

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

DEC 28 2007

DEPARTMENT OF REAL ESTATE

By *[Signature]*

* * *

In the Matter of the Accusation of)

ROBERT LEE KEECH,)

Respondent.)

NO. H-10089 SF

OAH NO. N-2007080906

DECISION

The Proposed Decision dated November 27, 2007, 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 JAN 17 2008

IT IS SO ORDERED

December 26, 2007

JEFF DAVI
Real Estate Commissioner

[Signature]

BY: John R. Liberator
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

ROBERT LEE KEECH,

Respondent.

Case No. H-10089 SF

OAH No. 2007080906

PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on October 29, 2007.

Counsel Mary F. Clarke represented complainant Charles W. Koenig, Deputy Real Estate Commissioner.

Edgardo Gonzalez, Attorney at Law, represented respondent Robert Lee Keech, who was also present.

The matter was submitted on October 29, 2007.

FACTUAL FINDINGS

1. Respondent Robert Lee Keech is licensed and/or holds licensing rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) as a real estate salesperson. On July 25, 2007, Charles W. Koenig, acting in his official capacity as a Deputy Real Estate Commissioner of the State of California, filed an accusation against respondent. Respondent filed a notice of defense.

2. On December 19, 2006, respondent was convicted on his plea of no contest of a violation of Insurance Code section 1871.4, subdivision (a)(1) (knowingly making a false or fraudulent statement or misrepresentation for the purpose of obtaining or denying workers' compensation benefits), a crime of moral turpitude that is substantially related to the qualifications, functions or duties of a real estate licensee. Although violation of that section is a felony, respondent's offense was reduced to a misdemeanor pursuant to Penal Code section 17, subdivision (b)(4). Imposition of sentence was suspended and respondent was placed on formal probation for 24 months on the conditions (among others) that he pay a fine of approximately \$1,000; complete 40 hours of volunteer work; submit to audits of his business records upon request; accurately report all employees, their classifications and

payroll; and maintain workers' compensation insurance. Respondent states that he has satisfied the conditions of his probation. His term of probation will end in one year.

3. In a "Confidential – Interview Information Statement" that he submitted to the Department of Real Estate (department) on March 19, 2007, respondent informed the department that the conviction arose out of his business as a painting contractor:

The issue that had happened was in my contracting business. I had hired an employee who was begging for work to scrape some peeling paint from a house. In the first week he claimed he fell from a ladder and tried to file against my workers comp [sic]. He tried to scam the system, as he did not really have an accident. As a result we were investigated because a procedures [sic] and he claimed he was paid under the table for weeks prior. This is untrue.

Under "Rehabilitation Efforts" in his "Conviction Detail Report," respondent stated "I will never hire someone again without being referred or checking their references."

At hearing, respondent testified that the employee, who was not identified by name, worked for respondent for only one or two days in 2003 before filing the workers' compensation claim, and that he then "disappeared" before respondent's conviction in 2006. According to respondent, the criminal complaint against him followed an audit of his books by his workers' compensation insurance carrier, the State Compensation Insurance Fund. Respondent acknowledged that he does not know whether the audit had anything to do with the employee's injury claim, because his company was audited every year.

Respondent testified that he does not know what the false statement or misrepresentation was that resulted in his conviction; State Fund never told him what it was and he never saw the evidence that State Fund relied on. Respondent assumes that the alleged crime had something to do with misreporting premiums or payroll to State Fund. Respondent decided to plead no contest because it would have cost him \$10,000 to go to trial, as opposed to paying a fine of \$1,000; respondent did not have \$10,000 to fight the charges and he felt that he had no choice but to "settle" for \$1,000.

4. Respondent's explanation of the circumstances leading to his conviction, which is vague on all of the material details, lacks candor. Respondent's claim that he agreed to plead no contest to a crime, a crime that was originally charged as a felony, without knowing the factual basis for the charges¹ against him is not credible; nor is it credible that respondent chose to plead no contest to a crime he did not commit rather than contest the false accusations of a former employee who had disappeared.

¹ Respondent was originally charged with four felonies relating to Insurance Code violations, but the other three charges were dismissed upon his no contest plea to a violation of section 1871.4, subdivision (a)(1).

5. Respondent is 31 years old. He is married and has two children. Respondent obtained his GED when he was 18 years old, and attended community college for about two years taking business and construction-related classes. Respondent and his family are active in their local church. Respondent has not suffered any criminal convictions other than the conviction identified in Finding 2.

6. Respondent started his painting business, Keech Brothers Inc., when he was 18 years old. His company now has five employees. Keech Brothers Inc. is a "Diamond Certified" contractor, a rating that reflects a high level of customer satisfaction. The company has also been on the "Honor Roll" of the Golden Gate Better Business Bureau since 2001. Respondent submitted numerous letters and emails from satisfied customers. Over the past three years, respondent has taken several continuation education courses related to his contracting business.

7. Respondent has been licensed as a real estate salesperson for about four years. He worked initially for a residential brokerage and then went to work for a commercial real estate company. Since March 2007 respondent has been working as an independent contractor for America's Home Loans, where he focuses on commercial leasing and sales. Respondent's supervisor is his brother, Edward Aaron Keech, Jr., a licensed real estate broker.

Since 2004, respondent has taken numerous real estate-related courses, including classes in risk management, property management, real estate appraisal, real estate finance and real estate economics. Respondent hopes to get a broker's license.

8. Four of respondent's family members are involved in the real estate industry and have worked with respondent on real estate matters: his brother, Edward Keech; his sister, Shellie Nealon; his aunt, Agnes Maggio; and his mother, Catherine Deeths. Keech, Nealon, Maggio, and Deeths testified that respondent is honest and trustworthy in his business affairs. All of them are aware of respondent's conviction; none of them has any knowledge of the particular circumstances that gave rise to the conviction.

Christopher Allan Powell is respondent's painting manager. He has known respondent for 20 years. Powell testified that he has never heard any complaints concerning respondent's honesty or integrity. He states that respondent is goal-oriented, a hard worker and a person who takes responsibility for his actions.

LEGAL CONCLUSIONS

1. The standard of proof applied in this matter is clear and convincing evidence to a reasonable certainty.

2. Business and Professions Code sections 490 and 10177, subdivision (b), provide that a real estate license may be revoked if the licensee has been convicted of a crime

of moral turpitude that is substantially related to the qualifications, functions or duties of a licensee. Although respondent states that he is innocent of any crime, his December 19, 2006 conviction of a violation of Insurance Code section 1871.4, subdivision (a)(1), is conclusive evidence of his guilt of that offense. (*Arneson v. Fox* (1980) 28 Cal.3d 440.) Respondent's conviction constitutes cause to revoke his real estate salesperson license. (Finding 2.)

3. Respondent has the burden of proving that he is sufficiently rehabilitated from his conviction so that discipline against his salesperson license is not warranted. The department has established criteria to assist in the evaluation of a licensee's rehabilitation. (Cal. Code Regs., tit. 10, § 2912.)

Respondent has not met his burden. It is true that respondent has offered evidence to show that he is honest and trustworthy in his business relationships. On the matter of his criminal conviction, however, a matter that reflects poorly on his honesty, respondent presented no meaningful evidence of rehabilitation. Respondent did not demonstrate any change in attitude from that which existed at the time of his offense, nor did he offer evidence of any change in his business practices since the offense; indeed, respondent accepts no responsibility for his crime. His conviction is less than two years old, and he remains on formal probation. Respondent's crime bears closely and directly upon the fiduciary obligations of a real estate salesperson. His lack of candor about the circumstances leading to his conviction, and his unpersuasive denial that he committed the crime, raise fresh concerns about his honesty. It would be contrary to the public interest to permit respondent to hold a salesperson license.

ORDER

All licenses and licensing rights of respondent Robert Lee Keech under the Real Estate Law are revoked.

DATED: November 27, 2007



DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings

1 MARY F. CLARKE, Counsel (SBN 186744)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789
6 -or- (916) 227-0780 (Direct)

FILED
JUL 25 2007

DEPARTMENT OF REAL ESTATE

By K. Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of

12 ROBERT LEE KEECH,

13 Respondent.

No. H-10089 SF

ACCUSATION

14
15 The Complainant, CHARLES W. KOENIG, a Deputy Real
16 Estate Commissioner of the State of California, for cause of
17 Accusation against ROBERT LEE KEECH (herein "Respondent"), is
18 informed and alleges as follows:

19 I

20 At all times herein mentioned, Respondent was and now
21 is licensed and/or has license rights under the Real Estate Law,
22 Part 1 of Division 4 of the Business and Professions Code
23 (herein "Code") as a real estate salesperson.

24 II

25 The Complainant, CHARLES W. KOENIG, a Deputy Real
26 Estate Commissioner of the State of California, makes this
27 Accusation in his official capacity.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

III

On or about December 19, 2006, in the Superior Court of the State of California, County of Sonoma, Respondent was convicted of the crime of Making A False And Fraudulent Written/Oral Material Statement in violation of Insurance Code Section 1871.4(a)(1), a misdemeanor and a crime involving moral turpitude which bears a substantial relationship under Section 2910 of Chapter 6, 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.


CHARLES W. KOENIG
Deputy Real Estate Commissioner

Dated at Sacramento, California
this 22nd day of June, 2007.