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FILED

MAY 31 2002

DEPARTMENT OF REAL ESTATE

By Jean Arnold

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
MALCOLM P. LEE,) NO. H-6676 SF
Respondent.)

ORDER GRANTING REINSTATEMENT OF LICENSE

On September 11, 1992, an Order was rendered herein revoking the real estate salesperson 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 December 18, 1992. Respondent's restricted real estate salesperson license expired on December 17, 1996.

On December 24, 2001, Respondent petitioned for reinstatement of said real estate salesperson license, and the Attorney General of the State of California has been given notice of the filing of said petition.

1 I have considered the petition of Respondent and the
2 evidence and arguments in support thereof. Respondent has
3 demonstrated to my satisfaction that Respondent meets the
4 requirements of law for the issuance to Respondent of an
5 unrestricted real estate salesperson license and that it would
6 not be against the public interest to issue said license to
7 Respondent.

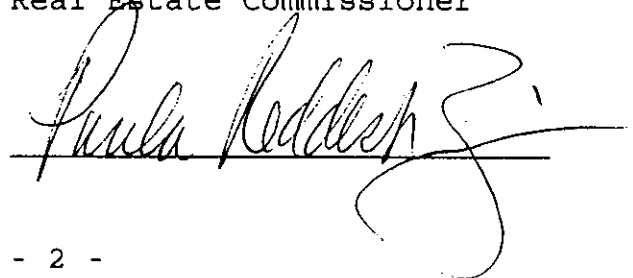
8 NOW, THEREFORE, IT IS ORDERED that Respondent's
9 petition for reinstatement is granted and that a real estate
10 salesperson license be issued to Respondent, if Respondent
11 satisfies the following conditions within nine months from the
12 date of this Order:

- 13 1. Respondent shall take and pass the real estate
14 salesperson license examination.
- 15 2. Submittal of a completed application and payment of
16 the fee for a real estate salesperson license.
- 17 3. Submittal of evidence of having, since the most
18 recent issuance of an original or renewal real estate license,
19 taken and successfully completed the continuing education
20 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
21 for renewal of a real estate license.

22 This Order shall be effective immediately.

23 DATED: May 28, 2002.

24 PAULA REDDISH ZINNEMANN
25 Real Estate Commissioner

26 
27

1 Department of Real Estate
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4
5 Telephone: (916) 739-3607
6
7

FILED
SEP 22 1992
DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

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

11 * * *

12 In the Matter of the Accusation of)
13 MALCOLM P. LEE,) NO. H-6676 SF
14 Respondent.) STIPULATION IN
) SETTLEMENT AND ORDER

15 It is hereby stipulated by and between MALCOLM P. LEE
16 (sometimes referred to as Respondent) and his attorney of record,
17 Laura V. Kerl, and the Complainant, acting by and through
18 Susan Y. Bennett, Counsel for the Department of Real Estate, as
19 follows, for the purpose of settling and disposing of the
20 Accusation filed on April 22, 1992, in this matter;

21 1. All issues which were to be contested and all
22 evidence which was to be presented by Complainant and Respondent
23 at a formal hearing on the Accusation, which hearing was to be
24 held in accordance with the provisions of the Administrative
25 Procedure Act (APA), shall instead and in place thereof be
26 submitted solely on the basis of the provisions of this
27 Stipulation.

1 2. Respondent has received, read and understands the
2 Statement to Respondent, the Discovery Provisions of the APA and
3 the Accusation filed by the Department of Real Estate in this
4 proceeding.

5 3. On May 8, 1992, Respondent filed a Notice of
6 Defense pursuant to Section 11505 of the Government Code for the
7 purpose of requesting a hearing on the allegations in the
8 Accusation. Respondent hereby freely and voluntarily withdraws
9 said Notice of Defense. Respondent acknowledges that he
10 understands that by withdrawing said Notice of Defense he will
11 thereby waive his right to require the Commissioner to prove the
12 allegations in the Accusation at a contested hearing held in
13 accordance with the provisions of the APA and that he will waive
14 other rights afforded to him in connection with the hearing such
15 as the right to present evidence in defense of the allegations in
16 the Accusation and the right to cross-examine witnesses.

17 4. Respondent, pursuant to the limitations set forth
18 below, hereby admits that the factual allegations in Paragraphs I
19 through III of the Accusation filed in this proceeding are true
20 and correct and the Real Estate Commissioner shall not be
21 required to provide further evidence of such allegations.

22 5. It is understood by the parties that the Real
23 Estate Commissioner may adopt the Stipulation and Agreement as
24 his decision in this matter thereby imposing the penalty and
25 sanctions on Respondent's real estate license and license rights
26 as set forth in the below "Order". In the event that the
27 Commissioner in his discretion does not adopt the Stipulation and

1 the Agreement, the Agreement shall be void and of no effect, and
2 Respondent shall retain the right to a hearing and proceeding on
3 the Accusation under all the provisions of the APA and shall not
4 be bound by any admission or waiver made herein.

5 6. The Order or any subsequent Order of the Real
6 Estate Commissioner made pursuant to this Stipulation shall not
7 constitute an estoppel, merger or bar to any further
8 administrative or civil proceedings by the Department of Real
9 Estate with respect to any matters which were not specifically
10 alleged to be causes for accusation in this proceeding.

11 DETERMINATION OF ISSUES

12 By reason of the foregoing stipulations, admissions and
13 waivers and solely for the purpose of settlement of the pending
14 Accusation without a hearing, it is stipulated and agreed that
15 the following determination of issues shall be made:

16 I

17 The Complainant, Edward V. Chiolo, a Deputy Real Estate
18 Commissioner of the State of California, makes this Accusation in
19 his official capacity.

20 II

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

25 ///

26 ///

27 ///

1 III

2 On or about May 16, 1990, in the Municipal Court of
3 California, County of San Mateo, Respondent was convicted of a
4 violation of Sections 484 and 490.5 of the California Penal Code
5 (Petty Theft/Merchants Personal Property), a crime involving
6 moral turpitude which is substantially related under Section
7 2910, Title 10, California Code of Regulations to the
8 qualifications, functions, or duties of a real estate licensee.

9 IV

10 The conduct of Respondent, as described in Paragraph
11 III is grounds for the suspension or revocation of all of the
12 real estate licenses and license rights of Respondent under the
13 provision of Sections 490 and 10177(b) of the Business and
14 Professions Code.

15 ORDER

16 All licenses and licensing rights of respondent
17 MALCOLM P. LEE under the Real Estate Law are revoked; provided,
18 however, a restricted real estate salesperson license shall be
19 issued to Respondent pursuant to Section 10156.6 of the Business
20 and Professions Code, if Respondent makes application therefor
21 and pays to the Department of Real Estate the appropriate fee for
22 the restricted license within 90 days from the effective date of
23 this Decision. The restricted license issued to Respondent shall
24 be subject to all of the provisions of Section 10156.7 of the
25 Business and Professions Code and to the following limitations,
26 conditions, and restrictions imposed under authority of Section
27 10156.6 of the Code:

1 A. The restricted license issued to Respondent may be
2 suspended prior to hearing by Order of the Real Estate
3 Commissioner in the event of Respondent's conviction or plea of
4 nolo contendere to a crime which is substantially related to
5 Respondent's fitness or capacity as a real estate licensee.

6 B. The restricted license issued to Respondent may be
7 suspended prior to hearing by Order of the Real Estate
8 Commissioner on evidence satisfactory to the Commissioner that
9 Respondent has violated provisions of the California Real Estate
10 Law, the Subdivided Lands Law, Regulations of the Real Estate
11 Commissioner or conditions attaching to the restricted license.

12 C. Respondent shall not be eligible to apply for the
13 issuance of an unrestricted real estate license nor for the
14 removal of any of the conditions, limitations, or restrictions of
15 a restricted license until one year has elapsed from the
16 effective date of this Decision.

17 D. Respondent shall submit with any application for
18 license under an employing broker, or any application for
19 transfer under an employing broker, a statement signed by the
20 prospective employing real estate broker on a form approved by
21 the Department of Real Estate which shall certify:

22 (1) That the employing broker has read the
23 Decision of the Commissioner which granted the right to a
24 restricted license; and,

25 ///

26 ///

27 ///

1 (2) That the employing broker will exercise close
2 supervision over the performance by the restricted licensee
3 relating to activities for which a real estate license is
4 required.

5 E. Respondent shall, within nine (9) months from the
6 effective date of this Order, present evidence satisfactory to
7 the Real Estate Commissioner that Respondent has taken and
8 successfully completed the courses specified in subdivisions
9 (a) and (b) of Section 10170.5 of the Real Estate Law for renewal
10 of a real estate license. The restricted license issued pursuant
11 to this Decision shall be deemed to be the first renewal of
12 Respondent's real estate salesperson license for the purposes of
13 applying the provisions of Section 10153.4. Upon renewal of the
14 license issued pursuant to this Order or upon reinstatement of
15 Respondent's real estate salesperson license, Respondent shall
16 submit evidence of having taken and successfully completed the
17 continuing education requirements of Article 2.5 of Chapter 3 of
18 the Real Estate Law for renewal of a real estate license. If
19 Respondent fails to satisfy this condition, the Commissioner may
20 order the suspension of the restricted license until the
21 Respondent presents such evidence. The Commissioner shall
22 afford Respondent the opportunity for a hearing pursuant to the
23 Administrative Procedure Act to present such evidence.

24
25
26 August 11, 1992
DATED

Susan Y. Bennett
SUSAN Y. BENNETT
Counsel for Complainant

* * *

I have read the Stipulation and Agreement, have discussed it with my counsel, and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508 and 11513 of the Government Code), and I willingly, intelligently and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusation at a hearing at which I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.

8-19-92

DATED

Malcolm P. Lee

MALCOLM P. LEE, Respondent

APPROVED AS TO FORM:

8/19/92

DATED

Laura V. Kerl

LAURA V. KERL

Attorney for Respondent

* * *

The foregoing Stipulation and Agreement for settlement is hereby adopted my Decision and Order and shall become effective at 12 o'clock noon on October 12, 1992.

IT IS SO ORDERED September 11, 1992.

CLARK WALLACE
Real Estate Commissioner

John R. Liberator
BY: John R. Liberator
Chief Deputy Commissioner

FILED
JUN 23 1992
DEPARTMENT OF REAL ESTATE

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

In the Matter of the Accusation of

MALCOLM P. LEE,

Respondent

By Kathleen Contreras

Case No. H-6676 SF

OAH No. N-41014

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, 455 Golden Gate Avenue,
Room 2248, San Francisco, California 94102

on August 5, 1992, at the hour of 9:00 AM,
or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: June 23, 1992

By Susan Y. Bennett
SUSAN Y. BENNETT *Counsel*

1 SUSAN Y. BENNETT, Counsel
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 739-3607

FILED
APR 22 1992
DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 MALCOLM P. LEE,)
13 Respondent.)

NO. H-6676 SF

ACCUSATION

14
15 The Complainant, Edward V. Chiolo, a Deputy Real Estate
16 Commissioner of the State of California for cause of Accusation
17 against MALCOLM P. LEE (hereinafter "Respondent") is informed and
18 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 salesperson subject to Section 10153.4 of the Code.

24 II

25 The Complainant, Edward V. Chiolo, 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 March 16, 1990, in the Municipal Court of California, County of San Mateo, Respondent was convicted of a violation of Sections 484 with 490.5 of the California Penal Code (Petty Theft/Merchants Personal Property), a crime involving moral turpitude which is substantially related under Section 2910, Title 10, California Code of Regulations to the qualifications, functions, or duties of a real estate licensee.

IV

The facts alleged above constitute cause under Sections 490 and 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 and Professions Code), and for such other and further relief as may be proper under other provisions of law.

Edward V. Chio

EDWARD V. CHIOLO
Deputy Real Estate Commissioner

Dated at San Francisco, California,
this 15th day of April, 1992.