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FILED
DEC 26 2002
DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) NO. H-26919 LA
ASHRAF FARID EL-MASRY,)
Respondent.)

ORDER DENYING REINSTATEMENT OF LICENSE

On June 4, 1997, a Decision was rendered herein
revoking the real estate broker license of Respondent, but
granting Respondent the right to the issuance of a restricted
real estate broker license. A restricted real estate broker
license was issued to Respondent on or about July 3, 1997.

On July 25, 2001, Respondent petitioned for
reinstatement of said license and the Attorney General of
the State of California has been given notice of the filing
of the petition.

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1 I have considered Respondent's petition and the
2 evidence and arguments in support thereof. Respondent has
3 failed to demonstrate to my satisfaction that Respondent has
4 undergone sufficient rehabilitation to warrant the reinstatement
5 of Respondent's real estate broker license, in that:

6 I

7 In the Decision which revoked Respondent's real estate
8 broker license there was a Determination of Issues made that
9 there was cause to revoke Respondent's real estate broker
10 license pursuant to Business and Professions Code ("Code")
11 Sections 490 and 10177(b).

12 On or about March 29, 1996, Respondent was convicted
13 of violating Penal Code Section 496(a) (Receiving Stolen
14 Property). The facts and circumstances surrounding the
15 conviction were that Respondent gave his wife a stolen car.

16 II

17 On October 29, 2002, Respondent was interviewed by
18 a Deputy Real Estate Commissioner ("Deputy") as part of the
19 petition application process. The Deputy stated that Respondent
20 failed to show remorse for his conviction. This evidences a
21 lack of change in attitude and a lack of rehabilitation and is
22 cause to deny Respondent's application pursuant to Section
23 2911(m)(1), Title 10, Chapter 6, California Code of Regulations
24 ("Regulations").

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III

Two complaints were submitted by third parties alleging unfair business practices by Respondent. This evidences a lack of change in attitude and a lack of rehabilitation and is cause to deny Respondent's application pursuant to Regulation 2911(m)(2).

IV

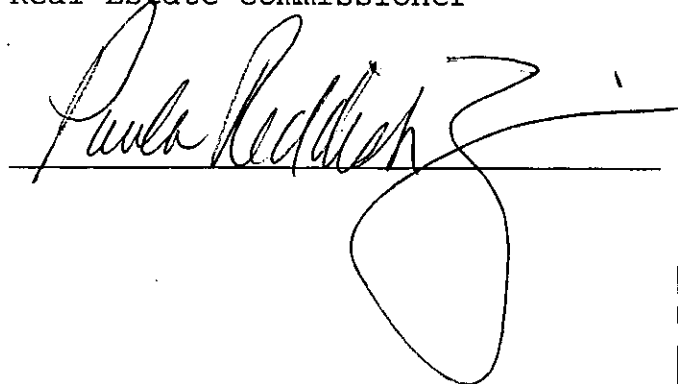
Due to the serious nature of the conduct which led to the revocation of Respondent's real estate broker license, combined with the facts set forth in Paragraphs II and III, additional time is needed to measure Respondent's rehabilitation.

NOW, THEREFORE, IT IS ORDERED that Respondent's petition for reinstatement of Respondent's real estate broker license is denied.

This Order shall become effective at 12 o'clock noon on January 15, 2003.

DATED: December 18, 2002.

PAULA REDDISH ZINNEBANN
Real Estate Commissioner



cc: Ashraf Farid El-Masry
21022 Canterbury Lane
Lake Forest, CA 92630

FILED
JUN 13 1997
DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By Janet B. Crow

* * * * *

In the Matter of the Accusation of)
)
)
ASHRAF FARID EL-MASRY,)
)
)
Respondent.)
_____)

No. H-26919 LA
L-9701229

DECISION

The Proposed Decision dated May 15, 1997, 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 July 3, 1997.

IT IS SO ORDERED

6/4/97

JIM ANTT, JR.
Real Estate Commissioner

Jm Antt Jr

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)		
ASHRAF FARID EL-MASRY,)		Case No. H-26919 LA
Respondent.)		OAH No. L-9701229
_____)		

PROPOSED DECISION

This matter came on regularly for hearing before H. Stuart Waxman, Pro Tempore Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California on April 30, 1997.

Complainant, Thomas McCrady, was represented by Elliott Mac Lennan, Real Estate Counsel.

Respondent, Ashraf Farid El-Masry ("Respondent"), was present and was represented by Attorney, Samuel Cubete.

Page 2, line 8 of the Accusation was amended to read "Section 496(a)" rather than "Section 496".

Oral and documentary evidence was received and the matter was submitted for decision.

FINDINGS OF FACT

The Administrative Law Judge makes the following Findings of Fact:

1. The Accusation was made by Thomas McCrady, complainant, who is a Deputy Real Estate Commissioner of the State of California, acting in his official capacity.

2. Respondent was issued a license as a real estate broker by the Department of Real Estate ("Department") on or before January 1, 1994. He is presently licensed and has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code as a real estate broker. The license will expire on January 8, 1999 unless renewed.

3. On March 29, 1996, in the Superior Court of California, County of Orange, in Case No. 94WF1655, Respondent was convicted on his plea of nolo contendere, of violation of Penal Code section 496(a) (Receiving Stolen Property), a misdemeanor and a crime inherently involving moral turpitude and one substantially related to the qualifications, functions and duties of a Department licensee.

4. Respondent was sentenced to three (3) years of informal probation and was ordered to pay fines and restitution.

5. The facts and circumstances surrounding the conviction arose out of Respondent's co-ownership of a service station with his uncle. Albeit not a vehicle dealer or salesperson, Respondent purchased used cars, placed them at his service station and resold them to customers after disclosing to the customers that he was not a vehicle dealer.

6. In 1993, Respondent purchased a 1990 Honda station wagon ("the Honda"). However, instead of reselling it, he registered it with the Department of Motor Vehicles and gave it to his wife to drive to work, take their children to school and go to church on Sundays. Unbeknownst to Respondent, the car had been stolen.

7. It was Respondent's custom and practice to check VIN numbers on a car's dashboard when he would perform a smog check. He followed that custom and practice when he purchased the Honda. Had he checked the VIN number on the dashboard against the number on the firewall, he would have noticed they did not match. Respondent was credible in his testimony that his failure to check the VIN number on the firewall was an oversight, and that he was unaware he had purchased a stolen automobile.

8. Respondent came to this country in 1980. He holds a Masters degree in Chemical Engineering. His main source of income is his service station. However, he assists buyers and sellers of real estate and performs property management services out of his home.

DETERMINATION OF ISSUES

Pursuant to the foregoing Findings of Fact, the Administrative Law Judge makes the following determination of issues:

1. Cause exists to suspend or revoke respondent's real estate broker's license for conviction of a crime, pursuant to the provisions of Business & Professions Code sections 490 and 10177(b), as set forth in Findings 3, 4, 5, and 6.

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Respondent argued that the crime of which he was convicted (Penal Code section 496a did not involve moral turpitude in that commission of the crime requires only civil negligence. However, Respondent was not convicted of violating section 496a. He was convicted of violating section 496(a), a crime which inherently involves moral turpitude. (People v. Rodriguez (1986) 177 Cal.App.3d 174.)

A strong argument could be made that, at and around the time he purchased the Honda, Respondent was in the business of selling motor vehicles without having applied for or obtained the requisite license from the Department of Motor Vehicles. However, even though Respondent admitted to the practice, it was neither pled in the Accusation nor argued at the trial. Accordingly, that practice is not considered as the basis for discipline in this matter.

2. Despite impressive evidence tending to mitigate the circumstances surrounding the crime, the record of conviction constitutes conclusive evidence of the conviction itself. The circumstances surrounding the conviction may only be considered in fixing the degree of discipline or determining if the conviction was substantially related to the qualifications, functions or duties of a real estate licensee under California Code of Regulations, title 10, section 2910. (Business and Professions Code section 493.)

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent, Ashraf Farid El-Masry, under the Real Estate Law are revoked; provided, however, a restricted real estate broker 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 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 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:

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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 a restricted license until two (2) years have elapsed from the effective date of this Decision.

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4. 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 Article 2.5 of Chapter 3 of the Real Estate Law 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 to present such evidence.

DATED: May 15, 1997



H. STUART WAXMAN

Pro Tempore Administrative Law Judge
Office of Administrative Hearings

Sacto,
Flay

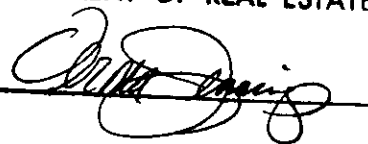
BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

FILED
FEB 18 1997
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of)
)
ASHRAF FARID EL-MASRY,)
)
Respondent.)

Case No. H-26919 LA
OAH No. L-9701229

By 

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, California, on **April 30, 1997**, at the hour of 1:30 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.

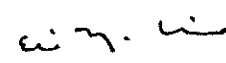
You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real 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: February 18, 1997.

DEPARTMENT OF REAL ESTATE

cc: Ashraf Farid El-Masry
Samuel Cubete, Esq.
Sacto.
OAH



ELLIOTT MAC LENNAN, Counsel

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ELLIOTT MAC LENNAN, Counsel
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, California 90012

(213) 897-3937

FILED
DEC 31 1996

DEPARTMENT OF REAL ESTATE

By 

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H-26919 LA
ASHRAF FARID EL-MASRY,)	<u>A C C U S A T I O N</u>
)	
)	
)	
Respondent.)	

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against ASHRAF FARID EL-MASRY is informed and alleges in his official capacity as follows:

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Respondent is presently licensed and/or has license rights as a real estate broker under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code) (Code).

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II

Respondent was originally licensed by the Department of Real Estate of the State of California as a real estate broker on January 9, 1991.

III

On March 29, 1996, in the Superior Court of California, Orange County, State of California, respondent was convicted upon a plea of nolo contendere to one count of violating Section 496 of the California Penal Code (Receipt of stolen property) a misdemeanor crime that occurred on November 11, 1994, which by its facts and circumstances involves moral turpitude and is substantially related under Section 2910, Chapter 6, Title 10 of the California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

IV

The facts as alleged constitute cause under Sections 490 and 10177(b) of the Code for the suspension or revocation of all licenses and license rights of respondent under the Real Estate Law.

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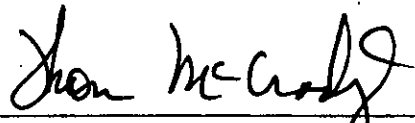
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1 WHEREFORE, Complainant prays that a hearing be conducted
2 on the allegations of this Accusation and that upon proof thereof,
3 a decision be rendered imposing disciplinary action against the
4 licenses and license rights of respondent ASHRAF FARID EL-MASRY
5 under the Real Estate Law (Part 1 of Division 4 of the Business
6 and Professions Code) and for such other and further relief as may
7 be proper under other applicable provisions of law.

8 Dated at Los Angeles, California

9 this 31st day of December, 1996.



Deputy Real Estate Commissioner

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26 cc: Ashraf Farid El-Masry
Sacto.
27 BSV