

FILED
MAY 10 2000

DEPARTMENT OF REAL ESTATE

By Shelly Ely

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
JOHN A. KALDAWI,)
Respondent.)

No. H-27362 LA

ORDER DENYING REINSTATEMENT OF LICENSE

On August 19, 1998, a Decision After Rejection 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 September 17, 1998, and Respondent has held a restricted license since that time.

On October 26, 1999, Respondent petitioned for reinstatement of said real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

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1 I have considered Respondent's petition and the
2 evidence and arguments in support thereof. Respondent has failed
3 to demonstrate to my satisfaction that Respondent has undergone
4 sufficient rehabilitation to warrant the reinstatement of
5 Respondent's real estate broker license. In response to a
6 question in the petition application, "Have you ever been a
7 defendant in any civil court litigation, including small claims
8 court? If yes, give details below...", Respondent answered "Not
9 Applicable" and failed to disclose in his petition the following
10 civil actions:

11 1. Western Mutual Insurance Co. v John Kaldawi, et al.
12 Los Angeles County Superior Court Northwest
13 Division No. LC050168.

14 2. People of the State of California ex rel. 20th
15 Century Insurance Co. v John Kaldawi, et al. Los
16 Angeles County Superior Court Northwest Division
17 No. LC048446.

18 Both civil actions allege that Respondent had engaged in
19 fraudulent practices. In view of Respondent's underlying
20 criminal conviction which involved substantial dishonesty and an
21 abuse of trust and his lack of candor in completing his petition
22 application, Respondent has not established that he has complied
23 with Section 2911 (j), Title 10, California Code of Regulations.
24 Consequently, I am not satisfied that Respondent is sufficiently
25 rehabilitated to receive an unrestricted real estate broker
26 license.

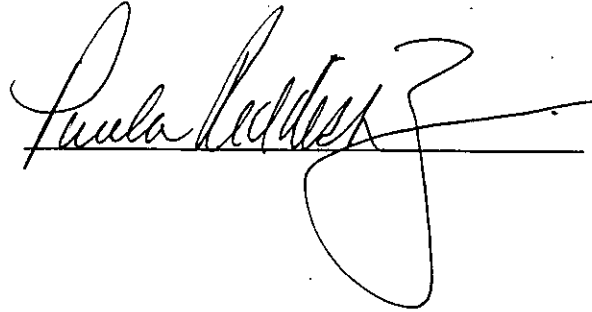
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1 NOW, THEREFORE, IT IS ORDERED that Respondent's
2 petition for reinstatement of his real estate broker license is
3 denied.

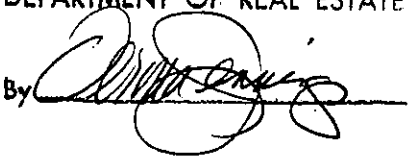
4 This Order shall become effective at 12 o'clock
5 noon on May 30, 2000.

6 DATED: April 20, 2000.

8 PAULA REDDISH ZINNEMANN
9 Real Estate Commissioner

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FILED
AUG 28 1998
DEPARTMENT OF REAL ESTATE
By 

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of) No. H-27362 LA
JOHN A. KALDAWI,) L-1997100258
Respondent.)

DECISION AFTER REJECTION

This matter came on for hearing before Paul M. Hogan,
Administrative Law Judge of the Office of Administrative Hearings
in Los Angeles, California, on March 11, 1998.

V. Ahda Sands, Counsel, represented the Complainant.

JOHN A. KALDAWI was present and was represented by
Stephen A. DiGiuseppe, Attorney at Law.

The Administrative Law Judge submitted a Proposed
Decision dated April 7, 1998, which I declined to adopt as my
Decision herein. Pursuant to Section 11517(c) of the Government
Code of the State of California, respondent was served with
notice of my determination not to adopt the decision of the
Administrative Law Judge along with a copy of said Proposed



1 Decision. On June 4, 1998, Respondent, by way of his counsel,
2 Stephen A. DiGiuseppe, was notified that the case would be
3 decided by me upon the record, the transcript of proceedings held
4 on March 11, 1998, and upon any written argument offered by
5 Respondent. Respondent submitted written argument received
6 June 8, 1998.

7 I have given careful consideration to the record in
8 this case including the transcript of the proceedings of
9 March 11, 1998, and the written argument submitted by Respondent.

10 The following shall constitute the Decision of the Real
11 Estate Commissioner in this proceeding:

12 FINDINGS OF FACT

13 I have determined that the Findings of Fact as stated
14 in the Proposed Decision of the Administrative Law Judge, dated
15 April 7, 1998, are appropriate in all respects and they are
16 adopted as the Findings of Fact of the Real Estate Commissioner
17 in this proceeding.

18 DETERMINATION OF ISSUES

19 The Determination of Issues, as stated in the Proposed
20 Decision of the Administrative Law Judge, dated April 7, 1998,
21 is appropriate in all respects and is adopted as the
22 Determination of Issues of the Real Estate Commissioner in this
23 proceeding.

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All licenses and licensing rights of Respondent
JOHN A. KALDAWI under the Real Estate Law are revoked; provided,
however, a restricted real estate broker license shall be issued
to JOHN A. KALDAWI 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 the authority of
Section 10156.6 of the Code and the following conditions:

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

1 Law, the Subdivided Lands Law, Regulations of the Real Estate
2 Commissioner or conditions attaching to the restricted license.

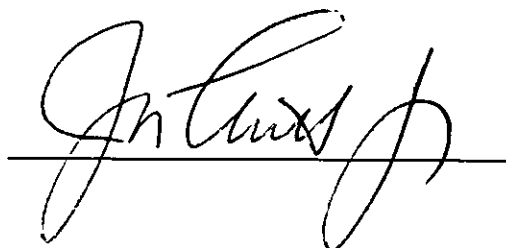
3 3. Respondent shall not be eligible to apply for the
4 issuance of an unrestricted real estate license nor for the
5 removal of any of the conditions, limitations or restrictions of
6 the restricted license until one year has elapsed from the
7 effective date of this Decision.

8 4. Respondent shall, within nine months from the
9 effective date of this Decision, present evidence satisfactory to
10 the Real Estate Commissioner that Respondent has, since the most
11 recent issuance of an original or renewal real estate license,
12 taken and successfully completed the continuing education
13 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
14 for renewal of a real estate license. If Respondent fails to
15 satisfy this condition, the Commissioner may order the suspension
16 of the restricted license until the Respondent presents such
17 evidence. The Commissioner shall afford Respondent the
18 opportunity for a hearing pursuant to the Administrative

19 This Decision shall become effective at 12 o'clock noon
20 on September 17, 1998.

21 IT IS SO ORDERED 8/19, 1998.

22
23 JIM ANTT, JR.
24 Real Estate Commissioner

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FILED
APR 29 1998

DEPARTMENT OF REAL ESTATE

By 

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)
JOHN A. KALDAWI,)
Respondent.)
_____)

No. H-27362 LA
L-1997100258

NOTICE

TO: JOHN A. KALDAWI, Respondent and ALAN D. WALLACE,
his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated April 7, 1998, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated April 7, 1998, is attached hereto 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 March 11, 1998, and any written argument hereafter submitted on behalf of

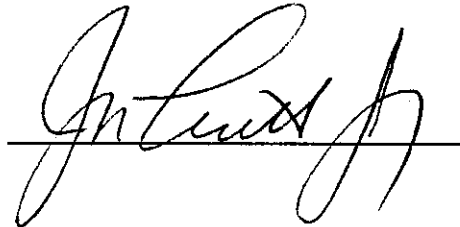
1 respondent and complainant.

2 Written argument of respondent to be considered by me
3 must be submitted within fifteen (15) days after receipt of the
4 transcript of the proceedings of March 11, 1998, at the Los Angeles
5 office of the Department of Real Estate unless an extension of the
6 time is granted for good cause shown.

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

12 DATED: 4/22/98

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14 JIM ANTT, JR.
15 Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation	)	Case No. H-27362 LA
Against:	)	
	)	
JOHN A. KALDAWI,	)	OAH No. L-1997100258
	)	
Respondent.	)	

PROPOSED DECISION

This matter came on regularly to be heard before Paul M. Hogan, Administrative Law Judge of the Office of Administrative Hearings at Los Angeles, California on March 11, 1998.

V. Ahda Sands represented complainant. John A. Kaldawi appeared in his own behalf without legal counsel. The parties presented evidence and written argument, and submitted the matter for decision on March 21, 1998.

The Administrative Law Judge presents his proposed decision as follows:

FINDINGS OF FACT

1. Complainant, Thomas McCrady, is a Deputy Real Estate Commissioner of the State of California and filed the Accusation in this matter while acting solely in his official capacity.
2. John A. Kaldawi, respondent, is licensed as a broker under the California Real Estate Law.
3. On May 4, 1995 respondent was found guilty in Los Angeles County Superior Court of the crime of bribery (Penal Code Section 68) a felony, and a crime involving moral turpitude. Sentence was suspended conditioned upon a grant of three years probation that required 400 hours of community service and a \$5,000.00 fine.
4. Respondent's conviction resulted from his exaction of a payment of ten thousand dollars for his approval, in his capacity as a city plan checker, for a zoning permit ordinarily handled by a one-time 30 minute visit.

5. Respondent has satisfied all the terms of his probation. He consequently obtained the court's order terminating his probation early, and setting the finding of guilt and conviction aside, and dismissing the action, all pursuant to Section 1203.3 of the Penal Code.

6. Respondent has presented uncontroverted evidence to support the following findings:

- a. More than two years have passed since the conviction of May 4, 1995.
- b. No restitution was paid by respondent because respondent was apprehended following a "sting" operation from which he derived no money.
- c. "Expungement" proceedings have been completed pursuant to Section 1203.3 of the Penal Code.
- d. Respondent has successfully completed probation and has obtained early discharge.
- e. Alcohol or drug usage was not part of the offense committed by respondent.
- f. Respondent has paid all fines assessed by the court.
- g. Respondent immediately left his prior employment after apprehension and has not been involved in any like employment since.
- h. Respondent's social life has changed. His family life has become stabile and he has operated a business as a professional building cost estimator successfully and without complaint for the past several years.
- i. Respondent has been involved in a series of intensive – and expensive – self-improvement, human potential courses continuously since his conviction. He has, as well, been heavily involved in church and community charities, and has been publicly recognized for his services.
- j. An impressive array of witnesses attest to substantial changes for the better in respondent's character; where before he was impulsive and scatter-brained, he has now become highly focused and responsible.

7. The crime of which respondent was convicted involved moral turpitude and was substantially related to the duties, qualifications or functions of a real estate licensee.

8. All competent evidence of respondent's rehabilitation has been considered.

DETERMINATION OF ISSUES

Complainant contends that respondent's evidence of rehabilitation cannot be considered because two years have not elapsed since respondent's conviction became final for all purposes. This argument is based on the fact that respondent took an appeal from the judgment of conviction which resulted in the conviction not becoming final until October 22, 1996, the date that the Court of Appeal filed its remittitur. Since complainant was barred from proceeding against respondent on the basis of his conviction, so the argument runs, respondent should be foreclosed from setting up any of his conduct antedating the remittitur as a basis for a finding of rehabilitation.

The only authority cited for this proposition is Section 2912 of the Commissioner's regulations.

This argument fails for three reasons. First, a reading of Section 2912 in its entirety reveals that the two-year rule found in subdivision "a" thereof, is but one of twelve separate factors to be used in "... evaluating the rehabilitation of a licensee" There is nothing in the regulation which indicates that any one or more of its sub-parts is entitled to any greater or lesser weight than any of the others. Thus, a reading of the plain language of the rule fails to disclose any mandate that would require an absolute prohibition from consideration of any competent evidence of rehabilitation, should such acts occur prior to expiration of two years from the date of conviction.

Secondly, complainant's interpretation would result in the regulation contravening the mandate of Section 482 of the Business and Professions Code which requires,

"Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

No administrative agency has authority to contravene existing statutory law.

"When a statute confers upon a state agency the authority to adopt regulations to implement, interpret, make specific or otherwise carry out its provisions, the agency's regulations must be consistent, not in conflict with the statute" (Washington v. Board of Supervisors [1993] 18 Cal.App.4th 981, at 985, quoting Mooney v. Pickett [1971] 4 Cal3d 669, at p. 679)

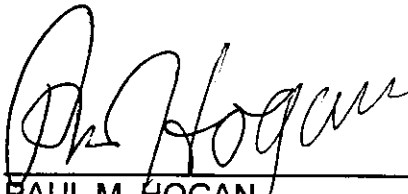
Thirdly, subdivision "a" itself establishes the entry of the judgment of conviction as the beginning point of the period of rehabilitation. Had the Commissioner intended to provide for the disposition of all proceedings of judicial review to have occurred before the commencement of the rehabilitative term, he needed only to have used the phrase "... most recent criminal conviction" The Department misread its own regulation.

Although complainant has established that cause exists for discipline of respondent's license by reason of his criminal conviction described above pursuant to law, respondent has established compelling evidence of complete rehabilitation. Consequently, it is determined that no public interest would be served by imposition of discipline.

ORDER

These proceedings are terminated without imposition of discipline.

Dated: April 7, 1998



PAUL M. HOGAN
Administrative Law Judge
Office of Administrative Hearings

PMH:rfm

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

FILED
JAN 15 1998
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of)
JOHN A. KALDAWI,)
Respondent.)

Case No. H-27362 LA
OAH No. L-1997100258

By

NOTICE OF CONTINUED 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, 107 South Broadway, 2nd Floor, Los Angeles, California, on **March 11, 1998**, at the hour of **9:00 a.m.**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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 and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: January 15, 1998.

cc: John A. Kaldawi
Alan D. Wallace, Esq.
Sacto.
OAH

DEPARTMENT OF REAL ESTATE

By:


V. AHDA SANDS, Counsel

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

FILED
NOV 13 1997
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of)
)
JOHN A. KALDAWI,)
)
Respondent.)
_____)

Case No. H-27362 LA
OAH No. L-1997100258

By K. Mederick

NOTICE OF CONTINUED 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, 107 South Broadway, 2nd Floor, Los Angeles, California, on **February 9, 1998**, at the hour of **1:30 p.m.**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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.

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Dated: **NOV 13 1997**

DEPARTMENT OF REAL ESTATE

cc: John A. Kaldawi
Sam K. Abdulaziz, Esq.
Sacto.
OAH

By:

V. Ahda Sands
V. AHDA SANDS, Counsel

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

Sacto. filed

FILED
NOV - 5 1997
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of)

JOHN A. KALDAWI,)

Respondent.)

By *[Signature]*
Case No. H-27362 LA
OAH No. L-1997100258

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, 107 South Broadway, 2nd Floor, Los Angeles, California, on **January 6, 1998**, at the hour of **9:00 a.m.**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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.

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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 and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: November 5, 1997.

DEPARTMENT OF REAL ESTATE

cc: John A. Kaldawi
Sam K. Abdulaziz, Esq.
Sacto.
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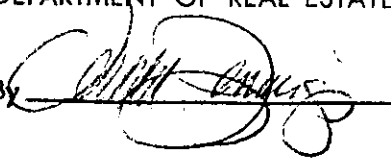
By: *[Signature]*

V. AHDA SANDS, Counsel

1 V. AHDA SANDS, Counsel
2 Department of Real Estate
3 107 South Broadway, Room 8107
4 Los Angeles, California 90012

5 (213) 897-3937

FILED
SEP 26 1997
DEPARTMENT OF REAL ESTATE

By 

8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * *

11 In the Matter of the Accusation of) No. H-27362 LA
12)
13 JOHN A. KALDAWI,) A C C U S A T I O N
14) Respondent.)
_____)

15 The Complainant, Thomas McCrady, a Deputy Real Estate
16 Commissioner of the State of California, for cause of accusation
17 against JOHN A. KALDAWI is informed and alleges in his official
18 capacity as follows:

19 I

20 At all times mentioned herein, JOHN A. KALDAWI
21 (hereinafter referred to as Respondent) was and still is licensed
22 by the Department of Real Estate of the State of California
23 ("Department") as a real estate broker under the Real Estate Law
24 (Part 1 of Division 4 of the Business and Professions Code,
25 hereinafter Code).

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II

On or about May 4, 1995, in the Superior Court of California, County of Los Angeles, State of California, Respondent was found guilty of the crime of violating Penal Code Section 68 (Bribery), a felony and a crime involving moral turpitude. On May 10, 1995, in Superior Court, Respondent was sentenced to three years of probation, ordered to pay a fine of \$5,000.00 and ordered to perform 400 hours of community service. After an appeal was filed by Respondent, the judgment was affirmed in full on October 22, 1996.

III

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

IV

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

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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 license and/or license rights of JOHN A. KALDAWI under the
5 Real Estate Law (Part 1 of Division 4 of the Business and
6 Professions Code) and for such other and further relief as may be
7 proper under other applicable provisions of law.

8 Dated at Los Angeles, California
9 this 26th day of September, 1997.

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12 Deputy Real Estate Commissioner
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24 cc: John A. Kaldawi
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