John R. Liberator

BY: John R. Liberator  
Chief Deputy Commissioner

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

MICHAEL W. ERB,

Respondent.

Case No. H-4386 SAC

OAH No. N2007090535

**PROPOSED DECISION**

Robert Walker, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter in Coalinga, California, on October 26, 2007.

John Van Driel, Counsel, Department of Real Estate, State of California, represented the complainant, Charles Koenig, Deputy Real Estate Commissioner.

The respondent, Michael W. Erb, appeared in propria persona.

The matter was submitted on October 26, 2007.

**FACTUAL FINDINGS**

*BACKGROUND*

1. The respondent, Michael W. Erb, is licensed as a real estate broker by the Department of Real Estate. Respondent's broker's license expired on June 2, 2007. He also holds a corporate officer license.

*CONVICTION*

2. On February 28, 2005, in the Superior Court of California in and for the County of San Joaquin, respondent was convicted of a violation of Corporations Code section 25401, making a false statement in order to buy or sell securities, a felony. The conviction was on a plea of guilty.

3. Making a false statement in order to buy or sell securities is a crime that involves moral turpitude.

4. Making a false statement in order to buy or sell securities is a crime that is substantially related to the qualifications, functions, or duties of the licensed activity.

5. At the time respondent was convicted of making a false statement in order to buy or sell securities, he was also convicted of two enhancements – a violation of Penal Code section 186.11 subdivision (a)(2), fraud and embezzlement, and a violation of Penal Code section 12022.6 subdivision (a)(2), taking, damaging, or destroying property. These convictions were on respondent's admissions.

6. Both of the enhancement convictions are for crimes that involve moral turpitude.

7. Both of the enhancement convictions are for crimes that are substantially related to the qualifications, functions, or duties of the licensed activity.

8. The court sentenced respondent to three years in state prison plus four years on the enhancements with credit for time served. The court also assessed fines and fees and reserved the issue of restitution to victims. Pursuant to a subsequent agreement or order, respondent was to sell his interests in a number of pieces of real estate and use the proceeds to provide restitution to the victims. Respondent is scheduled to be released from prison on December 27, 2008.

9. The conviction grew out of a November 2002 incident in which respondent offered securities for sale in violation of California securities laws. The enhancements grew out of a January 2004 incident in which respondent offered securities for sale in violation of California securities laws.

10. These were not schemes in which respondent took people's money and absconded. He actually invested the money in real estate ventures in the names of the victims. But he had solicited their investments by means of communications that included untrue statements of material fact or omitted to state a material fact necessary to make the statements made not misleading in light of the circumstances under which they were made.

*RESPONDENT'S LIMITED PARTICIPATION IN THE HEARING IN THIS MATTER*

11. In the hearing in the present matter, respondent submitted a written statement in which he objected to the proceeding on the ground that the time for appeal of his criminal conviction has not yet elapsed.

12. Respondent refused to participate further.

REHABILITATION

13. Respondent offered no evidence of rehabilitation.

LEGAL CONCLUSIONS

1. Respondent's February 28, 2005 conviction is final. He may have other avenues to obtain a review of his conviction, but the time for appeal has elapsed. Thus, respondent's objection to this proceeding, which is noted in Finding 11, is not well taken.

2. Business and Professions Code section 490 and section 10177, subdivision (b), together, provide that the board may suspend or revoke a license on the ground that the licensee has been convicted of a felony or a crime involving moral turpitude that is substantially related to the qualifications, functions, or duties of a real estate licensee.

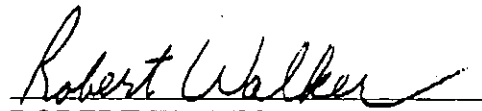
3. By reason of the matters set forth in Findings 2 through 9, there is cause to suspend or revoke respondent's licenses pursuant to Business and Professions Code section 490 and section 10177, subdivision (b).

4. In view of the fact that respondent has not completed the prison sentence that was imposed for his conviction and the fact that he offered no evidence of rehabilitation, the appropriate discipline is revocation.

ORDER

Respondent's licenses and licensing rights are revoked.

DATED: November 21, 2007

  
ROBERT WALKER  
Administrative Law Judge  
Office of Administrative Hearings

**FILED**

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DEPARTMENT OF REAL ESTATE

By L. Frost

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7

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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11	In the Matter of the Accusation of	)	NO. H-4386 SAC
		)	
12	MICHAEL W. ERB,	)	<u>ACCUSATION</u>
		)	
13	Respondent.	)	
		)	

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

19 I

20 Respondent is presently licensed and/or has license  
21 rights under the Real Estate Law, Part 1 of Division 4 of the  
22 Business and Professions Code (hereinafter "Code") as a real  
23 estate broker.

24 II

25 The Complainant, Charles Koenig, a Deputy Real Estate  
26 Commissioner of the State of California, makes this Accusation  
27 against Respondent in his official capacity.

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III

On or about August 4, 2005, in the San Joaquin County Superior Court, Respondent was convicted of a violation of Section 25401 of the Corporations Code (making a false statement to buy/sell securities), a felony and a crime which is substantially related under Section 2910, Title 10, California Code of Regulations to the qualifications, functions or duties of a real estate licensee. He was also convicted at the same time of two enhancements: Penal Code Section 186.11(A)(2) (fraud and embezzlement) and Penal Code Section 12022.6(A)(2) (taking/damaging/destroying property), both crimes involving moral turpitude and which bear a substantial relationship to the qualifications, functions or duties of a real estate licensee.

IV

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

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondent under the Real Estate Law (Part 1 of Division 4 of the Business

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1 and Professions Code), and for such other and further relief as  
2 may be proper under other provisions of law.

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4   
5 CHARLES KOENIG  
6 Deputy Real Estate Commissioner

7 Dated at Sacramento, California,  
8 this 31<sup>st</sup> day of October, 2005.

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