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DEPARTMENT OF REAL ESTATE

By C. Westbrook

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
KENNETH KREMER,)
Respondent.)

NO. H- 5793 SF
N 29727

DECISION

The Proposed Decision dated May 16, 1987
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.

This Decision shall become effective at 12 o'clock noon
on July 13, 1987.

IT IS SO ORDERED June 1, 1987.

JAMES A. EDMONDS, JR.
Real Estate Commissioner

By: John R. Liberator
JOHN R. LIBERATOR
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation	)	
of:	)	
	)	
KENNETH KREMER	)	CASE NO. H-5793 SF
	)	
	)	OAH NO. N-28626
Respondent.	)	

PROPOSED DECISION

This matter was heard before Ruth S. Astle, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 16, 1987, in San Francisco, California.

Vera Winter Lee, Staff Counsel, represented the Complainant.

Respondent was present and represented by V. James Jackl, Attorney at Law, 2033 N. Main Street, Suite 700, Walnut Creek, California 94591.

FINDINGS OF FACT

I

Kenneth Anthony Kremer (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*).

II

Joseph J. Mankewich, Deputy Real Estate Commissioner of the State of California, made the Accusation in his official capacity and not otherwise.

*All references are to said code unless otherwise noted.

III

Respondent was licensed by the California Department of Real Estate (Department) as a real estate salesperson until June 10, 1984. A new real estate salesperson license was issued to him on April 29, 1985 to expire April 28, 1989.

IV

At all times mentioned herein, Foremost Guaranty Corporation, a Michigan corporation (Foremost) was the owner of real property commonly known as 18360 Joseph Drive, Castro Valley, California (property).

FIRST CAUSE OF ACTION

V

On April 1, 1985, respondent, acting in the capacity of real estate licensee and acting for and in expectation of compensation, prepared and presented to Foremost a Real Estate Purchase Contract and Receipt for Deposit (Deposit Receipt) which contained an offer by Kenneth Landry (Landry) to purchase the Property. A counteroffer was made by Foremost and accepted by Landry on April 17, 1985.

VI

On July 9, 1985, escrow was settled and respondent was paid Four Thousand Eight Hundred Dollars (\$4,800) commission for handling the transaction described in Finding V (transaction).

VII

Between June 10, 1984 and April 29, 1985, respondent was not licensed with the Department and failed to obtain a real estate license prior to engaging in the business and acting in the capacity of a real estate licensee.

SECOND CAUSE OF ACTION

VIII

Respondent received the entire commission from seller described in Finding VI of the First Cause of Action and failed to reveal to the broker under whom he was at the time licensed the commission which he received for the transaction. Respondent informally informed the broker about the transaction and never intentionally attempted to conceal it from the broker.

OTHER MATTERS

IX

Respondent was in financial difficulty at the time the transaction began. He was in the process of reactivating his license but he knew his license had not actually been issued yet. Respondent was first licensed in 1976. He realizes that what he did was wrong and it is unlikely that it will happen again.

X

Respondent was very loosely associated with the broker in his office. This transaction was the only one respondent participated in during the time he was with the broker. The other salespersons in the office were on 100% commission arrangements. They all paid a desk fee (a flat fee rent). There were some escrow fees paid to the broker by the other salespersons in the office, but respondent was not aware of these fees.

DETERMINATION OF ISSUES

FIRST CAUSE OF ACTION

I

By reason of the matters set forth in Findings V, VI and VII, cause for disciplinary action exists pursuant to sections 10131(a), 10177(d) and (f), and 10130.

SECOND CAUSE OF ACTION

II

By reason of the matters set forth in Finding VIII cause for disciplinary action exists pursuant to section 10137.

OTHER MATTERS

III

The matters in mitigation and extenuation set forth in Findings IX and X have been considered in making the following order.

ORDER

1. The license and licensing rights of Kenneth Kremer are revoked.

2. A restricted real estate salesperson license shall be issued to respondent under section 10156.5 if respondent makes application therefor and pays to the Department appropriate fee for said license within ninety (90) days from the effective date of this decision.

3. The restricted license issued to respondent shall be subject to all of the provisions of section 10156.7 and to the following conditions imposed under section 10156.6:

- A. An actual suspension of ten (10) days.
- B. Said restricted license 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 bears a significant relation to respondent's fitness or capacity as a real estate licensee.
- C. Said restricted license may be suspended prior to hearing by Order of the 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 Commissioner or conditions attaching to this restricted license.
- D. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions of a restricted license until one (1) year has elapsed from the date of issuance of the restricted license to respondent.
- E. Respondent shall, within nine (9) months from the effective date of this Decision, present satisfactory evidence to the Commissioner that he 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 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.

- F. Respondent shall submit with his application for license under an employing broker, or his application for transfer to a new employing broker, a statement signed by the prospective employing broker which shall certify:
- (i) That he/she has read the Decision of the Commissioner which granted the right to a restricted license; and
 - (ii) That he/she will exercise close supervision over the performance by the restricted licensee of activities for which a real estate license is required.

DATED: May 16, 1987

Ruth S. Astle
RUTH S. ASTLE
Administrative Law Judge

RSA:hrs

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5 Telephone: (415) 557-3220

DEPARTMENT OF REAL ESTATE

By Mary A. Morello
Mary A. Morello

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 - - -

11 In the Matter of the Accusation of) NO. H-5793 SF
12 KENNETH ANTHONY KREMER,)
13 Respondent.)
14)

15 The complainant, JOSEPH J. MANKEWICH, a Deputy Real
16 Estate Commissioner of the State of California, for cause of
17 accusation against KENNETH ANTHONY KREMER is informed and
18 alleges as follows:

19 FIRST CAUSE OF ACTION

20 I

21 KENNETH ANTHONY KREMER (respondent) is presently
22 licensed and/or has license rights under the Real Estate Law,
23 Part 1 of Division 4 of the Business and Professions Code (Code)
24 as a real estate salesperson.

25 II

26 The Complainant JOSEPH J. MANKEWICH, a Deputy Real
27 Estate Commissioner of the State of California, makes this

1 against respondent in his official capacity.

2 III

3 Respondent was licensed by the California Department
4 of Real Estate (Department) as a real estate salesperson until
5 June 10, 1984. A new real estate salesperson license was issued
6 to him on April 29, 1985 to expire April 28, 1989, however,
7 respondent had no employing broker beginning June 1, 1985.

8 IV

9 At all times mentioned below, Foremost Guaranty
10 Corporation, a Michigan corporation (Foremost) was the owner of
11 real property commonly known as 18360 Joseph Drive, Castro
12 Valley, California (the Property).

13 V

14 On or about April 1, 1985, respondent, acting in the
15 capacity of real estate licensee and acting for and in
16 expectation of compensation, prepared and presented to Foremost
17 a Real Estate Purchase Contract and Receipt for Deposit (Deposit
18 Receipt) which contained an offer by Kenneth Landry (Landry) to
19 purchase the Property. A counteroffer was made by Foremost on
20 June 11, 1985 and accepted by Landry.

21 VI

22 On or about July 9, 1985, escrow was settled and
23 respondent was paid FOUR THOUSAND EIGHT HUNDRED DOLLARS
24 (\$4,800) commission for handling the transaction described in
25 Paragraph V (the Transaction).

26 VII

27 By commission of the above acts at the above times,

1 respondent engaged in the business and acted in the capacity of
2 a real estate licensee in the State of California as defined in
3 Section 10131(a) of the Code.

4 VIII

5 Between approximately June 10, 1984 and April 29,
6 1985, respondent was not licensed with the Department and failed
7 to obtain a real estate license prior to engaging in the
8 business and acting in the capacity of a real estate licensee.

9 IX

10 The above acts and omissions of respondent violated
11 Section 10130 of the Code and are grounds for disciplinary
12 action under Section 10177(d) and (f).

13 SECOND CAUSE OF ACTION

14 I

15 There is incorporated into this Second Cause of Action
16 all of the allegations contained in Paragraphs I through VI of
17 the First Cause of Action.

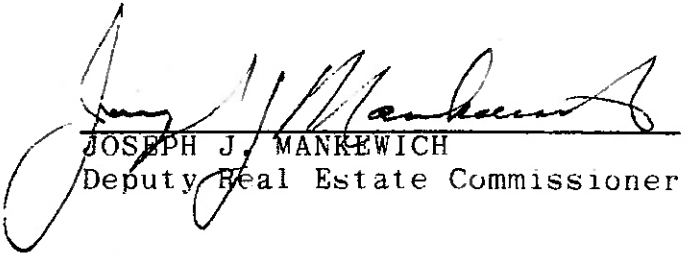
18 II

19 Respondent received the entire commission from seller
20 described in Paragraph VI of the First Cause of Action and
21 failed to reveal to the broker under whom he was at the time
22 licensed either the existence of the Transaction or the
23 commission which he later received for the Transaction.

24 III

25 The above acts and omissions of respondent violated
26 Section 10137 of the Code and are grounds for disciplinary
27 action under Section 10137 of the Code.

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

8
9
10 
11 JOSEPH J. MANKEWICH
12 Deputy Real Estate Commissioner

13 Dated at San Francisco, California
14 this 22nd day of December, 1986.