

FILED

OCT 26 2000

DEPARTMENT OF REAL ESTATE

By Jean Armenta

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
MARK WHITNEY LAPHAM,)
Respondent.)

No. H-7128 SF

ORDER GRANTING REINSTATEMENT OF LICENSE

On July 24, 1995, a Decision was rendered herein revoking the real estate broker license of Respondent, but granting Respondent the right to the issuance of a restricted real estate broker license. A restricted real estate broker license was issued to Respondent on August 17, 1995, and Respondent has operated as a restricted licensee without cause for disciplinary action against Respondent since that time.

On October 25, 1999, Respondent petitioned for reinstatement of said real estate broker 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 including Respondent's
3 record as a restricted licensee. Respondent has demonstrated to
4 my satisfaction that Respondent meets the requirements of law for
5 the issuance to Respondent of an unrestricted real estate broker
6 license and that it would not be against the public interest to
7 issue said license to Respondent.

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

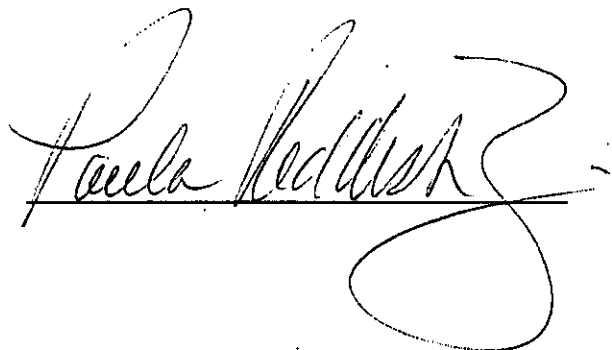
13 1. Submittal of a completed application and payment of
14 the fee for a real estate broker license.

15 2. Submittal of evidence of having, since the most
16 recent issuance of an original or renewal real estate license,
17 taken and successfully completed the continuing education
18 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
19 for renewal of a real estate license.

20 This Order shall be effective immediately.

21 DATED: October 23, 2000

22 PAULA REDDISH ZINNEMANN
23 Real Estate Commissioner

24 
25
26
27

COPY

FILED
JUL 28 1995

BEFORE THE DEPARTMENT OF REAL ESTATE
DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

By Victoria Dillon
Victoria Dillon

In the Matter of the Accusation of)
MARK WHITNEY LAPHAM,)
Respondent.)

No. H-7128 SF
OAH No. N 9409142

DECISION

The Proposed Decision dated June 28, 1995,
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 August 17, 1995.

IT IS SO ORDERED

7/24, 1995.

JIM ANTT, JR.
Real Estate Commissioner

J. Antt Jr.

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
MARK WHITNEY LAPHAM,)	Case No. H-7128 SF
Respondent.)	OAH No. N 9409142
_____)	

PROPOSED DECISION

This matter was heard before Robert R. Coffman, Administrative Law Judge, State of California, Office of Administrative Hearings, on June 9, 1995 in San Francisco, California.

Susan M. Rossi, Counsel, represented the Complainant.

Respondent Mark Whitney Lapham represented himself.

FINDINGS OF FACT

I

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 (Code) as a real estate broker.

II

On or about March 7, 1991, in a General Court Martial before the U.S. Department of the Navy, Patrol Wings Pacific, Naval Air Station, Moffett Field, California, respondent was convicted of violations of Articles 80 (use of inside information for private gain), 81 (receipt of a bribe), and 133 (soliciting a bribe) of the Uniform Code of Military Justice, crimes involving moral turpitude which bear a substantial relationship under section 2910, Title 10, California Code of Regulations, to the qualifications, functions, and duties of a real estate licensee.

III

On the above court martial respondent, on or about May 14, 1991, was sentenced to two years confinement, forfeiture of all pay and allowance and dismissal from the Navy. The two year confinement was modified to 30 days and respondent served 25 days actual jail time.

IV

As a result of the above court martial respondent was placed on interim suspension by the California State Bar Court on November 28, 1991.

As a result of the court martial set out above, on or about May 12, 1994, respondent was suspended from the practice of law by the California Supreme Court for his violations of 10 USC 881 (conspiracy to commit graft) and 933 (receiving graft), and 934 (attempt to alter the testimony of a witness), all of which constitute violations of section 6106 of the Business and Professions Code and involve moral turpitude.

V

The facts forming the basis of the State Bar's disciplinary action, stipulated to by respondent, were as follows:

1. Respondent was a lieutenant in the Judge Advocate General's Corps ("JAGC"), United States Naval Reserve ("USNR"). From April 1989 until November 1989, he was assigned to the Naval Legal Service Office, San Francisco, as a Navy Legal Assistance Officer at Alameda Naval Air Station (in Alameda) and Mare Island Navy Ship Yard (in Vallejo).

2. As a Legal Assistance Officer, respondent was required to provide services for active duty military members, retired military members and certain eligible military dependents. Specifically, it was respondent's responsibility to assist eligible individuals with their legal problems. In the event that respondent was incompetent to provide the necessary assistance, or prohibited to do so by order or regulation, respondent was to explore with the client other resources available to them with the Navy or to recommend that the client seek competent civilian counsel to assist them. Respondent was authorized, as appropriate, to make referrals to specific civilian attorneys.

3. Respondent was not permitted to receive compensation, either directly or indirectly, from the legal assistance clients for his services.

4. The Violation of 10 U.S.C. Section 880:

By using confidential client information in an attempt to obtain a benefit for himself and his father, respondent violated 10 U.S.C. section 880, attempt to violate a lawful general regulation, specifically, the prohibition against using inside information. These acts do not involve moral turpitude but do constitute other misconduct warranting discipline.

5. The Violation of 10 U.S.C. Section 881:

As a Legal Assistance Officer, respondent was not permitted to receive any compensation, by way of referral fees or otherwise, from civilian attorneys to whom he directed legal assistance clients in need of representation by civilian attorneys.

During the period of approximately May through September 1989, respondent and another JAGC officer, Lt. Rivera ("Rivera"), referred clients to a licensed California attorney, Robert Kiernan ("Kiernan"), who had sought out respondent and Rivera for the purpose of obtaining referrals of clients.

In total, respondent referred twenty-one (21) clients to Kiernan and in return received a total of approximately \$6,200.00 from Kiernan for the referrals. During the same period, Rivera received a similar amount of money from Kiernan for referrals.

By obtaining money from attorney Kiernan for the referral of clients, respondent violated 10 U.S.C. 881, conspiracy to commit graft. This conduct involves moral turpitude in violation of Business and Professions Code section 6106.

6. The Violations of 10 U.S.C. Section 892:

By failing to provide adequate legal services in that he utilized the unsupervised services of Shannahan to generate legal documents; providing official government information to Kiernan without authorization; utilizing government property to copy the information provided to Kiernan; and receiving money from legal assistance clients, respondent operated in dereliction of his duties and failed to obey lawful orders and regulations, in violation of 10 U.S.C. section 892. These acts do not involve moral turpitude but do constitute other misconduct warranting discipline.

7. The Violations of 10 U.S.C. Section 933:

By receiving and transmitting money from legal assistance clients to Shannahan, one not entitled to payment

from such clients, respondent engaged in conduct unbecoming an officer and a gentleman, in violation of 10 U.S.C. section 933. These acts do not involve moral turpitude but do constitute other misconduct warranting discipline.

By receiving graft from Kiernan for the referral of legal assistance clients, respondent engaged in additional conduct unbecoming an officer and a gentleman, in violation of 10 U.S.C. section 933. This conduct involves moral turpitude in violation of Business and Professions Code section 6106.

8. The Violations of 10 U.S.C. Section 934:

By receiving and transmitting money from legal assistance clients and obtaining from Shannahan forgiveness of debt in an unspecified amount, respondent wrongfully received compensation for his services as an officer of the United States Navy, in violation of 10 U.S.C. 934, the general article. These acts do not involve moral turpitude, but do constitute other misconduct warranting discipline.

By wrongfully endeavoring to alter the potential testimony of Kiernan, respondent committed further acts in violation of 10 U.S.C. 934, the general article. This conduct involves moral turpitude in violation of Business and Professions Code section 6106.

VI

Pursuant to stipulation respondent's license to practice law in California was suspended for three years, execution of the suspension order was stayed and respondent was placed on probation for three years on conditions, including an actual suspension of 30 months, successful completion of the Bar's Ethics School, and that he pass the Professional Responsibility Examination.

The three year period of probation commenced May 12, 1994, but on the 30 month actual suspension respondent was given credit for the period of interim suspension which commenced November 28, 1991. Respondent has complied with the ethics and professional responsibility conditions of probation.

Respondent is not authorized to practice law in California until he petitions for reinstatement, pays the appropriate fees and costs, and has demonstrated his rehabilitation, fitness to practice, and learning and ability in the general law under the Bar's standards.

VII

(a) Respondent graduated from Gonzaga University School of Law, Spokane, Washington, in 1985. He was admitted to practice law in Idaho in 1986. He is also licensed in Idaho as a certified public accountant.

Approximately November 1985 he went on active duty with the Navy, assigned to the Judge Advocate Generals Corps.

(b) Respondent left the Navy in March 1991. He has held a California real estate broker license since June 1990 and has been employed in real estate since March 1991.

Presently, respondent is self-employed as a real estate mortgage loan broker in Danville, California. In the past he has employed others in his business, but currently he runs the business by himself.

Respondent has no present intent to petition the Bar for reinstatement. He intends to remain in the real estate profession and has no need to activate his license to practice law.

(c) Respondent is very contrite for his wrongful conduct that resulted in his court martial. He recognizes that such conduct was wrongful, inappropriate and without excuse or justification. He accepts responsibility for it. He made \$5,000 in restitution to those injured by his conduct.

Respondent presented evidence that he is a trustworthy person, respected within his community.

DETERMINATION OF ISSUES

Cause was established for discipline under sections 490, 10177(b), and 10177(f) of the Code.

It would not be against the public interest to grant respondent a restricted real estate license under specific terms and conditions.

ORDER

1. The real estate broker license of respondent Mark Whitney Lapham is revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to section 10156.5 of the Code if respondent makes application

therefore and pays to the Department the appropriate fee for the restricted license within 30 days from the effective date of this Decision. The restricted license issued to respondent shall be subject to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of the Code.

- A. The restricted license shall be suspended for 60 days.
- B. Respondent may not apply for the removal of the restrictions imposed herein for a period of two years from the effective date of this Decision.
- C. The restricted license issued to respondent may be suspended prior to hearing by Order of the Commissioner in the event of respondent's conviction of plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
- D. The restricted license issued to respondent 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 Real Estate Commissioner or conditions attaching to the restricted license.
- E. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Commissioner that respondent 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 of 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, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the

payment of the appropriate examination fee.
If respondent fails to satisfy this condition,
the Commissioner may order suspension of
respondent's license until he passes the
examination.

DATED: _____

6-28-95

A handwritten signature in dark ink, appearing to read 'Robert R. Coffman', written over a horizontal line.

ROBERT R. COFFMAN
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Accusation of
MARK WHITNEY LAPHAM,

}

By *Victoria Dillon*
Victoria Dillon

Case No. H-7128 SF

OAH No. N 9409142

Respondent

CONTINUED

FIRST AMENDED 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 _____
State Building, Building Manager's Office, Room 1155
455 Golden Gate Avenue, San Francisco, CA 94102

on Friday, June 9, 1995 (2 hrs. hearing) _____, at the hour of 9:00 a.m.,
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.

Dated: April 11, 1995

DEPARTMENT OF REAL ESTATE

By *Susan M. Rossi*
SUSAN M. ROSSI, Counsel

wd

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

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of
MARK WHITNEY LAPHAM,

By Victoria Dillon
Case No. H-7128 SF Victoria Dillon
OAH No. N 9409142

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 _____

OFFICE OF ADMINISTRATIVE HEARINGS

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

on Thursday, May 11, 1995, (2 hrs. hearing), at the hour of 1:30 p.m.,
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: December 8, 1994

By John Van Driel
JOHN VAN DRIEL, Counsel

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1 JOHN VAN DRIEL, Counsel
2 Department of Real Estate
3 185 Berry Street, Room 3400
4 San Francisco, CA 94107-1770
5 Telephone: (415) 904-5917

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DEPARTMENT OF REAL ESTATE

By *Victoria Dillon*
Victoria Dillon

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-7128 SF
12 MARK WHITNEY LAPHAM,) ACCUSATION
13 Respondent.)
14 _____)

15 The Complainant, Les R. Bettencourt, a Deputy Real
16 Estate Commissioner of the State of California, for cause of
17 Accusation against MARK WHITNEY LAPHAM (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 (the Code) as a real estate broker.

23 II

24 The Complainant, Les R. Bettencourt, a Deputy Real
25 Estate Commissioner of the State of California, makes this
26 Accusation against Respondent in his official capacity and not
27 otherwise.

///

1 III

2 On or about May 14, 1991, in a General Court Martial
3 before the U. S. Department of the Navy, Patrol Wings Pacific,
4 Naval Air Station, Moffett Field, California, Respondent was
5 convicted of violations of Articles 80 (use of inside information
6 for private gain), 81 (receipt of a bribe), and 133 (soliciting a
7 bribe) of the Uniform Code of Military Justice, crimes involving
8 moral turpitude which bear a substantial relationship under
9 Section 2910, Title 10, California Code of Regulations, to the
10 qualifications, functions, or duties of a real estate licensee.

11 IV

12 As a result of the court martial set out above, on or
13 about May 12, 1994, in case number S038373, Respondent was
14 suspended from the practice of law by the California Supreme Court
15 for his violations of 10 USC § 881 (conspiracy to commit graft)
16 and § 933 (receiving graft), and § 934 (attempt to alter the
17 testimony of a witness), all of which constitute violations of
18 Code § 6106 and involve moral turpitude.

19 V

20 The facts alleged in paragraph III above constitute
21 cause under Sections 490 and 10177(b) of the Code for suspension
22 or revocation of all licenses and license rights of Respondent
23 under the Real Estate Law.

24 VI

25 The suspension of Respondent's attorney license by the
26 California Supreme Court, as alleged in Paragraph IV, constitutes
27 ///

1 cause for revocation or suspension of Respondent's real estate
2 license under Section 10177(f) of the Code.

3 WHEREFORE, Complainant prays that a hearing be conducted
4 on the allegations of the Accusation and that upon proof thereof,
5 a decision be rendered imposing disciplinary action against all
6 licenses and license rights of Respondent under the Real Estate
7 Law (Part 1 of Division 4 of the Business and Professions Code)
8 and for such other and further relief as may be proper under other
9 applicable provisions of law.

10

11


LES R. BETTENCOURT
Deputy Real Estate Commissioner

12

13 Dated at San Francisco, California

14 this 28th day of July, 1994.

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