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SEP 23 2009

DEPARTMENT OF REAL ESTATE

By K. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of
DAVID HOWARD KOHLER,
Respondent.

No. H-25076 LA

ORDER GRANTING REINSTATEMENT OF LICENSE

On March 17, 1993, a Decision was rendered herein revoking the real estate salesperson license of Respondent effective April 13, 1993, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on April 13, 1993, and Respondent has operated as a restricted licensee since that time.

On December 22, 2008, Respondent petitioned for reinstatement of said real estate salesperson license, and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered the petition of Respondent and the evidence and arguments in support thereof. Respondent has demonstrated to my satisfaction that Respondent meets the requirements of law for the issuance to Respondent of an unrestricted real estate salesperson license and that it would not be against the public interest to issue said license to Respondent.

1 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for
2 reinstatement is granted and that a real estate salesperson license be issued to Respondent if
3 Respondent satisfies the following conditions within twelve (12) months from the date of this
4 Order:

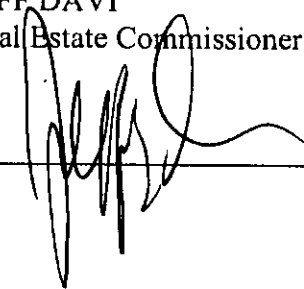
- 5 1. Submittal of a completed application and payment of the fee for a real
6 estate salesperson license.
- 7 2. Submittal of evidence of having taken and successfully completed the
8 continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal
9 of a real estate license.

10 This Order shall be effective immediately.

11 DATED: _____

9-9-09

12 JEFF DAVI
13 Real Estate Commissioner

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MAR 24 1993

DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)
DAVID HOWARD KOHLER,)
Respondent.)

No. H-25076 LA
L-56501

STIPULATION
AND WAIVER

I, DAVID HOWARD KOHLER, respondent herein, acknowledge that I have received and read the Accusation filed by the Department of Real Estate on May 15, 1992, and the Statement to Respondent sent to me in connection with the Accusation.

I hereby admit that the allegations of the Accusation filed against me are true and correct and constitute a basis for the discipline of my real estate salesperson license.

I further acknowledge that the Real Estate Commissioner held a hearing on this Accusation on August 25, 1992, before the Office of Administrative Hearings, for the purpose of proving the allegations therein. I was present at the hearing and participated therein. Further, I have had an opportunity to read and review the Proposed Decision of the Administrative Law

1 Judge.

2 I understand that pursuant to Government Code Section
3 11517(c), the Real Estate Commissioner has rejected the Proposed
4 Decision of the Administrative Law Judge. I further understand
5 that pursuant to the same Section 11517(c), the Real Estate
6 Commissioner may decide this case upon the record, without taking
7 additional evidence, after affording me the opportunity to present
8 written argument to the Real Estate Commissioner.

9 I further understand that by signing this Stipulation
10 and Waiver, I am waiving my right to obtain a dismissal of the
11 Accusation through proceedings under Government Code Section
12 11517(c) if this Stipulation and Waiver is accepted by the Real
13 Estate Commissioner. However, I also understand that I am not
14 waiving my rights to further proceedings to obtain a dismissal of
15 the Accusation if this Stipulation and Waiver is not accepted by
16 the Real Estate Commissioner.

17 I hereby request that the Real Estate Commissioner in
18 his discretion revoke my real estate salesperson license and
19 issue to me a restricted real estate salesperson license under
20 the authority of Section 10156.5 of the Business and Professions
21 Code if I make application therefor and pay to the Department of
22 Real Estate the appropriate fee for said license within one year
23 from the effective date of the Decision herein.

24 I further understand that the restricted license shall
25 be subject to the provisions of Section 10156.7 of the Business
26 and Professions Code and the following conditions, limitations
27 and restrictions will attach to the restricted license issued by

1 the Department of Real Estate pursuant hereto:

2 1. The license shall not confer any property right in
3 the privileges to be exercised thereunder and the Real Estate
4 Commissioner may by appropriate order suspend the right of
5 respondent to exercise any privileges granted under this
6 restricted license in the event of:

7 a. The conviction of respondent (including a plea
8 of nolo contendere) to a crime which bears a
9 substantial relationship to respondent's
10 fitness or capacity as a real estate
11 licensee; or

12 b. The receipt of evidence that respondent has
13 violated provisions of the California
14 Real Estate Law, the Subdivided Lands Law,
15 regulations of the Real Estate Commissioner or
16 conditions attaching to this restricted license.

17 2. Respondent shall not be eligible to apply for the
18 issuance of an unrestricted real estate license nor the removal
19 any of the conditions, limitations or restrictions attaching to
20 the restricted license until three years have elapsed from the
21 date of issuance of the restricted license to respondent.

22 3. With the application for license, or with the
23 application for transfer to a new employing broker, respondent
24 shall submit a statement signed by the prospective employing
25 broker on a form approved by the Department of Real Estate
26 wherein the employing broker shall certify as follows:

27 a. That the broker has read the Accusation and

1 this Stipulation and Waiver which are the basis
2 for the issuance of the restricted license; and

3 b. That the broker will carefully review all
4 transaction documents prepared by the restricted
5 licensee and otherwise exercise close supervision
6 over the licensee's performance of acts for which
7 license is required.

8 4. Respondent shall, within six months from the
9 effective date of the restricted license, take and successfully
10 complete the courses specified in subdivisions (a) and (b) of
11 Section 10170.5 of the Real Estate Law for renewal of a real
12 estate license. If respondent fails to satisfy this condition,
13 Commissioner may order suspension of the restricted license
14 until respondent successfully completes the required courses.

15 DATED: 2/19/93.

16 
17 DAVID HOWARD KOHLER, Respondent
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19 * * * * *

20 I have read the Accusation filed herein, the
21 Proposed Decision of the Administrative Law Judge dated
22 September 24, 1992, and the foregoing Stipulation and Waiver
23 signed by respondent. I am satisfied that it will not be inimical
24 to the public interest to issue a restricted real estate
25 salesperson license to respondent.

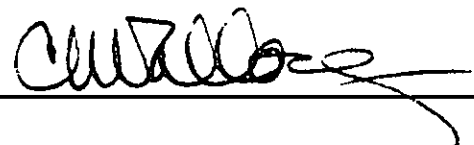
26 Therefore, it is hereby ordered that the real estate
27 salesperson license of respondent be revoked and a restricted

1 real estate salesperson license be issued to respondent DAVID
2 HOWARD KOHLER if respondent has otherwise fulfilled all of the
3 statutory requirements for licensure. The restricted license
4 shall be limited, conditioned and restricted as specified in the
5 foregoing Stipulation and Waiver.

6 This Order shall become effective April 13,
7 1993.

8 DATED: 3/17/93.

10 CLARK WALLACE
11 Real Estate Commissioner

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Santa Mary

OCT 19 1992

DEPARTMENT OF REAL ESTATE
BY *Sybil Williams*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
DAVID HOWARD KOHLER,) NO. H-25076 LA
Respondent.) L-56501

NOTICE

TO: DAVID HOWARD KOHLER, Respondent
and
TODD F. HAINES, his Counsel

YOU ARE HEREBY NOTIFIED that the Proposed Decision
herein dated September 24, 1992, of the Administrative Law Judge
is not adopted as the Decision of the Real Estate Commissioner.
A copy of the Proposed Decision dated September 24, 1992, is
attached for your information.

In accordance with Section 11517(c) of the Government
Code of the State of California, the disposition of this case
will be determined by me after consideration of the record herein
including the transcript of the proceedings held on August 25,
1992, and any written argument hereafter submitted on behalf of

1 respondent and complainant.

2 Written argument of respondent to be considered by me
3 must be submitted within 15 days after receipt of the transcript
4 of the proceedings of August 25, 1992, at the Los Angeles office
5 of the Department of Real Estate unless an extension of the time
6 is granted for good cause shown.

7 Written argument of complainant to be considered by me
8 must be submitted within 15 days after receipt of the argument of
9 respondent at the Los Angeles office of the Department of Real
10 Estate unless an extension of the time is granted for good cause
11 shown.

12 DATED: _____

10/15/92

13 CLARK WALLACE
14 Real Estate Commissioner

15 Clark Wallace
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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation)
Against:)

DAVID HOWARD KOHLER,)

Respondent.)
_____)

Case No. H-25076 LA
OAH No. L-56501

PROPOSED DECISION

This matter came on regularly for hearing before W. F. Byrnes, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on August 25, 1992. Marjorie P. Mersel, Counsel, represented the complainant. Respondent appeared personally and was represented by Todd F. Haines, Attorney at Law. Evidence having been received and the matter submitted, the Administrative Law Judge finds the following facts:

I

Steven J. Ellis made the Accusation in his official capacity as a Deputy Real Estate Commissioner.

II

David Howard Kohler (hereinafter referred to as respondent) is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code).

III

At all times relevant hereto, respondent has been licensed by the Department of Real Estate as a real estate salesperson.

IV

On or about December 18, 1991, in the Municipal Court of Los Angeles, San Fernando Judicial District, respondent was convicted on a jury verdict of violating Penal Code Section 484(a) (petty theft), a misdemeanor. Imposition of sentence was suspended, and respondent was placed on 24 months probation and fined a total (with penalty assessment) of \$405.00. Respondent was also ordered to work 20 days for Caltrans/Graffiti Removal with a provision that upon completion of Caltrans and fine payment, the court will favorably consider reducing the probationary period to 12 months. Respondent has completed his Caltrans work and paid his fine.

V

Respondent's conviction was a result of his purchasing baseball equipment on which the price tags had been changed, at a Sportsmart store in Northridge. The case is puzzling, as respondent had nothing to gain by changing these price tags. He had been provided with a company credit card and asked to purchase equipment for the company's men's and women's softball teams, and he went to Sportsmart with a friend to do so. The two of them were horsing around, playing ball in the store with bats, gloves, and balls, and were irresponsibly careless about what happened to the price tags on the merchandise, apparently partly because of respondent's annoyance with the unavailability of sales assistance. They eventually took their purchases to the counter, respondent off-handedly told the clerk to check the prices (but paid no attention as to whether that was done), and the merchandise was paid for with the company credit card. Respondent was arrested outside the store. The incorrect price tags resulted in an underpayment to the store of about \$100.00.

VI

Respondent does not agree with the jury's verdict against him, but he accepts responsibility for his own actions and he welcomes the added maturity that these events have imposed upon him. He was deeply humiliated by his arrest and the subsequent court proceedings, and he has resolved never to permit such a thing to occur again. He is 29 years old, and has been employed as a loan officer at Fallbrook Mortgage Corporation for five years. His employer trusts him, and reports that there have never been any complaints about respondent's performance, but that the company has received numerous letters praising his excellent work.

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

I

Cause exists for the suspension or revocation of respondent's license pursuant to Section 490 of the Business and Professions Code in that he has been convicted of a crime as described in Section 10177(b) of said Code, and the crime is substantially related to the qualifications, functions, and duties of a real estate licensee.

II

Upon consideration of all the facts and circumstances in this matter, and from observation of respondent's demeanor and comportment at the hearing, it is concluded that the public interest will not suffer if respondent is permitted to retain a properly restricted license.

* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The real estate salesperson's license of respondent David Howard Kohler is revoked; provided, however, that a restricted real estate salesperson's 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 said license within six months from the effective date of the decision herein.

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 the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of said Code:

1. Said 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 which bears a significant relationship to respondent's fitness or capacity as a real estate licensee.

2. Said restricted license may be suspended prior to hearing by order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that the respondent has violated provisions of the California Real Estate Law, the Subdivided

NOT ADAPTED

NOT ADOPTED

Lands Law, regulations of the Real Estate Commissioner, or conditions attaching to this restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations, or restrictions of a restricted license until one year has elapsed from the date of issuance of the restricted license to respondent.

4. Respondent shall submit with his application for license under an employing broker, or his application for a transfer to a new employing broker, a statement signed by the prospective employing broker which shall certify:

- a. That the decision of the Commissioner which granted the right to a restricted license has been read; and
- b. That close supervision will be exercised over the performance by the restricted licensee of activities for which a real estate license is required.

Dated: 9-24-92



W. F. BYRNES
Administrative Law Judge
Office of Administrative Hearings

WFB:lf

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

FILED

JUN 18 1992

DEPARTMENT OF REAL ESTATE

BY *[Signature]*

In the Matter of the Accusation of

DAVID HOWARD KOHLER,

Case No. H-25076 LA

OAH No. L-56501

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

OFFICE OF ADMINISTRATIVE HEARINGS, 314 West First Street

Los Angeles, CA 90012

**on August 25, 1992, at the hour of 2:30 p.m.
or as soon thereafter as the matter can be heard, upon the Accusation served upon you.**

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. The interpreter must be approved by the Administrative Law Judge 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 Administrative Law Judge directs otherwise.

DATED: June 18, 1992

DEPARTMENT OF REAL ESTATE

cc: David Howard Kohler
Todd F. Haines, Esq.
Fallbrook Mortgage Corp.
OAH
Sacto
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By *[Signature]*

**ROBERT E. BAKER
Attorney-in-CHARGE**

FOR: MARJORIE P. MERSEL, Counsel

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MARJORIE P. MERSEL, Counsel
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, California 90012
(213) 897-3937

FILED

MAY 15 1992

DEPARTMENT OF REAL ESTATE
BY *Spurlin Williams*

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H-25076 LA
DAVID HOWARD KOHLER,)	<u>A C C U S A T I O N</u>
Respondent.)	

The complainant, Steven J. Ellis, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against DAVID HOWARD KOHLER, alleges as follows:

I

The complainant, Steven J. Ellis, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in his official capacity.

II

DAVID HOWARD KOHLER (hereinafter referred to as respondent) is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code).

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III

At all times herein mentioned, respondent was licensed by the Department of Real Estate of the State of California as a real estate salesperson, or possessed renewal rights for such a license.

IV

On or about December 18, 1991, in the Municipal Court of Los Angeles, San Fernando Judicial District, respondent was convicted of the crime of violating Penal Code Section 484(a) (Petty Theft), a crime involving moral turpitude.

V

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

VI

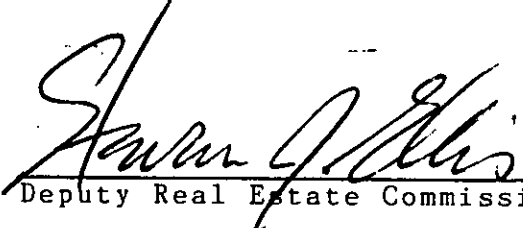
Respondent's criminal conviction is cause under Sections 490 and 10177(b) of the Business and Professions Code for suspension or revocation of all licenses and license rights of respondent under the Real Estate Law.

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, DAVID HOWARD KOHLER, under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such

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1 other and further relief as may be proper under other applicable
2 provisions of law.

3 Dated at Los Angeles, California
4 this 15th day of May, 1992.

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7 Deputy Real Estate Commissioner
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cc: David Howard Kohler
Fallbrook Mortgage Corp.
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