

FILED
JUL 14 1994
DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By Lana B. Oran

* * * * *

In the Matter of the Accusation of)

No. H- 25544 LA
H- 25550 LA
L- 69492
L- 61541

TIMOTHY RUSH, et al.,)

Respondent (s).)

DECISION

The Proposed Decision dated June 20, 1994
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.

This Decision shall become effective at 12 o'clock
noon on August 4, 1994.

IT IS SO ORDERED

7/11/94

CLARK WALLACE
Real Estate Commissioner

Clark Wallace

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation)	Nos. H-25544 LA, and
against:)	H-25550 LA
)	
TIMOTHY RUSH, <u>et al.</u> ,)	OAH Nos. L-69492, and
)	L-61541
Respondents.)	
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PROPOSED DECISION

These matters, having been consolidated for trial, were originally heard on January 27, 1994. A proposed decision was issued by the undersigned on February 14, 1994 which dealt only with the allegations in Case No. H-25550. On March 9, 1994, V. Ahda Sands, attorney for complainant, sent a written memorandum to the undersigned ex parte, which pointed out the omission of findings with respect to Case No. H-25544 LA, but which also pointed out an alleged error in a finding relating to the amount of restitution which the respondent had paid to one of the individuals affected by his claimed misconduct. Accordingly, the undersigned served a notice of ex parte contact on March 10, 1994. On March 17, 1994, respondent wrote an ex parte letter to the undersigned on the issue of the amount of restitution made. Thereafter, the undersigned struck the record and recalled the proposed decision, and set the matter down for further hearing.

On June 1, 1994, the said matters again came on regularly for hearing before Paul M. Hogan, Administrative Law Judge of the Office of Administrative Hearings.

V. Ahda Sands, staff counsel, represented the complainant. Respondent appeared personally without legal counsel.

Evidence, both oral and documentary, was presented and the matter was submitted for decision. The Administrative Law Judge makes his findings of fact, determinations of issues, and renders his proposed decision as follows:

FINDINGS OF FACT

I

Complainant, Steven J. Ellis, filed the accusations herein solely in his official capacity as a Deputy Real Estate Commissioner.

II

Respondent was originally licensed by the Department as a real estate salesperson on October 10, 1979. Respondent's license was not in effect during the period October 9, 1983 to June 27, 1991. The license is now in effect, and will expire on June 26, 1995 unless renewed.

III

During the period July 12, 1990 through October 5, 1990, at a time when he held no active real estate license, respondent acted as a real estate license while employed by licensed brokers Alfred R. and Sharon La Peter. At a time within this period, Mr. Rush solicited Lemuel and Shirley King to buy real estate and attempted to negotiate and conclude a purchase on their behalf. The attempt proved fruitless; the seller strongly pressured Mr. Rush to unwind the proposed deal so that he could conclude another, including threatening suit against all involved, including the Kings. Mr. Rush, unable to contact the Kings, signed their names to cancellation papers without their express authority. Mr. Rush's action was solely to benefit the Kings, and to protect them against adverse action by the seller; Mr. Rush promptly returned the Kings' earnest money to them, and received nothing out of the transaction he had had with them.

IV

During this period, Mr. Rush had left the matter of his license renewal with the secretarial staff of the La Peters.' He did not know his license had lapsed.

V

Mr. Rush should have known that he was unlicensed. He failed to ascertain the status of his license, and acted as a real estate licensee in the absence of proper licensure.

VI

On May 6, 1993, in the Los Angeles County Municipal Court, Los Cerritos Judicial District, respondent was convicted on his pleas of guilty to four counts of embezzlement in violation of Section 487(1) of the Penal Code, felonies, and crimes involving moral turpitude which are substantially related to the duties, functions and qualifications of a real estate licensee.

VII

The matter was certified to Superior Court for sentencing. Pronouncement of sentence was deferred, and respondent was placed on supervised felony probation for five years, on condition, among others, that he serve 180 days in custody and pay full restitution to all those he had damaged by his embezzlement, including the four individuals named in the criminal complaint.

VIII

The matter which gave rise to the rehearing in this matter involved a discrepancy in the amounts claimed by the property owner Mr. Sylvestre Rivera Morales. Mr. Morales claimed upward of \$42,000. lost. In a contested hearing before the Superior Court, the Court found that Mr. Morales' loss amounted to the sum of \$13,006..

IX

Mr. Rush remains on probation. He is currently in compliance with the terms of his probation. Also, he has provided substantial evidence of his efforts at rehabilitation, and seems to be sincerely remorseful. At the time of the embezzlements, Mr. Rush was putting his wife through graduate school, and renovating his house. He denies any problems with drugs, alcohol or sexual involvement, and any other criminal history. He has remained active in the real estate field, and has been successful with no client problems. His marriage of approximately ten years is intact, and he is supporting his two young children. To date, he has paid approximately \$40,000. in restitution.

DETERMINATION OF ISSUES

1. Mr. Rush's license is subject to discipline pursuant to Section 10177(d) of the Business and Professions Code by reason of his violation Section 10130 thereof in acting as a real estate licensee without a valid license in force.

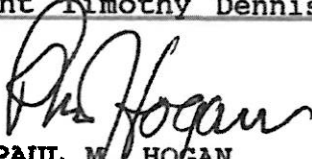
2. Mr. Rush's license is further subject to discipline pursuant to Sections 490 and 10177(b) of said Code by reason of his convictions of violations of the embezzlement statute.

3. All evidence of rehabilitation presented by the respondent has been considered. The circumstances prompting Mr. Rush's violations of the trust reposed in him by his clients were less than overwhelming. Respondent has failed to explain his criminal conduct, leaving the court in the position of being unable to determine with any degree of assurance that the conduct would not be repeated upon but slight provocation. Thus, at the present time, the only remedy sure to protect the public is unqualified revocation.

ORDER

The real estate salesperson's license heretofore issued by the Department to respondent Timothy Dennis Rush, is hereby revoked.

June 20, 1994


PAUL M. HOGAN
Administrative Law Judge
Office of Administrative Hearings

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FILED
SEP-7 1993

DEPARTMENT OF REAL ESTATE
BY *Jana B. Crona*

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H-25550 LA
)	
ALFRED R. & SHARON LA PETER,)	<u>ACCUSATION</u>
INC., a California corporation;)	
ALFRED RAYMOND LA PETER)	
individually and as designated)	
officer of Alfred R. & Sharon)	
La Peter, Inc.; and TIMOTHY)	
DENNIS RUSH, individually,)	
)	
)	
)	
Respondents.)	

The Complainant, Steven J. Ellis, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against ALFRED R. & SHARON LA PETER, INC., a California corporation; ALFRED RAYMOND LA PETER individually and as designated officer of Alfred R. & Sharon La Peter, Inc.; and TIMOTHY DENNIS RUSH, individually, is informed and alleges as follows:

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2 ALFRED R. & SHARON LA PETER, INC. (herein respondent
3 "ASL"), ALFRED RAYMOND LA PETER (herein respondent "LA PETER"),
4 and TIMOTHY DENNIS RUSH (herein respondent "RUSH") are presently
5 licensed and/or have license rights under the Real Estate Law,
6 Part 1 of Division 4 of the Business and Professions Code
7 (hereinafter "the Code").

8 2

9 At all times herein mentioned, respondent ASL was
10 licensed as a corporate real estate broker, acting by and
11 through respondent LA PETER, its designated broker-officer.

12 3

13 At no relevant time herein mentioned was RUSH licensed
14 as a real estate salesperson or broker because his license was
15 expired from October 9, 1983 to June 27, 1991. RUSH was
16 originally licensed October 10, 1979.

17 4

18 The term "the Regulations" as used herein refers to
19 provisions of Title 10, Chapter 6, California Code of
20 Regulations.

21 5

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

25 6

26 All further references herein to "Respondents" include
27 the parties identified in Paragraphs 1 through 3, above, and
28 also include the employees, agents and real estate licensees

1 employed by or associated with said parties and who at all times
2 herein mentioned were engaged in the furtherance of the business
3 or operations of said parties and who were acting within the
4 course and scope of their authority and employment.

5 7

6 At all times herein mentioned, Respondents engaged in
7 the business of, acted in the capacity of, advertised or assumed
8 to act as a real estate broker in the State of California within
9 the meaning of Section 10131(a) of the Code, including the
10 operation of a real estate sale business with the public
11 wherein, on behalf of others, for or in expectation of
12 compensation, Respondents sold or offered to sell, solicited
13 prospective sellers or purchasers of, solicited or obtained
14 listings of, or negotiated the purchase, sale or exchange of
15 real property.

16 8

17 In the course of the employment by Respondent ASL
18 described in Paragraph 7, unlicensed person RUSH, did the
19 following:

20 (a) From July 12, 1990 to October 5, 1990, RUSH
21 solicited Lemuel and Shirley King to purchase real property and
22 thereafter attempted to negotiate and conclude said purchase.

23 (b) In or about October 5, 1990, RUSH, without
24 authorization from the prospective buyers, forged the names of
25 the buyers Lemuel and Shirley King canceling the escrow.

26 (c) After October 5, 1990 escrow monies amounting to
27 some \$1,000 belonging to the Kings was delivered to RUSH
28

1 pursuant to his forged cancellation. RUSH has failed to deliver
2 all of this money to the prospective buyers, the Kings.

3 9

4 In connection with the activities described in
5 Paragraph 7:

6 (a) RUSH violated Section 10130 of the Code by acting
7 without a license.

8 (b) RUSH violated Section 10177(j) of the Code by
9 retaining monies not belonging to him, said acts constituting
10 fraud or dishonest conduct.

11 (c) During the last three years, in the course of the
12 activities described in Paragraph 7 and 8, Respondents, LA PETER
13 and ASL, violated Section 10137 of the Code by employing and
14 compensating RUSH, an unlicensed person who LA PETER knew or
15 should have known to be unlicensed, for performing acts and
16 conducting activity for which a real estate license is required
17 under the provisions of Section 10131(a) of the Code, including
18 but not limited to soliciting prospective sellers or purchasers
19 of real property or soliciting or obtaining listings of, or
20 negotiating the purchase, sale or exchange of real property.

21 10

22 The acts and omissions of Respondent RUSH described in
23 Paragraphs 8 and 9, above, violated the Code and the Regulations
24 as set forth below:

25 Paragraph

Provisions Violated

26 9 (a)

Sec. 10130 of the Code

27 9 (b)

Sec. 10177(j) of the Code

28

