

1 The burden of proving rehabilitation rests with the
2 petitioner (Feinstein v. State Bar (1952) 39 Cal. 2d 541). A
3 petitioner is required to show greater proof of honesty and
4 integrity than an applicant for first time licensure. The proof
5 must be sufficient to overcome the prior adverse judgment on the
6 applicant's character (Tardiff v. State Bar (1980) 27 Cal. 3d
7 395).

8 I have considered Respondent's petition and the
9 evidence and arguments in support thereof. Respondent has failed
10 to demonstrate to my satisfaction that Respondent has undergone
11 sufficient rehabilitation to warrant the reinstatement of
12 Respondent's real estate broker license.

13 The Department has developed criteria in Section 2911
14 of Title 10, California Code of Regulations ("Regulations") to
15 assist in evaluating the rehabilitation of an applicant for
16 reinstatement of a license. Among the criteria relevant in this
17 proceeding are:

18 Section 2911(i). Completion of, or sustained enrollment
19 in, formal educational or vocational training courses for
20 economic self-improvement.

21 Respondent has provided no evidence of formal
22 educational or vocational training since Respondent's most recent
23 license discipline.

24 Section 2911(k). Correction of business practices
25 resulting in injury to others or with the potential to cause such
26 injury.

27 ///

1 Respondent has a history of injurious business
2 practices. Respondent's license was disciplined because on
3 June 21, 1999, Respondent was convicted of bank larceny in
4 violation of Title 18 United States Code, Section 2113.
5 Respondent committed the crime in part by soliciting a lender to
6 make a mortgage loan to Respondent's client based on fraudulent
7 loan application information submitted by Respondent. Thus,
8 Respondent's license was disciplined because of his business
9 practices.

10 Respondent's Petition includes incomplete and/or
11 inaccurate information. In response to item 4 in the Petition
12 ("Have you ever been a defendant in any civil court
13 litigation...?"), Respondent answered "No". This response was
14 incorrect. Respondent was a defendant in at least eight civil
15 actions in California from 1995 through 1997. In response to item
16 7 in the Petition ("If the discipline was related to business
17 practices, explain what steps and efforts have been made toward
18 correction."), Respondent provided no information.

19 The Department obtained a copy of six loan transaction
20 files from Respondent for the following loan applications
21 solicited by Respondent as agent for Homeowners Finance Center
22 between November 12, 2005 and September 13, 2006, including:

23 (a) an application from Ira Stein for a \$232,000 loan
24 to refinance real property at 320 Alabama Street #10,
25 San Francisco, California;

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1 (b) two applications from Vito Serrano for loans to
2 purchase real property at 101 Market Street #207, San Diego,
3 California;

4 (c) an application from William and Gretchen Lawton
5 for a \$409,500 loan to purchase real property at 5555 Sylvania
6 Heights, Sonoma, California;

7 (d) an application from Armando Diodati for a
8 \$1,155,000 loan to purchase real property at 744 Occidental
9 Avenue, San Mateo, California. No MLDS.

10 (e) an application from Elva and Jose Lopez for an
11 \$870,000 loan to refinance real property at 1459 Florida Street,
12 San Francisco, California.

13 None of these transaction files contained the mortgage
14 loan disclosure statement signed by borrowers complying with the
15 requirements of Section 10240 of the Code.

16 Consequently, Respondent has failed to submit evidence
17 sufficient to demonstrate that Respondent has corrected his
18 business practices, so Respondent has not established that
19 Respondent has complied with Section 2911(k).

20 Section 2911(l). Significant or conscientious
21 involvement in community, church or privately-sponsored programs
22 designed to provide social benefits or to ameliorate social
23 problems.

24 Respondent has provided no evidence of significant or
25 conscientious involvement in community, service programs since
26 Respondent's most recent license discipline.

27 ///

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

MAR 28 2001

DEPARTMENT OF REAL ESTATE

* * *

In the Matter of the Accusation of)
GARY NICHOLAS SAYED,)
Respondent.)

NO. H-7888 SF)
OAH NO. N2000110397)

By Shelly Ely

DECISION

The Proposed Decision dated February 23, 2001, 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 with the following correction:

Pursuant to Section 11517(b)(3) of the Government Code, the word "Accusation" is substituted for the word "Application" in the caption on page 1 of the Proposed Decision.

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 April 17, 2001.

IT IS SO ORDERED March 26, 2001.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish Zinnemann

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

ACCUSATION

In the Matter of the ~~Application~~ of:

GARY NICHOLAS SAYED,

Respondent.

Case No. H-7888 SF

OAH No. N2000110397

PROPOSED DECISION

Robert Walker, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on February 14, 2001.

David B. Seals, Counsel, represented the complainant, Les R. Bettencourt, Deputy Real Estate Commissioner, State of California.

Bernard J. Schoenberg, Attorney at Law, represented the respondent, Gary Nicholas Sayed.

SUMMARY AND ISSUES

Respondent is licensed as a real estate broker. In 1999, based on an incident that occurred in 1989, respondent was convicted of bank larceny. Should respondent's license be suspended or revoked?

FACTUAL FINDINGS

1. Respondent, Gary Nicholas Sayed, is licensed as a real estate broker.
2. On June 21, 1999, in the United States District Court for the Northern District of California, respondent was convicted of bank larceny, a violation of subdivision (b) of section 2113 of title 18 of the United States Code. The conviction was on a plea of guilty. Pursuant to a plea agreement, the court placed respondent on probation for two years. Among the conditions of probation, the court required that respondent pay restitution of \$91,000 and that, except for employment activities, he be confined to his home with electronic monitoring for six months. Respondent has paid the restitution and has completed the home confinement. Respondent's probation is set to terminate in June of 2001. He says that he has complied with all of the conditions of his probation.

3. The circumstance that gave rise to respondent's conviction had to do with a 1989 loan application. In 1989 respondent began working as a real estate salesperson. Stephen Boschetti, doing business as Omnivest Realty and Development in Burlingame, California, employed respondent. (Respondent had placed his license with Mr. Boschetti in 1988 but did not begin work until 1989.) Before going to work for Mr. Boschetti respondent had worked in his family's bakery and had owned a restaurant. Respondent worked for Mr. Boschetti for two years. After respondent had worked for Mr. Boschetti for a few months, he learned that Mr. Boschetti occasionally falsified loan applications for clients who were applying for loans to purchase property. Respondent says that Mr. Boschetti assured him that it was common practice for realtors to use inflated income figures in loan applications. Realtors did that so that a client could qualify for a loan for which the client would not qualify under lenders' standard guidelines if the client reported his or her actual income. In the summer of 1989 respondent assisted clients in completing a loan application to buy a home. Respondent used inflated income figures in the application. Respondent knew that the prospective lender would not make a loan in the requested amount if his clients reported their actual incomes. Based on the false information, the lender did make the loan. A number of years later, the buyers defaulted on the loan payments, and the lender sustained a loss of \$91,000. That is when charges were brought against respondent.

4. Respondent says that after working for Mr. Boschetti for some time he became very concerned about the unethical practice of inflating income figures and decided that he wanted no part of it. He began looking for other employment. In October of 1991 he found a position with Skyline Realty and Homeowners Finance Center and has been employed there since that time.

5. At Skyline respondent has worked on hundreds of loan applications. He declares that, since leaving his position with Mr. Boschetti, he has not engaged in any dishonest activity. Frank E. Lembi of Skyline Realty and Homeowners Finance Center praises respondent as a valued member of his firm. Mr. Lembi has been a real estate broker in San Francisco for over 54 years. He says that respondent has worked on approximately 1,000 transactions at Skyline and that there has never been a complaint concerning him. Mr. Lembi describes respondent as stable, dedicated, and dependable.

6. Ian Jack, Chairman of Surety Financial Services in Sherman Oaks, California, has worked with respondent on large, complex transactions. Mr. Jack says that respondent is expert and professional. He says, also, that respondent engages in good business practices.

7. Respondent says that both Mr. Lembi and Mr. Jack know of his conviction.

8. The crime of which respondent was convicted is one involving moral turpitude. The crime of which respondent was convicted is one that is substantially related to the qualifications, functions, or duties of the licensed activity.

9. Respondent has been married for ten years. He and his wife have one son and are adopting a second child. Respondent says that he has a close relationship with his parents and that he spends a great deal of time with his family. He and his wife have recently devoted a good deal of time to choosing a school for their son.

10. Respondent declares that the reason he left Mr. Boschetti's office was that he did not want to be part of an enterprise in which people falsified loan applications and that he has done nothing dishonest since leaving that office.

LEGAL CONCLUSIONS

1. By reason of the matters set forth in Findings 2, 3, and 8, it is determined that respondent has been convicted of a crime that involves moral turpitude and that is substantially related to the qualifications, functions, or duties of the licensed activity. Thus, pursuant to section 490 and subdivision (b) of section 10177 of the Business and Professions Code, there are grounds to suspend or revoke his license.

2. This case presents a somewhat unusual, though not unprecedented, circumstance. The dishonesty that gave rise to respondent's conviction occurred over 11 years ago. The evidence shows that, over nine years ago, respondent took steps to rehabilitate himself and discontinued associating with the person with whom he acted when he engaged in the dishonest conduct. But, because respondent's dishonest act was discovered only recently, his conviction is recent, and he is still on probation. The conviction was on June 21, 1999, and respondent's criminal probation is set to terminate in June of 2001. There is evidence that respondent has made substantial progress toward rehabilitation. He changed employment because he wanted to avoid associating with the person with whom he had engaged in the dishonest conduct. He has been with his new employer for over nine years, and there are no known complaints against him during that time. Moreover, his employer describes him as stable, dedicated, and dependable. Since the incident that gave rise to his conviction, respondent has been married and has established a stable family. Respondent has paid full restitution in the amount of \$91,000. Ordinarily, protection of the public would require an outright revocation because of the continuing criminal probation; however, it does not under these circumstances. Because of the length of time that has passed since the incident that gave rise to respondent's conviction and because of the substantial progress respondent has made toward rehabilitation, the public can be adequately protected with the issuance of a restricted license subject to a number of conditions.

ORDER

All licenses and licensing rights of respondent, Gay Sayed, under the real estate law are revoked. The Department, however, shall issue a restricted real estate broker license to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent applies for a restricted license and pays the application fee within 90 days from the effective date of this decision. The restricted license shall be subject to all of the provisions of section

10156.7 of the Business and Professions Code and to the following limitations, conditions, and restrictions imposed under authority of section 10156.6 of that code:

1. The 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 that is substantially related to respondent's fitness or capacity as a real estate licensee.

2. The restricted license may be suspended prior to hearing by order of the Real Estate 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.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or for the removal of any of the conditions, limitations, or restrictions of a restricted license until five years have elapsed from the effective date of this decision.

4. Respondent shall, within nine months from the effective date of this decision, present evidence satisfactory to the Real Estate 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 respondent presents evidence that he has satisfied this condition. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

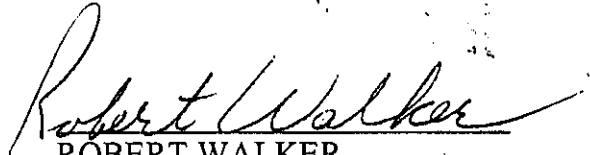
5. Respondent shall, within six months from the effective date of this decision, take and pass the professional responsibility examination administered by the department and shall pay the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of respondent's license until respondent passes the examination.

6. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by this decision or by a separate written order such information concerning respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest. Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in respondent's custody and control and periodic summaries of salient information concerning each real estate transaction in which respondent was engaged during the period covered by the report.

7. Within 30 days from the effective date of this decision respondent shall cause his current employer to submit to the Department of Real Estate a letter stating that the

employer has read a copy of this decision. Respondent shall not begin employment with any other employer licensed by the Department of Real Estate without first causing the prospective employer to submit to the Department of Real Estate a letter stating that the prospective employer has read a copy of this decision.

DATED: February 23, 2001



ROBERT WALKER

Administrative Law Judge

Office of Administrative Hearings

FILED
NOV 30 2000

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

DEPARTMENT OF REAL ESTATE

Shelly Ely

In the Matter of the Accusation of

GARY NICHOLAS SAYED

}

Case No. H-7888 SF

OAH No.

Respondent

**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 THE OFFICE OF ADMINISTRATIVE HEARINGS, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612 on WEDNESDAY--FEBRUARY 14, 2001, at the hour of 9:00 AM, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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 and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: NOVEMBER 30, 2000

DEPARTMENT OF REAL ESTATE
David B. Seals
By _____
DAVID B. SEALS, Counsel

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
NOV 21 2000

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

GARY NICHOLAS SAYED

}
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By Shelly Ely

Case No. H-7888 SF

OAH No.

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Dated: NOVEMBER 21, 2000

DEPARTMENT OF REAL ESTATE
By David B. Seals
DAVID B. SEALS Counsel

flap

1 LARRY A. ALAMAO, Counsel
State Bar No. 47379
2 Department of Real Estate
P. O. Box 187000
3 Sacramento, CA 95818-7000
4 Telephone: (916) 227-0789

FILED
OCT 27 2000

DEPARTMENT OF REAL ESTATE

By Jean Alamo

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 GARY NICHOLAS SAYED,)
13 Respondent.)

No. H-7888 SF

ACCUSATION

15 The Complainant, LES R. BETTENCOURT, a Deputy Real
16 Estate Commissioner of the State of California, for cause of
17 Accusation against GARY NICHOLAS SAYED (hereinafter
18 "Respondent"), is informed 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 California Business and Professions Code (hereinafter "Code")
23 as a real estate broker.

24 II

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

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III

On or about June 21, 1999, in the U. S. District Court for the Northern District of California, Respondent was convicted of violation of Title 18, United States Code, Section 2113(b) (Bank Larceny), 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.


LES R. BETTENCOURT
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 12th day of October, 2000