

1 I have considered Respondent's petition and the
2 evidence submitted in support thereof. Respondent has
3 demonstrated to my satisfaction that Respondent meets the
4 requirements of law for the issuance to Respondent of an
5 unrestricted real estate salesperson license and that it
6 would not be against the public interest to issue said
7 license to Respondent.

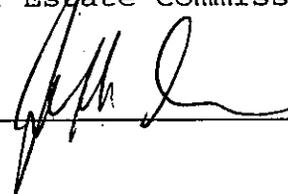
9 NOW, THEREFORE, IT IS ORDERED that Respondent's
10 petition for removal of restrictions is granted and that a real
11 estate salesperson license be issued to Respondent if
12 Respondent satisfies the following conditions within nine (9)
13 months from the date of this Order:

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

23 This Order shall be effective immediately.

24 Dated: _____

25 JEFF DAVI
26 Real Estate Commissioner

27 

DEPARTMENT OF REAL ESTATE

SEP 18 1991

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
Laura B. Davis

* * * *

In the Matter of the Application of)
)
RICHARD DUANE LEAVITT,)
)
)
)
)
Respondent.)

No. H-24618 LA
L-53739

DECISION

The Proposed Decision dated August 16, 1991 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 application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy of Section 11522 is attached hereto for the information of respondent.

If and when application is made for a real estate salesperson license through a new application or through a petition for removal of restrictions, all competent evidence or rehabilitation presented by the respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is attached hereto.

This Decision shall become effective at 12 o'clock noon on October 8, 1991.

IT IS SO ORDERED September 9, 1991.

CLARK WALLACE
Real Estate Commissioner

John R. Liberator
By: JOHN R. LIBERATOR
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the matter of the Application)
of:) Case No. H-24618 LA
RICHARD DUANE LEAVITT,)
Respondent.)
_____)

PROPOSED DECISION

This matter was heard by Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on August 2, 1991, at Los Angeles, California. Complainant was represented by James Peel, Counsel. Respondent was represented by Gay Geiser-Sandoval.

Oral and documentary evidence was presented and the matter was submitted for decision. The Administrative Law Judge makes the following findings of fact:

FINDINGS OF FACT

1. The statement of issues was filed by Steven J. Ellis, a Deputy Real Estate Commissioner of the State of California, solely in his official capacity.
2. Respondent applied for a real estate salesperson license on January 28, 1991, which application is the subject of these proceedings.
3. a. On February 24, 1989, in the Superior Court, County of Orange, State of California, respondent was convicted, on his plea of guilty, of violating Health and Safety Code Sections 11359 (possession of marijuana for sale) and 11360 (unlawful transportation of marijuana), crimes involving moral turpitude and substantially related to the qualifications, functions, and duties of a real estate salesperson. Imposition of sentence was suspended and respondent was placed on probation for 3 years upon terms and conditions which included payment of a \$2,500 fine and submission to random drug testing.

b. The facts and circumstances surrounding the conviction are as follows. Respondent returned a package left on his truck to its owner, which individual was under police surveillance. The package contained about 4 pounds of marijuana.

4. a. On May 27, 1986, in the Municipal Court of South Orange County Judicial District, County of Orange, State of California, respondent was convicted, on his plea of guilty, of violating Health and Safety Code Section 25191(a) (transportation of hazardous waste in an uncertified vehicle), a crime not necessarily involving moral turpitude or substantially related to the qualifications, functions, and duties of a real estate salesperson. Imposition of sentence was suspended and respondent was placed on formal probation for 3 years on terms and conditions that included payment of a \$4,400 fine and restitution in the amount of \$15,000.

b. The facts and circumstances surrounding the conviction are as follows. Respondent rented a truck for his brother and helped him take a load to a trash dump. He was not aware of the nature of his cargo until they arrived at the dump. Once he learned what he had transported, respondent refused to help his brother unload the hazardous waste and walked away from the dump. When contacted by the authorities respondent admitted his participation and cooperated with them in trying to locate the source of the waste.

c. The crime for which respondent was convicted, in the existing circumstances, does not involve moral turpitude and is not substantially related to the qualifications, functions, or duties of a real estate salesperson.

5. a. Respondent is still on probation for the marijuana convictions. All random drug tests have been negative and he is complying with all other terms and conditions of his probation. He received an early release from probation on the hazardous waste conviction; a petition pursuant to Penal Code Section 1203.4 was granted by the Court on July 2, 1991. Respondent has informed a broker about the convictions and expects to be sponsored by said individual.

b. Respondent is 42 years old. He is married and has two children, one is 7 years old and another is 7 months old. He is employed a vehicle salesperson. He is also involved in community activities which include serving on a water conservation board and volunteering in a youth soccer league.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

DETERMINATION OF ISSUES

1. Grounds exist to deny the issuance of a salesperson license to respondent pursuant to Business and Professions Code Sections 480(a) and 10177(b) because he was convicted of crimes involving moral turpitude and substantially related to the qualifications, functions and duties of a real estate salesperson, by reason of finding of fact number 3.

2. Grounds do not exist to deny the issuance of a salesperson license to respondent pursuant to Business and Professions Code Sections 480(a) or 10177(b) with respect to the hazardous waste conviction because it was not established that the crime involved moral turpitude or was substantially related to the qualifications, functions, or duties of a real estate salesperson, by reason of finding of fact number 4.

3. In light of the substantial evidence of mitigation and rehabilitation presented by respondent, it is concluded that the public will be adequately protected by the issuance of a restricted license to respondent.

* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The application of respondent Richard Duane Leavitt for issuance of an unrestricted real estate salesperson license is hereby denied; provided, however, that a restricted real estate salesperson license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent applies for such license and pays to the Department the appropriate fee for said license within ninety (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 the restricted license until two (2) years have elapsed from the effective date of this Decision.
4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:
 - a. That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
 - b. That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.
5. Respondent shall, within eighteen (18) months of the issuance of respondent's restricted license under the provisions of Section 10153.4 of the Business and Professions Code, submit evidence satisfactory to the Real Estate Commissioner of successful completion, at an accredited institution, of two of the courses listed in Section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If respondent fails to present satisfactory evidence of successful completion of said courses, the conditional license shall be automatically suspended effective eighteen (18) months after issuance of respondent's original

real estate license. Said suspension shall not be lifted until respondent has submitted the required evidence of course completion and the Commissioner has given written notice to the respondent of lifting of the suspension.

DATED: 8/16/91

A handwritten signature in cursive script, appearing to read "Samuel D. Reyes". The signature is written in black ink and is positioned above the printed name.

SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings

SM
BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

JUN-5 1991

In the Matter of the Application of

RICHARD DAUNE LEAVITT,

Respondent

DEPARTMENT OF REAL ESTATE

Case No. H-24618 LAY copy

OAH No. L-53739

NOTICE OF HEARING ON APPLICATION

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, 314 W. First Street, Los Angeles, CA 90012

on the 8th day of August, 1991, at the hour of 2:30 p.m., or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you.

You may be present at the hearing, and you may be represented by counsel, but you are neither required to be present at the hearing nor to be represented by 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.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you are not present nor represented at the hearing, the Department may act upon your application without taking evidence.

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 hearing officer 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 hearing officer directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: June 5, 1991

By

Marjorie P. Merseil
MARJORIE P. MERSEL,

Counsel

CC: Richard Duane Leavitt
Gay Geiser Sandavol, Esq.
Steve Schmidt

RE 500 (Rev. 8/87)

✓ Sacto.

OAH

PRI

1 truthfulness of respondent, in connection with respondent's
2 application for a real estate salesperson license filed on
3 January 28, 1991, and relation thereto, will consider the
4 following:

5 III

6 Respondent, pursuant to the provisions of Section
7 10153.3 of the Business and Professions Code, made application
8 to the Department of Real Estate of the State of California for
9 a real estate salesperson license on or about January 28, 1991,
10 with the knowledge and understanding that any license issued as
11 a result of said application would be subject to the conditions
12 of Section 10153.4 of the Business and Professions Code.

13 IV

14 On or about February 24, 1989, in the Superior Court
15 of the State of California for the County of Orange, respondent
16 pled guilty to, and was convicted of, the crime of violating
17 Health & Safety Code Section 11359 and 11360 (possession of
18 marijuana for sale) and (transportation of marijuana for sale),
19 felonies and crimes involving moral turpitude.

20 V

21 On or about May 27, 1986, in the Municipal Court,
22 South Judicial District, County of Orange, State of California,
23 respondent was convicted of the crime of violating Health and
24 Safety Code Section 25191(a) (transportation of hazardous waste
25 in uncertified vehicle), a crime involving moral turpitude.

26 /

27 /

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

VI

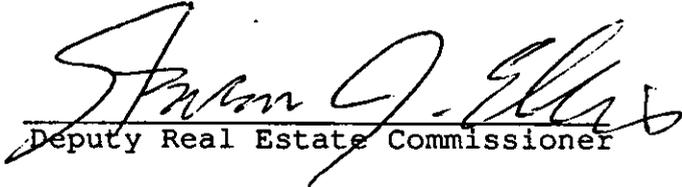
The crimes of which respondent was convicted bear a substantial relationship to the qualifications, functions or duties of a real estate licensee.

VII

Respondent's convictions, as alleged above, are grounds for denying respondent's application for a real estate license under Sections 480 and 10177(b) of the Business and Professions Code of the State of California.

These proceedings are brought under the provisions of Section 10100, Division 4 of the Business and Professions Code of the State of California and Sections 11500 through 11528 of the Government Code.

Dated at Los Angeles, California
this 1st day of May, 1991.


Deputy Real Estate Commissioner

cc: Richard Duane Leavitt
Steve Schmidt/Steve Schmidt & Company
Sacto.
PRI