

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

AUG 27 2008.

DEPARTMENT OF REAL ESTATE

* * *

By R. Henry

In the Matter of the Accusation of)
HARRY ALFRED FROMM,)
Respondent.)

NO. H-10322 SF
OAH NO. 2008030761

DECISION

The Proposed Decision dated August 14, 2008, 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 SEP 17 2008.

IT IS SO ORDERED.

9-27 08
JEFF DAVIS
Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

HARRY ALFRED FROMM,

Respondent.

Case No. H-10322 SF

OAH No. 2008030761

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on August 12, 2008.

Real Estate Counsel David B. Seals represented complainant Charles W. Koenig, a Deputy Real Estate Commissioner.

Lou Aronian, Attorney at Law, represented respondent Harry Alfred Fromm, who was present.

The matter was submitted for decision on August 12, 2008.

FACTUAL FINDINGS

1. Respondent Harry Alfred Fromm is licensed and/or has license rights under the Real Estate Law (Bus. & Prof. Code, div. 4, pt. 1) as a real estate broker. The license is current and has an expiration date of February 6, 2011.

2. On October 2, 2006, respondent was convicted in Santa Clara County, on his guilty pleas, of misdemeanor violations of Penal Code section 368, subdivision (e) (theft/embezzlement of more than \$400 by a caretaker from an elder/dependent adult), and Penal Code section 484/487, subdivision (a) (grand theft). Each offense involves moral turpitude and is substantially related to the qualifications, functions or duties of a real estate licensee.

Imposition of sentence was suspended, and respondent was placed on court probation for one year on conditions that included \$130 in fines and assessments. Respondent was not ordered to pay any restitution.

3. The conviction was set aside pursuant to Penal Code section 1203.4 in November 2007.

4. The victim in this case is respondent's elderly aunt by marriage, Helen Costanzo. The criminal charges were that respondent took money from Costanzo between 2000 and 2002 when he was her caretaker. Respondent was asked to provide an accounting for his expenditures, but he was not able to provide a satisfactory one.

5. Respondent denies that he stole any money from Costanzo. He testified that he loved her and that he took good care of her for many years because no other family member would. He says that she gave him \$300 to \$400 a month in order to reimburse him for expenses he had incurred on her behalf, to pay for his services to her, and to help him out financially.

Respondent concedes he was more than a caretaker, he was a trustee and held a power of attorney for Costanzo. Respondent never read the trust document, and denies ever having a copy of it. He never kept an accounting of expenditures he made. He did not keep receipts. He deposited checks into Costanzo's bank accounts, he kept track in her checkbook of the checks he wrote, but he never opened her bank statements or balanced her accounts. He never knew how much money she had but acted under the assumption that she had sufficient money to cover the checks he wrote.

Respondent testified that he pleaded guilty to the charges on the advice of counsel, not because he did anything improper, but because he believed that there was no other way out of, what was to him, a protracted and expensive legal process. Respondent also believed that once the convictions were expunged, they would be off his record. He did not understand that the convictions could affect his broker's license notwithstanding the expungement.

6. Respondent filed for personal bankruptcy prior to being criminally charged. Costanzo's conservator filed a creditor's claim for \$35,000 which respondent acknowledged as a valid debt.¹

7. Respondent is 80 years old. He is a retired engineer who worked in the construction field. He attended college at San Jose State University and the University of Santa Clara.

8. Respondent does not remember when he first obtained his real estate broker license, but believes he has held it for at least 30 years. Respondent testified that he never had a real estate office, but utilized the license only for his own personal transactions.

9. This is respondent's first disciplinary action.

¹ It is assumed that restitution was not ordered in the criminal case because the debt was discharged in bankruptcy.

10. Respondent presented no evidence from third persons regarding his character or rehabilitation.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 10177, subdivision (b), read in conjunction with Business and Professions Code section 490, subdivision (a), the Commissioner suspend or revoke a real estate license if the licensee has been convicted of a crime that involves moral turpitude and bears a substantial relationship to the licensed activity.

Factual Finding 2: Respondent has been convicted of the misdemeanor offenses of grand theft and theft/embezzlement by a caretaker from an elder/dependent adult. The offenses involve moral turpitude per se as they involve dishonesty for personal gain.

Respondent argues his conduct did not involve moral turpitude because he did not steal from his aunt. By his guilty pleas, respondent admitted each and every element of the offenses of which he was convicted. In a license discipline proceeding, the licensee may present evidence of extenuating circumstances by way of mitigation or explanation. But a licensee may not collaterally attack his conviction. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.)

The offenses are substantially related to the qualifications, functions, or duties of a real estate licensee as they involve the doing of an unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) Cause exists to suspend or revoke respondent's real estate broker license pursuant to Business and Professions Code section 11077, subdivision (b), read in conjunction with Business and Professions Code section 490, subdivision (a).

2. In California Code of Regulations, title 10, section 2912, the Department has established criteria to be used in evaluating the rehabilitation of a licensee who has committed a criminal offense. In that the offenses are so recent, respondent meet few of the relevant criteria of rehabilitation other than successful completion of probation and expungement of the conviction.

The most important criteria of rehabilitation is a change of attitude from that which existed at the time of the offense. Respondent has not presented any evidence to show a change in his attitude or any insight into the failings on his part. Respondent may have had good intentions with respect to his aunt, but his own testimony establishes a failure to execute the fiduciary obligations he owed to her.

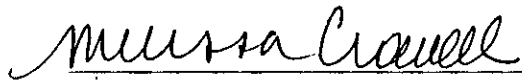
The purpose of this proceeding is not to further punish respondent but to protect the public. (*Norman v. Department of Real Estate* (1979) 93 Cal.App.3d 768, 778 (quoting *Borror v. Department of Investment* (1971) 15 Cal.App.3d 531, 540).) The legislature intends that real estate brokers be persons of honesty and integrity and worthy of the

fiduciary obligations they bear. (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.) Respondent's conduct in this case, coupled with the absence of any significant evidence of rehabilitation, renders revocation the only license discipline that is consistent with the protection of the public.

ORDER

All licenses and licensing rights of respondent Harry Alfred Fromm under the Real Estate Law are revoked.

DATED: August 14, 2008



MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings

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Dept of Real Estate

AUG 18 2008

SACRAMENTO LEGAL

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FILED

MAR 11 2008

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DEPARTMENT OF REAL ESTATE

By K. Mar

7 BEFORE THE DEPARTMENT OF REAL ESTATE
8 STATE OF CALIFORNIA

9 * * *

10 In the Matter of the Accusation of)
11 HARRY ALFRED FROMM,) H-10322 SF
12 Respondent.) ACCUSATION
13)

14 The Complainant, CHARLES W. KOENIG, a Deputy Real
15 Estate Commissioner of the State of California; for cause of
16 Accusation against HARRY ALFRED FROMM (hereinafter "Respondent"),
17 is informed and alleges as follows:

18 I

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

23 II

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

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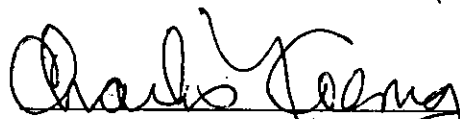
III

On or about October 2, 2006, in the Superior Court of the State of California, County of Santa Clara (Case Number CC588356), Respondent was convicted of the crime of Theft Or Embezzlement By A Caretaker From An Elder/Dependent Adult in violation of Penal Code Section 368(e), and the crime of Grand Theft in violation of Penal Code Section 484/487(a), each a misdemeanor and a crime involving moral turpitude which bears a substantial relationship 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 Respondent's license 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 Code, and for such other and further relief as may be proper under provisions of law.


CHARLES W. KOENIG
Deputy Real Estate Commissioner

Dated at Sacramento, California
this 10th day of March, 2008.