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FILED

OCT - 8 2009

DEPARTMENT OF REAL ESTATE

By K. Mar

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of
ANDREW PETER KARLESKIND,
Respondent.

No. H-8316 SF

ORDER DENYING REINSTATEMENT OF LICENSE

On November 4, 2003, a Decision was rendered in H-8316 SF 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 December 5, 2003 and Respondent has been so licensed since that time.

On July 8, 2008, Petitioner 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.

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

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1 The following circumstances attend this petition. On or about February 7, 2000, in
2 the United States District Court, Northern District of California, Petitioner was convicted of
3 violating Title 18, United States Code, Section 371 (Conspiracy To Commit Bank Fraud), a
4 felony.

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

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

12 Regulation 2911(n) Change in attitude from that which existed at the time of the
13 conduct in question as evidenced by any or all of the following:

14 (1) Testimony of applicant

15 In response to item 3 in the petition ("Have you ever been convicted of any
16 violation of law?"), Respondent disclosed his Federal conspiracy conviction, but failed to
17 disclose that on May 14, 2004, in the Superior Court of California, County of Contra Costa, Case
18 No. 119658-3 Respondent was convicted of Wet Reckless Driving in violation of Vehicle Code
19 Section 23103.5, a misdemeanor.

20 (5) Absence of subsequent felony or misdemeanor convictions that are reflective
21 of an inability to conform to societal rules when considered in light of the conduct in question.

22 On May 14, 2004, in the Superior Court of California, County of Contra Costa,
23 Case No. 119658-3, Respondent was convicted of Wet Reckless Driving in violation of Vehicle
24 Code Section 23103.5, a misdemeanor.

25 Since Respondent has not established that Respondent has complied with
26 Regulations 2911(n)(1) and 2911 (n)(5) of Title 10, California Code of Regulations, I am not

27 ///

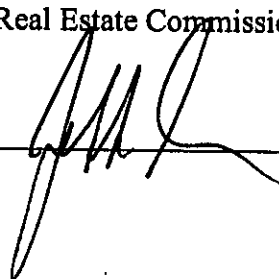
1 satisfied that Respondent is sufficiently rehabilitated to receive an unrestricted real estate broker
2 license.

3 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for
4 reinstatement of his real estate broker license is denied.

5 This Order shall become effective at 12 o'clock noon on OCT 29 2009

6 DATED: 9-15-09

7 JEFF DAVI
8 Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
NOV 14 2003

DEPARTMENT OF REAL ESTATE

By Lucie B. Ben

* * *

In the Matter of the Accusation of)
ANDREW PETER KARLESKIND,)
Respondent.)

NO. H-8316 SF
OAH NO. N-2003030676

DECISION

The Proposed Decision dated October 14, 2003, 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 DECEMBER 5, 2003.

IT IS SO ORDERED November 4, 2003.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish Zinnemann

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

ANDREW PETER KARLESKIND,

Respondent.

Case No. H-8316 SF

OAH No. N2003060676

PROPOSED DECISION

Administrative Law Judge Cheryl R. Tompkin, State of California, Office of Administrative Hearings, heard this matter on September 3, 2003, in Oakland, California.

James L. Beaver, Counsel, represented the complainant Les R. Bettencourt, Deputy Real Estate Commissioner of the State of California.

Steven D. Woodson, Attorney at Law, 11590 Berryessa Road, San Jose, California 95133, represented the respondent Andrew Peter Karleskind, who was present at hearing.

The matter was submitted on September 3, 2003.

FACTUAL FINDINGS

1. Official notice is taken that complainant Les R. Bettencourt made the Accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California.
2. Andrew Peter Karlsekind (respondent) is presently licensed and/or has license rights under the Real Estate Law as a real estate broker. Respondent's license will expire on January 14, 2007, unless renewed.
3. On February 2, 2000, in the United States District Court, Northern District of California, respondent was convicted, upon a plea of guilty, of violation of 18 U.S.C. section 371 (conspiracy to commit bank fraud), a felony and a crime involving moral turpitude which bears a substantial relationship to the qualifications, functions or duties of a real estate licensee.

On September 18, 2000, respondent was sentenced to 24 months probation on terms and conditions that included payment of \$100,000.00 in restitution, payment of a \$10,000.00 fine and payment of a \$100.00 special assessment. Respondent was also ordered to participate in the Home Confinement with Electronic Monitoring Program for a period of 6 months, which restricted him to his residence at all times except for activities pre-approved by his probation officer.

On September 18, 2000, respondent paid the \$100.00 special assessment. On December 20, 2000, he paid both the \$10,000.00 fine and \$100,000.00 in restitution. On November 6, 2001, respondent's probation was terminated approximately 10 months early.

The facts and circumstances of the conviction are that between January 1, 1996, and March 4, 1999, respondent conspired with others to make false statements on loan applications submitted to financial institutions insured by the Federal Deposit Insurance Corporation.

4. Respondent is a broker with Alameda Mortgage Corporation, a company started by his father 35 years ago. Respondent began working at Alameda Mortgage Corporation in 1983 as a real estate salesperson. He obtained his broker's license a couple of years later. In 1984 respondent met Jim Daman (also known as Hossein Damankeshideh) at Allied Brokers, a real estate firm that was one of his father's clients. Between 1984 and 1990 respondent served as the exclusive mortgage consultant for Jim Daman without incident.

In the early 1990s Daman briefly left the real estate field but returned to the industry in 1995. Upon his return, Daman contacted respondent to renew their business relationship. After he completed the first couple of loans for Daman respondent began to question the source of the down payments and closing costs of Daman's buyers. It soon became clear to respondent that a third party (Daman or his friends) was lending the buyers the money for the down payment and closing costs. It was also clear that this fact was not reflected on the financial information submitted in support of the loans being processed by respondent. The documentation submitted to respondent by Daman created the false impression that the buyer had money to put into the property, when in fact the buyer did not. Despite his knowledge of this fraud, respondent continued to arrange loans based on the false documentation. Respondent denies he ever received any type of kickback for processing the fraudulent loans.

Respondent admits he "got caught up" in ensuring that the real estate transactions initiated by Daman were completed. Daman was relentless in following up on his transactions, sometimes calling respondent 20 to 30 times a day, and he soon became respondent's main source of business. Respondent justified his conduct to himself by arguing that he was helping purchasers acquire homes and that the lender was unlikely to lose money because real estate prices were rising. He also admits that he wanted to save face with the listing brokers who could damage his reputation in the industry if he failed

to perform, so he went along with the fraudulent scheme. However, at some point several buyers failed to make any payments and an investigation was initiated by the Private Mortgage Insurance Company that had insured many of the loans. The Federal Bureau of Investigation (FBI) subsequently got involved. Respondent states "it was sort of a relief" when the FBI showed up and that he cooperated fully in the FBI investigation, including providing information about others involved in the crime. He also gave full statements to law enforcement and expressed a willingness to testify if called upon to do so. Respondent no longer associates with Daman.

5. Following his conviction respondent allowed his broker license to lapse to avoid the embarrassment of having his name printed in the Department of Real Estate newspaper. After consulting with an attorney he applied for renewal of his license. His license was renewed on January 15, 2003, and the subject disciplinary proceeding ensued. Respondent has no prior history of license discipline.

6. Respondent acknowledges what he did was wrong and expresses remorse for his conduct. He states that he will not re-offend because he realizes that there is enough business available to permit him to earn money without committing fraud. Respondent also notes that at the time of his offense 100% financing was not available to borrowers; however now buyers can obtain 105% financing even with inferior credit. Respondent additionally states that he will not re-offend because it was not worth the cost to himself or his family and he does not want his family to ever have to go through such an experience again. He notes that his illegal conduct detracted from his personal life and damaged the reputation of Alameda Mortgage Corporation, the family business.

7. Respondent's father is the broker of record for Alameda Mortgage Corporation. However, in 1999 respondent's father invited him to take over the family business and become the broker of record, which respondent would like to do. Respondent has served as the president of Alameda Mortgage Corporation since 2000. He has supervisory responsibility over the nine loan officers and four processors that are currently employed at Alameda Mortgage Corporation. Respondent is also very involved in the day-to-day operations of Alameda Mortgage Corporation, and he has been able to reestablish some of the financial ties that were damaged by his criminal conduct. Chase Manhattan, one of the banks respondent helped to defraud, recently approved Alameda Mortgage Corporation to do business with that company. Alameda Mortgage Corporation has also obtained a line of credit from First Collateral, and it continues to do business with the Private Mortgage Insurance Company that initiated the investigation that resulted in respondent's conviction. Respondent's current focus is on running Alameda Mortgage Corporation, but he states that his long term goal is to become a certified mortgage banker.

7. At hearing Montford Berney testified on respondent's behalf. Berney met respondent approximately fifteen years ago when he was the framing contractor on respondent's personal residence. Over the years they have done numerous projects together, including land development and building custom homes. Berney knows respondent well on both a social and business basis. He is aware of respondent's

conviction for bank fraud. However, he has always found respondent to be an honest individual.

8. Respondent is 45 years of age. He has been married 17 years and has five minor children for whom he provides support. His wife does not work outside the home. Respondent and his wife are actively involved in the Catholic Church. They devoted several hundreds hours to fundraising activities on behalf of the church in both 2002 and 2003. Respondent also referees his children's soccer and water polo teams, and serves as the scoreboard operator for one of his children's swimming team.

LEGAL CONCLUSIONS

1. Cause for suspension or revocation of respondent's license exists pursuant to Business and Professions Code sections 490 and 10177, subdivision (b) in that respondent has been convicted of a crime involving moral turpitude and/or which is substantially related to the qualifications, functions or duties of a real estate salesperson, as set forth in Finding 3.


2. Notwithstanding respondent's conviction, it is determined that it would not be against the public interest to permit respondent to retain his real estate broker license upon appropriate terms and conditions. In this regard it is noted that respondent was a real estate broker for many years before engaging in the illegal conduct that resulted in his conviction, and he has no prior history of license discipline. At hearing respondent accepted responsibility for his actions and seemed to sincerely regret his illegal conduct. He has not engaged in any known criminal conduct since 1999 and he is no longer in contact with Daman. His extensive involvement with his family and church also suggests respondent has a very stable lifestyle and good support network. It thus appears unlikely that respondent will engage in criminal conduct in the future. All of these factors support the determination that respondent's conviction does not require revocation of his real estate broker license. However, respondent clearly exercised poor judgment when he engaged in bank fraud, which is a very serious offense. Therefore, a period of probation to permit the Department to monitor respondent's actions appears appropriate.

ORDER

All licenses and licensing rights of respondent Andrew Peter Karleskind under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent 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 issued to respondent 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 is substantially related to respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to respondent 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 nor for the removal of any of the conditions, limitations or restrictions of a restricted license until five (5) 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 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.
5. Respondent shall, within six (6) months from the issuance of the restricted license, 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 the suspension of the restricted license until respondent passes the examination.

DATED: 10/14/03


CHERYL R. TOMPKIN
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
JUN - 9 2003

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

ANDREW PETER KARLESKIND,

Case No. H-8316 SF

OAH No. N-2003030676

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, CA 94612 on WEDNESDAY, SEPTEMBER 3, 2003, at the hour of 9:00 A.M., 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: JUNE 9, 2003

DEPARTMENT OF REAL ESTATE

By

JAMES L. BEAVER, Counsel

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

MAR 13 2003

DEPARTMENT OF REAL ESTATE

Laurie A. Zinn
BY _____

Case No. H-8316 SF

OAH No.

In the Matter of the Accusation of

ANDREW PETER KARLESKIND,

}

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 **THE OFFICE OF ADMINISTRATIVE HEARINGS, 1515 CLAY STREET, SUITE 206, OAKLAND, CA 94612** on **WEDNESDAY, JUNE 4, 2003**, at the hour of **1:30 P.M.**, 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.

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DEPARTMENT OF REAL ESTATE

Dated: MARCH 13, 2003

By *James L. Beaver*
JAMES L. BEAVER, Counsel (L)

1 DAVID A. PETERS, Counsel (SBN 99528)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789
6 -or- (916) 227-0781 (Direct)
7

FILED
FEB - 6 2003

DEPARTMENT OF REAL ESTATE

By Lauriel J. Z...

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-8316 SF
12 ANDREW PETER KARLESKIND,) 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 ANDREW PETER KARLESKIND (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 Business and Professions Code (hereinafter "Code") as a real
23 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.

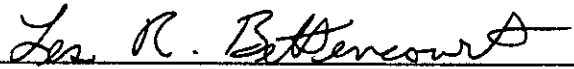
1 III

2 On or about February 7, 2000, in the United States
3 District Court, Northern District of California, Respondent was
4 convicted of violation of Title 18 U.S.C. Section 371
5 (Conspiracy to Commit Bank Fraud), a crime involving moral
6 turpitude which is substantially related under Section 2910,
7 Title 10, California Code of Regulations to the qualifications,
8 functions or duties of a real estate licensee.

9 IV

10 The facts alleged above constitute cause under
11 Sections 490 and 10177(b) of the Code for suspension or
12 revocation of all licenses and license rights of Respondent
13 under the Real Estate Law.

14 WHEREFORE, Complainant prays that a hearing be
15 conducted on the allegations of this Accusation and that upon
16 proof thereof a decision be rendered imposing disciplinary
17 action against all licenses and license rights of Respondent,
18 under the Real Estate Law (Part 1 of Division 4 of the Business
19 and Professions Code) and for such other and further relief a
20 may be proper under the provisions of law.

21 
22 LES R. BETTENCOURT
23 Deputy Real Estate Commissioner

24 Dated at Oakland, California,
25 this 6th day of February, 2003.
26
27