

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Jane B. Olson

* * * * *

In the Matter of the Accusation of) No. H-25821 LA
)
)
HARRY LOGAN EAVES, JR.,) L-08053
)
)
Respondent.)
_____)

DECISION

The Proposed Decision dated October 31, 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.

The Decision suspends or revokes one or more real estate licenses on grounds of knowingly making a false statement of fact required to be revealed in an application for license.

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 December 8, 1994.

IT IS SO ORDERED November 14, 1994

JOHN R. LIBERATOR
Interim Commissioner

John R. Liberator

(C) On March 29, 1990, at a probation violation hearing at which Respondent appeared, the court revoked probation, ordered Respondent to serve 5 days in jail, and recalled the bench warrant.

3. The facts underlying the conviction are that Respondent was shopping at J.C. Penney's, he had bought numerous items but didn't have enough money to also purchase a \$12.00 pair of sunglasses, so he put them in his pocket. When he went to court and plead guilty, Respondent used his brother's name, Michael Jonathan Eaves. As of the date of the hearing, he has not advised the criminal court that he used an alias.

4. On or about April 30, 1993, Respondent applied to become a real estate salesperson. On the application, in response to question no. 27, asking applicants to provide a detailed explanation of any criminal convictions or filings, Respondent divulged a misdemeanor conviction but not the petty theft conviction set forth in Finding No. 2. Respondent misstated the information in response to question no. 27.

5. The Department issued salesperson license no. 01159737 to Respondent; his conditional license expires on November 13, 1994 and his license expires on May 12, 1997.

6. Deputy Commissioner Toth arranged to meet Respondent on April 14, 1994; Respondent was not told the purpose of the meeting. On the eve of the meeting, Respondent's brother called him, as he thought about his brother, he remembered the petty theft conviction and that he had not divulged it previously to the Department. On April 14, 1994, when Respondent completed the Department's Confidential - Report of Interview form, he did not know why he was asked to complete the form but voluntarily divulged the petty theft conviction as well as his use of his brother's name as an alias.

7. At the April 14, 1994 meeting, Deputy Commissioner Toth erroneously advised Respondent that he had an outstanding bench warrant issued by the court in the petty theft case. Respondent told Deputy Commissioner Toth that he would take care of it and have the conviction expunged. He has not had the conviction expunged.

8. Respondent has been working full time as a real estate salesperson since he became licensed. Since February, 1994, he has been working for Theron Jackson at Realty World. Mr. Jackson testified that Respondent is responsible and hardworking. Respondent's real estate license is important; he hopes to build a career in real estate.

9. The petty theft conviction and the birth of Respondent's daughter in July, 1989, impacted Respondent; he realized he needed to start being more responsible.

(A) He divulged the petty theft conviction and use of his brother's name to both his father and brother. He did not and has not similarly confessed this to the court for fear of being sent to jail or prison. While he recognized he was wrong and "stupid" for stealing the sunglasses and using his brother's name as an alias; since the conviction was in his brother's name, he fooled himself into thinking of the conviction as his brother's.

(B) In 1991, when he was arrested for driving under the influence, he took responsibility and gave the officer his correct name and identification.

(C) In 1992, Respondent began to attend church regularly becoming in 1993, a deacon. As a deacon he makes an effort to work with youth, counseling them.

(D) He has been an involved and caring father who helps to support his 2 children, a daughter born in 1989 and a son born in 1994. He pays his daughter's tuition at a private Christian school.

(E) He has been taking real estate courses to improve his job knowledge and to qualify for an unconditioned license.

10. Respondent credibly testified that he forgot about the petty theft conviction when he completed his real estate application; he was anxious to begin a new career and no longer thought of the conviction as his. His demeanor while testifying, the fact that he divulged the DUI conviction, and subsequently, volunteered the petty theft conviction to the Department, support his testimony that he forgot.

Pursuant to the foregoing findings of facts, the Administrative Law Judge determines the following issues:

DETERMINATION OF ISSUES

1. Cal. Bus. & Prof. Code §10177(a):

(A) Respondent misstated that he only had 1 prior misdemeanor conviction, when he had 2. The issue is whether the misstatement was material. Madrid v. Department of Real Estate, 152 Cal.App.3d 454, 458-9 (Second Dist., Div. Five 1984).

(B) While a conviction for petty theft is substantially related to the qualifications or duties of a real estate licensee (Cal. Code Regs. tit. 10, §2910(a)(1)), at the

time Respondent applied the conviction was over 3 years old. However, Respondent also used an alias and has never advised the court he used one. This constitutes a continuing deceit and violation, one which he failed to reveal to the Department on his application and which is substantially related. Cal. Code Regs. tit. 10, §2910(a)(4).

(C) Good cause exists to suspend or revoke Respondent's license pursuant to Cal. Bus. & Prof. Code §10177(a) by reason of Respondent's material misstatement on his application, as set forth in Finding Nos. 2 - 5 and 10.

2. Rehabilitation:

(A) The Department argues that Respondent has not been rehabilitated since the misstatement in the application because he has failed to have the petty theft conviction expunged as he promised Deputy Commissioner Toth he would¹ and he has not told the court that he used an alias, evidencing dishonesty.

(B) Every time Respondent appears in court on the petty theft case using his brother's name, he continues to perpetuate the deception. Unless or until Respondent divulges his use of an alias to the court, he cannot be blamed for not voluntarily appearing in court to have the criminal conviction expunged. The real problem is Respondent's continuing failure to correct the use of an alias which constitutes a continuing dishonesty to the court. While Respondent's brother may not care, dishonesty to the court is serious.

(C) Honest and integrity are essential qualifications for real estate licensees. Harrington v. Department of Real Estate, 214 Cal.App.3d 394, 402-403 (1989). Because of his continuing dishonesty, some discipline to protect the public is warranted, but revocation is not. Respondent admits his wrongdoing, he realizes how his initial dishonesty has escalated. His misstatement to the Department was inadvertent and corrected when he went to see Deputy Commissioner Toth. He credibly explained why he has not advised the court about his use of an alias; of course, his fear of jail or prison does not excuse his continuing failure. These proceedings are not designed to punish licensees, even for continuing law violations, but to protect the public. The positive changes in Respondent's life demonstrate that the public will be adequately protected if

¹The Department also argues that Respondent has not taken care of the outstanding bench warrant. However, the criminal court records show the bench warrant was recalled by the court on March 29, 1990. There was no evidence of any subsequently issued outstanding bench warrant.

his license is suspended and he is allowed to apply for a restricted license.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent Harry Logan Eaves, Jr., under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson's license shall be issued to Respondent pursuant to Cal. Bus. & Prof. Code §10156 if Respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision.

The restricted license issued to Respondent shall be subject to all of the provisions of Cal. Bus. & Prof. Code §10156.7 and to the following limitations, conditions, and restrictions imposed under authority of §10156.6 of the Code:

1. Any restricted real estate license issued to Respondent pursuant to this Decision shall be suspended for 20 days from the date of issuance of the restricted license.

2. The restricted license issued to Respondent may be suspended after 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. The restricted license issued to Respondent may be suspended after 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.

4. 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 a restricted license until five years has elapsed from the effective date of this Decision.

5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Cal. Bus. & Prof. Code §10170 et.seq., for renewal of a real estate license. If Respondent fails to satisfy this condition, the commissioner may order the suspension of the

restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act.


6. Respondent shall, within six months from the effective date of the restricted license, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of the restricted license until Respondent passes the examination.

7. Respondent shall submit with any application for license under an employing broker -- or any application or notification of transfer to a new employing broker, under Cal. Code Regs. tit. 10, §2752 -- a statement signed by the prospective employing broker which shall certify:

a. That the broker has read this decision which granted the right to the restricted license; and

b. That the broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the performance by the restricted licensee of activities for which a real estate license is required.

Dated: October 31, 1994


Theresa Fay-Bustillos
Administrative Law Judge
Office of Administrative Hearings

Sacto. Harry

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
AUG 23 1994
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of)
HARRY LOGAN EAVES, JR.,)
Respondent.)

Case No. H-25821
OAH No. L-08053

By: [Signature]

NOTICE OF HEARING ON ACCUSATION

To the above-named Respondent(s):

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, California, on SEPTEMBER 2, 1994 at the hour of 9:00 a.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: August 23, 1994

DEPARTMENT OF REAL ESTATE

By: *V. Ahda Sands*
V. AHDA SANDS, Counsel

cc: Harry Logan Eaves, Jr.
Unified Development Corporation
Sacto.
OAH

In order to induce reliance, Respondent represented in his application for real estate license that he had no prior criminal convictions.

In reliance upon the representations of Respondent described above, Respondent was originally licensed by the Department of Real Estate of the State of California (Department) as set forth above.

Respondent's representations described in Paragraph 3 were false or misleading when made or were made by Respondent with no reasonable grounds for believing said representations to be true, In truth and in fact, Respondent had previously been convicted of a criminal offense.

Respondent failed to disclose to the Department of Real Estate of the State of California that on or about May 3, 1989, in the Municipal Court of Los Angeles County, State of California, Respondent pled guilty to and was convicted of the crime of violating Penal Code Section 484(a) (Petty Theft of merchandise worth \$11.58, a misdemeanor and a crime involving moral turpitude.

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

/

/

1
2 On his application for his real estate salesperson
3 license filed on or about April 30, 1993, Respondent was asked if
4 he had been convicted of any violation of law. He responded "NO",
5 thereby making a material misstatement of fact.

9

6 The acts and omissions of Respondent, as set forth
7 above, is grounds to suspend or revoke his real estate salesperson
8 license pursuant to Section 10177(a) of the Code.

9 WHEREFORE, Complainant prays that a hearing be conducted
10 on the allegations of this Accusation and that upon proof thereof,
11 a decision be rendered imposing disciplinary action against all
12 licenses and/or license rights of HARRY LOGAN EAVES, JR. under the
13 Real Estate Law and for such other and further relief as may be
14 proper under applicable provisions of law.

15 Dated at Los Angeles, California
16 this 18 day of May 1994.
17

18 STEVEN J. ELLIS
19 Deputy Real Estate Commissioner
20
21
22
23
24

25
26 cc: Harry Logan Eaves, Jr.
27 Unified Development Corporation
SACTO
OAH
cbt