

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

- - -

In the Matter of the Application of )  
TAKASHI TSUNODA,  
Respondent.

No. H-4604 SF

FILED  
AUG 25 1978

DEPARTMENT OF REAL ESTATE

By Roshni R. Kalidin  
Roshni R. Kalidin

DECISION

The Proposed Decision dated August 15, 1978, 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 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 September 14, 1978.

IT IS SO ORDERED 8/23, 1978.

David H. Fox  
DAVID H. FOX  
Real Estate Commissioner

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of )	)	
TAKASHI TSUNODA,	)	NO. H-4604 SF
	)	
Respondent.	)	N-11898
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PROPOSED DECISION

This matter was heard before Robert S. Kendall, Administrative Law Judge of the Office of Administrative Hearings, at San Francisco, California, on August 10, 1978.

The Department of Real Estate was represented by Stephen W. Thomas, Counsel.

Respondent was present and was represented by Edward Nelson, Counsel.

Accordingly, the following decision is proposed, certified and forwarded pursuant to the provisions of Government Code Section 11517(b):

FINDINGS OF FACT

FIRST CAUSE OF ACTION

I

The Real Estate Commissioner of the State of California (Commissioner) pursuant to Business and Professions Code Section 10152 (the Code) requires further proof of the honesty and truthfulness of Takashi Tsunoda (respondent) in connection with his application for a real estate broker license filed by respondent on October 13, 1977. Therefore, the Commissioner instituted a Statement of Issues for the purpose of further inquiring into respondent's qualifications for the license applied for which was originally issued to respondent on April 12, 1978 and was thereafter suspended by the Commissioner's order of July 4, 1978.

## II

Daniel J. Guthrie, a Deputy Real Estate Commissioner of the State of California, was acting in his official capacity as such and not otherwise, when he made the statement of Issues.

## III

It was established by the preponderance of the evidence that on December 19, 1974, in the Municipal Court of Palo-Alto-Mountain View Judicial District, County of Santa Clara, State of California, respondent was convicted upon his plea of guilty of a violation of Section 484 of the California Penal Code (Petty Theft). Thereafter, the Court ordered that respondent pay a fine of Two Hundred Fifty Dollars (\$250), plus a Sixty-Five Dollar (\$65) assessment penalty, and further that respondent be placed on informal probation for a period of one (1) year.

## IV

a) It was established that respondent on November 15, 1974, literally went on a shoplifting spree in several stores in a shopping center. He took numerous unrelated items for which he had no use and at the time had more than sufficient funds in his possession to pay for the unneeded items.

b) Respondent, prior and since the incident has an exemplary record of conduct, including an honorable discharge from the U.S. Army.

c) Respondent is unable to explain the reasons for his behavior. However, he does not attempt to rationalize it, or otherwise disregard it. He is to the day of hearing, still humiliated, shamed and inhibited by the fear that his aged parents will learn of it. His wife, however, is aware of the incident.

## SECOND CAUSE OF ACTION

## V

Findings of Fact I, II, III and IV are incorporated as though fully set out.

## VI

On October 13, 1977, respondent filed with the Department of Real Estate, State of California (the Department), an application for the issuance to him of a real estate broker license.

## VII

In response to the following questions in his application; to wit: "5a. Have you ever been convicted of any violation of law other than a non-moving type of traffic violation"? Respondent answered, No", and submitted a note with his application which read as follows:

"(note)

I think it was in 1974  
Shoplifting. (misdemeanor) Plead not guilty

Court - dismissed

Not convicted

Palo Alto Mountain View, Ca.

Municiple (sic) Court

Answer to No. 5 = No. Not convicted."

## VIII

a) It was established respondent had successfully completed all the requirements imposed by the court in connection with his probation, and that on April 19, 1976, the court expunged and dismissed the matter pursuant to Penal Code Section 1203.4.

b) When respondent was preparing his application to the Department of Real Estate for the license here in issue, he did go to the court clerk's office to inquire into the actual status and effect of change of plea and dismissal under the cited code section. It was not established, however, that he was misled by any information he received at that place as it was not established how much and what he told the clerk about his reasons for the query.

c) It was not established that respondent made any attempt to contact the Department of Real Estate to determine what if any effect a Penal Code 1203.4 expungement would have on an application, or the scope of what he was required to reveal on the application.

d) While it is true respondent was less than forthright, candid and frank, but was self-serving, in the manner in which he alluded to his offense and its disposition, it was not thereby established he was attempting to, or did in fact conceal the occurrence of certain pertinent events; or to deliberately mislead the Department by such conduct; or to make knowingly a false statement in connection with the application. However, it is true his statements did misrepresent certain happenings and how they came about.

e) It is found that respondent's entries in part 5(a) of the application were of an equivocal nature, and of such a quality and character that Department personnel could thereby have been alerted sufficiently to have inquired further of respondent of the circumstances he related therein.

### THIRD CAUSE OF ACTION

#### IX

All Findings of Fact in the First and Second Causes of Action are incorporated herein as though fully set out.

#### X

In reliance upon respondent's answers to the question 5(a) in his application, the Department issued to respondent on April 12, 1978, a real estate broker license with a termination date of April 11, 1982.

#### XI

It is found the broker license was procured by respondent by virtue of his misrepresentation of the true facts of his conviction and expungement by his making a material misstatement of these facts in answering question 5(a) in his application.

DETERMINATION OF ISSUES

FIRST CAUSE OF ACTION

I

The matters set out in Finding of Fact III established respondent's conviction for an offense involving moral turpitude, and which is substantially related to the qualifications, functions and duties of a real estate licensee. Therefore, grounds exist pursuant to Business and Professions Code Section 10177(b) for the denial of the license applied for, and/or restoration of the license previously issued but thereafter suspended.

SECOND CAUSE OF ACTION

II

The matters set out in Findings of Fact VII and VIII do not establish respondent knowingly made a false statement of a fact required to be revealed in an application to the Department. Therefore, no grounds exist pursuant to Business and Professions Code Section for denial of the license applied for, and/or refusal to restore the license previously issued but thereafter suspended.

THIRD CAUSE OF ACTION

III

The matters set out in Findings of Fact X and XI establish respondent made a misstatement of material facts in connection with his application. Therefore, grounds have been established for affirming the order of suspension of the license herein ordered.

ORDER

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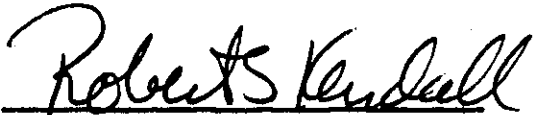
The application for Broker License of respondent Takashi Tsunoda is

hereby denied singly, separately and severally of De-  
terminations of Issue I and II on the 1st and 3rd Causes  
for Disciplinary Action respectively.

II

The Second Cause for Disciplinary Action is dis-  
missed.

DATED: August 15, 1978.

  
ROBERT S. KENDALL  
Administrative Law Judge

RSK:rs

COPY

FILED  
JUL 26 1978

DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

By May A. Morello  
May A. Morello

In the Matter of the Application of )  
TAKASHI TSUNODA )  
Respondent )

No. H-4604 SF

NOTICE OF HEARING ON APPLICATION

(Pursuant to Section 11509 of the Government Code)

TO THE RESPONDENT ABOVE NAMED:

YOU ARE HEREBY NOTIFIED that a hearing will be held before the Department of  
Hearing Room, Office of Administrative Hearings,  
Real Estate at 100 Van Ness Avenue, 11th Floor, San Francisco, CA  
on the 10th day of August, 1978, at the hour of 9:00 A.M.,  
or as soon thereafter as the matter can be heard, upon the Statement of Issues  
served upon you.

You may be present at the hearing, and you may be represented by counsel,  
but you are neither required to be present at the hearing, nor are you required  
to be represented by counsel. However, if you are not present at the hearing  
in person, nor represented at the hearing by counsel, the agency may take dis-  
ciplinary action against you upon any express admissions, or upon other evidence,  
and in the event that no notice of defense has been filed by you, upon  
affidavits, without any notice to you.

The burden of proof is upon you to establish that you are entitled to the  
agency action sought and if you are not present nor represented at the hearing,  
the agency may act upon your application without taking evidence.

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.

Dated: July 26, 1978

DAVID H. FOX  
REAL ESTATE COMMISSIONER

By SW Thomas  
Attorney  
STEPHEN W. THOMAS



FILED  
JUL 7 - 1978

DEPARTMENT OF REAL ESTATE

*Roshni R. Kalidin*  
Roshni R. Kalidin

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

- - -

In the Matter of the Application of )  
TAKASHI TSUNODA, )  
Respondent. )

ORDER SUSPENDING REAL ESTATE LICENSE

TO: TAKASHI TSUNODA  
P. O. Box 4632  
2720 Diercx Drive  
Mountain View, CA 94040

On October 13, 1977, the above-named respondent filed with the Department of Real Estate of the State of California (hereinafter referred to as Department) an application for a real estate broker license. In response to a question in said application, to wit: "Have you ever been convicted of any violation of law other than a non-moving type of traffic violation", respondent answered, "No", and submitted a note with his application, as follows:

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"(note)

I think it was in 1974  
Shoplifting. (misdemeanor) Plead not guilty  
Court - dismissed  
Not convicted

Palo Alto Mountain View, Ca.

Municiple (sic) Court

Answer to No. 5. = No. Not convicted."

On April 12, 1978, Department issued a real estate  
broker license to respondent in reliance upon the aforesaid  
answer of respondent.

On June 26, 1978, in Case No. H-4604 SF, a Statement  
of Issues signed by a Deputy Real Estate Commissioner of the  
State of California was filed charging respondent with having  
procured a real estate license by fraud, misrepresentation  
or deceit and with knowingly having made a false statement of  
fact required to be revealed in the application of such license.

NOW, THEREFORE, IT IS ORDERED under authority of  
Section 10177.1 of the Business and Professions Code of the  
State of California that the real estate broker license  
heretofore issued to respondent and the exercise of any  
privileges thereunder is hereby suspended pending final  
determination made after a hearing on the aforesaid Statement  
of Issues, a copy of which is attached hereto.

IT IS FURTHER ORDERED that all license certificates  
and identification cards issued by Department which are in the  
possession of respondent be immediately surrendered by  
personal delivery or by mailing in the enclosed self-addressed

1 envelope to: Department of Real Estate, One Hallidie Plaza,  
2 Suite 200, San Francisco, California 94102.

3 This Order shall be effective immediately.

4 DATED: 7/4/78.

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*David H Fox*  
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DAVID H. FOX  
Real Estate Commissioner

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STEPHEN W. THOMAS, Counsel  
One Hallidie Plaza  
Suite 200  
San Francisco, CA 94102  
  
(415) 557-3220

**FILED**  
JUN 26 1978

DEPARTMENT OF REAL ESTATE

*Roshni R. Kalidin*  
Roshni R. Kalidin

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of  
  
TAKASHI TSUNODA,  
  
Respondent.

No. H-4604 SF  
  
STATEMENT OF ISSUES

FIRST CAUSE OF ACTION

I

The Real Estate Commissioner of the State of California (hereinafter referred to as Commissioner) in conformity with Section 10152 of the Business and Professions Code of the State of California (hereinafter referred to as the Code) requires further proof of the honesty and truthfulness of TAKASHI TSUNODA (hereinafter referred to as respondent) in connection with his application for a real estate broker license filed on or about October 13, 1977, and pursuant thereto has instituted the within proceedings for the purpose of inquiring into respondent's qualifications for said license.

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II

Daniel J. Guthrie, a Deputy Real Estate Commissioner of the State of California, acting in his official capacity as such and not otherwise, makes this Statement of Issues.

III

In acting upon the application of respondent, the Commissioner shall consider, but shall not be limited to, the following facts:

That on or about December 19, 1974, in the Municipal Court of Palo Alto-Mountain View Judicial District, County of Santa Clara, State of California, respondent was convicted upon his plea of guilty of a violation of Section 484 of the California Penal Code (PETTY THEFT); that thereafter the Court ordered that the respondent pay a fine of TWO HUNDRED FIFTY DOLLARS (\$250), plus a SIXTY-FIVE DOLLAR (\$65) assessment penalty, and further that respondent be placed on informal probation for a period of one (1) year.

IV

That the facts as alleged in Paragraph III above, pertain to the conviction of respondent for an offense that is a crime involving moral turpitude, and pursuant to the provisions of Section 10177(b) of the Code, constitute grounds for the denial of respondent's application for a license as a real estate broker.

SECOND CAUSE OF ACTION

There is hereby incorporated into this second, separate, and distinct cause of action, all of the allegations

1 contained in Paragraphs I, II and III of the First Cause of  
2 Action, as if herein more fully set forth.

3 I

4 That on or about October 13, 1977, respondent filed  
5 with the Department of Real Estate, State of California  
6 (hereinafter referred to as the Department), an application  
7 for the issuance to him of a real estate broker license.

8 II

9 That in response to the following questions in said  
10 application, to wit: "5.a. Have you ever been convicted of  
11 any violation of law other than a non-moving type of traffic  
12 violation"? Respondent answered, "No", and submitted a note  
13 with his application, as follows:

14 "(note)

15 I think it was in 1974  
16 Shoplifting. (misdemeanor) Plead not guilty

17 Court - dismissed

18 Not convicted

19 Palo Alto Mountain View, Ca.

20 Municiple (sic) Court

21 Answer to No. 5 = No. Not convicted."

22 III

23 That respondent knowingly made a false statement of a  
24 fact required to be revealed in said application in that he  
25 failed to state in said application that he had been convicted  
26 of a violation of Section 484 of the Penal Code, State of  
27 California (PETTY THEFT), as hereinabove described in  
Paragraph III, of the First Cause of Action.

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IV

That the acts or conduct of respondent, as alleged in Paragraphs I, II and III above, pertain to a statement of fact which respondent knew to be untrue, and which he was required to reveal in said license application, and said acts or conduct are grounds for denial of respondent's application for a real estate broker license, pursuant to the provisions of Section 480(c) of the Code.

THIRD CAUSE OF ACTION

There is hereby incorporated into this third, separate, and distinct cause of action, all of the allegations contained in Paragraphs I, II and III of the First Cause of Action and Paragraphs I, II and III of the Second Cause of Action with the same force and effect as if herein more fully set forth.

I

That in reliance upon the aforesaid answer to the aforesaid question in said application, the Department issued to respondent, on or about April 12, 1978, a real estate broker license having a termination date of April 11, 1982.

II

That said broker license was procured by respondent by virtue of his misrepresentation or by his making a material misstatement in answering the aforesaid question in said application for the facts were as stated in Paragraph III of the First Cause of Action.

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III

That the acts and conduct of respondent, as alleged in Paragraphs I and II above, pertain to a misrepresentation and to a false statement of fact which respondent knew to be untrue and which he was required to reveal in said license application and are grounds for denial of respondent's application for a real estate broker license under the provisions of Section 10177(a) of the Code.



DANIEL J. GUTHRIE  
Deputy Real Estate Commissioner

Dated at San Francisco, California  
this 26th day of June, 1978.