

Laura B. Chon

* * *

ORDER GRANTING UNRESTRICTED LICENSE

///

1 On April 7, 2002, Respondent petitioned for the
2 removal of restrictions attaching to Respondent's real estate
3 salesperson license.
4

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

12 NOW, THEREFORE, IT IS ORDERED that Respondent's
13 petition for removal of restrictions is granted and that a real
14 estate salesperson license be issued to Respondent if Respondent
15 satisfies the following conditions within nine (9) months from
16 the date of this Order:

17 1. Submittal of a completed application and payment of
18 the fee for a real estate salesperson license.

19 2. Submittal of proof that Respondent has taken and
20 passed the Professional Responsibility Examination administered
21 by the Department including the payment of the appropriate
22 examination fee.

23 ///

24 ///

25 ///

26 ///

27 ///

1 3. Submittal of evidence of having, since the most
2 recent issuance of an original or renewal real estate license,
3 taken and successfully completed the continuing education
4 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
5 for renewal of a real estate license.
6

7 This Order shall be effective immediately.

8 Dated: May 12, 2003.

9 PAULA REDDISH ZINNEMANN
10 Real Estate Commissioner
11 
12
13
14
15
16
17
18
19
20
21
22
23
24

25 cc: Roger Dean Phillips
26 310 Avenue "F"
27 Redondo Beach, CA 90277

Handwritten signature/initials

FILED
JUN 10 1999
DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

By *K. Kiedrich*

In the Matter of the Application of)	No. H-28009 LA
)	
)	L-1999020213
ROGER DEAN PHILLIPS,)
)	
)	
Respondent.)
_____)

DECISION

The Proposed Decision dated May 18, 1999, 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 application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy of Section 11522 is attached hereto for the information of respondent.

If and when application is made for a real estate salesperson license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is attached hereto.

This Decision shall become effective at 12 o'clock noon on June 30, 1999.

IT IS SO ORDERED

June 2, 1999

JOHN R. LIBERATOR
Acting Real Estate Commissioner

John R. Liberator

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

In the Matter of the Application of

ROGER DEAN PHILLIPS,

Respondent.

)
) **File No. H-28009 LA**
)
) **OAH No. L1999020213**
)
)

PROPOSED DECISION

On April 16, 1999, in Los Angeles, California, H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Complainant, Thomas McCrady, was represented by Martha J. Rosett, Real Estate Counsel.

Respondent, Roger Dean Phillips ("Respondent") was represented by Lawrence H. Lackman, Attorney at Law.

During the hearing, Complainant amended the Statement of Issues to add the following sentence at page 4, line 14:

The acts described in Paragraphs 3 and 4 above also constitute grounds for denial of Respondent's application for a California real estate license pursuant to Business and Professions Code section 10177(j).

Respondent objected to the document from the Arizona Department of Real Estate appended to Complainant's Exhibit 2 on grounds that it was irrelevant. He later withdrew the objection but questioned the relevance of the statutes referenced therein on grounds that their language was omitted from the document and therefore cannot be compared to California law. While his argument is well grounded, the acts and/or omissions described in the document are deemed relevant to determine whether grounds now exist to deny Respondent's application for a California real estate salesperson license pursuant to Business and Professions Code sections 10177(f) and 10177(j).

Respondent objected to Complainant's Exhibit 3 on grounds that the exhibit was irrelevant. The objection is overruled except to the extent referenced in the paragraph above.

Respondent objected to Complainant's Exhibit 4 on grounds that the exhibit was irrelevant. As with Exhibit 2, he later withdrew the objection but questioned the relevance of the statutes referenced therein on grounds that their language was omitted from the document and therefore cannot be compared to California law. Again, the acts and/or omissions described in the document are deemed relevant to determine whether grounds now exist to deny Respondent's application for a California real estate salesperson license pursuant to Business and Professions Code sections 10177(f) and 10177(j).

Oral and documentary evidence was received. The record was held open to and including April 23, 1999 for counsel to submit written post-hearing argument. At the request of Complainant's counsel, that date was extended to and including April 30, 1999. The written arguments were timely received. Respondent's argument was marked as Respondent's Exhibit "C" for identification. Complainant's argument was marked as Complainant's Exhibit 5 for identification. On April 30, 1999, the record was closed and the matter was submitted for decision.

On May 3, 1999, Respondent filed and served an objection to copies of Arizona statutes referenced in and appended to Complainant's written argument on grounds of lack of foundation. Specifically, he argued that the copies fail to indicate whether the language of the statutes is the same now as it was at the time Respondent faced disciplinary action by the Arizona Department of Real Estate. He also objected on grounds that the submission of the statutes was not timely. The objection was received at the Office of Administrative Hearings on May 4, 1999. On his own motion, the Administrative Law Judge reopened the record and marked the objection as Respondent's Exhibit "D" for identification. On May 4, 1999, the record was closed and the matter was submitted for decision. Respondent's objections to the admission of the statutes referenced in and appended to Complainant's written argument are sustained.

FACTUAL FINDINGS

The Administrative Law Judge makes the following Factual Findings:

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

///

///

///

///

2. On January 2, 1990, the Department of Real Estate ("the Department") issued a real estate salesperson license to Respondent. The license expired on January 1, 1994. On June 10, 1998, Respondent applied for a real estate salesperson license pursuant to the provisions of Business and Professions Code section 10153.3. The Department denied the application on grounds that Respondent's Arizona real estate salesperson license had been disciplined by the Arizona Department of Real Estate, and that Respondent had agreed to a Consent Judgment being entered against him in a matter brought against him by the State of Arizona in connection with certain real estate transactions in which Respondent had allegedly been involved. Respondent's appeal of the Department's denial of his application resulted in the filing of the instant action.

3. In 1976, Respondent was issued a real estate salesperson license by the Arizona Department of Real Estate. Between 1982 and 1986, he was employed at corporate real estate broker, John Hall & Associates ("John Hall"). At that time, Respondent was married to Susan K. Phillips, an Arizona real estate broker also working at John Hall.

4. During the course of his employment with John Hall, Respondent became acquainted with Timothy L. Sasak ("Sasak"), a mortgage broker licensed by the Arizona Department of Corporations. Sasak was not licensed as a real estate salesperson or broker. Respondent applied for and obtained a loan from Sasak.

5. Sasak operated a number of companies involved with his mortgage brokering activities. However, unbeknownst to Respondent at that time, those companies had been formed for the purpose of and operated in connection with several illegal investment schemes designed and perpetrated by Sasak.

6. At a time not disclosed by the evidence, Sasak asked Respondent and his wife to serve as real estate salespeople in connection with purchases and sales of properties controlled by Sasak. Respondent and his wife performed all such work under the John Hall broker license. In 1986, while still with John Hall, Respondent and his wife moved into an office in Sasak's office building in order to have more convenient access to Sasak's business. Respondent and his wife did not sell interests in any of Sasak's investment funds and did not solicit investors for the funds.

7. In May of 1986, Respondent asked Sasak to become his business partner in the purchase of a shopping center. They formed a general partnership ("Freeway Village Partners") with Sasak holding a 2/3 interest in the shopping center and Respondent and his wife holding a 1/3 interest.

8. In approximately 1988, The State of Arizona filed a complaint against Sasak, Respondent and Respondent's wife alleging violations of the Arizona Banking Act, the Arizona Racketeering Act, and Arizona Consumer Fraud Act and the Arizona Securities Act (State of Arizona, ex rel. Grant Woods, Attorney General; William H. Rivoir, III, Superintendent of Banks, and the Arizona Corporation Commission v. Timothy L. Sasak, et al Case No. CV88-12008). Sasak was subsequently convicted of a felony and incarcerated.

9. In September of 1991, the Court entered a Consent Judgment against Respondent and his wife in connection with that case. Upon receiving the consent of Respondent and his wife for the entry of judgment, the Court found that the participation of Respondent and his wife in Freeway Village Partners could render them liable for all or a portion of a summary judgment previously entered against the partnership, Sasak and various entities Sasak controlled. However, the Court expressly made no finding that either Respondent or his wife committed any violation of law.

10. Based upon the consent of Respondent and his wife, the Court entered judgment enjoining Respondent and his wife from the business of marketing or selling any security or commodity or holding themselves out as marketers or sellers of such; operating, managing, directing, supervising or controlling the acquisition or administration of any blind pool investment funds or trusts; owning any financial institution, escrow business, agent, affiliate or property, any trust business or company or any mortgage broker or banker; engaging in any conduct in violation of the Arizona Consumer Fraud Act; and engaging in any business involving the sale, lease or transfer of any real estate located in the State of Arizona, other than their own personal property. The Court also awarded judgment, jointly and severally, against Sasak, Freeway Village Partners, Respondent and his wife which required Respondent and his wife to pay to the State the funds in two (2) time deposit accounts, the contents of a safety deposit box and nine thousand three hundred dollars (\$9300).

11. On December 9, 1992, Respondent was disciplined by the Arizona Department of Real Estate in connection with his activities relating to Sasak and Sasak's business dealings. In a Consent Order, Respondent admitted to numerous facts set forth verbatim below:

"1. Roger D. Phillips ('Phillips') was at all times material to this complaint licensed as a real estate salesperson in the state of Arizona. That license expired on February 28, 1991. At all times material to this complaint, Phillips was employed by John Hall and Associates ('John Hall').

"2. Susan K. Douglas-Phillips ('Douglas-Phillips') was at all times material to this complaint licensed as a real estate salesperson from August 20, 1982 until January 20, 1986, and held a real estate broker's license from January 20, 1986 to January 31, 1990, during which time she was employed as a broker doing business with and for John Hall. Douglas-Phillips' broker's license expired on January 31, 1990.

"3. John Hall was at all times material to this complaint licensed as a corporate real estate broker in the state of Arizona. That license will expire on June 30, 1994.

///

///

"4. Timothy L. Sasak ('Sasak') was at all times material to this complaint an Arizona licensed mortgage broker who controlled and operated Avanti Mortgage Corporation ('AMC') and Upside Financial Services, Inc. ('Upside'). Sasak is not now, nor has he ever been, licensed as a real estate salesperson or broker in the state of Arizona.

"5. From 1982 to 1986, Sasak controlled Amerispec Properties, Inc. ('Amerispec') and Avanti Associates 5112 ('AA 5112'). From 1982 to 1986, Sasak also created and operated several blind pool mortgage funds, including the Avanti Associates First Mortgage Fund 84 Limited Partnership ('84 Fund'), the Avanti Associates First Mortgage Fund 85 ('85 Fund') and The Regulation D Partnerships ('Reg D Partnerships').

"6. In May 1986, Phillips, Douglas-Phillips and Sasak formed a general partnership to purchase a shopping center in Tempe, Arizona, known as the Freeway Village Shopping Center. Freeway Village Partners was owned by Sasak, who had a two-thirds interest, and Phillips and Douglas-Phillips, who together had a one-third interest. Phillips and Douglas-Phillips managed the shopping center.

"7. In 1986, Phillips and Douglas-Phillips moved into Sasak's offices located at 2722 North 7th Street, Phoenix, Arizona, the same offices which housed the 84 Fund and 85 Fund ('Funds'), and the various entities under Sasak's control.

"8. During 1985 and 1986, Phillips and Douglas-Phillips acted as real estate agents for AMC and received commissions from transactions involving Sasak. Phillips and Douglas-Phillips created transactions to sell or exchange the various properties in which the Funds had an interest, but whose borrowers were no longer performing.

"9. In connection with his duty to create transactions for Sasak and the Funds, Phillips induced his friend, Nashat Khalaf ('Khalaf'), to enter into a buyback agreement to purchase two properties from the 84 Fund. The properties consisted of two luxury homes in Paradise Valley, known as Lots 22 and 39 of Stone Canyon East. Both properties were owned by Robert Walker.

"10. As to the properties pledged as security for the Walker loans, Lot 39, located at 5339 East San Miguel, had been encumbered by Walker in March 1985, when he purchased it with a \$420,000 loan from the 84 Fund. Lot 39 required a 60% loan-to-value ratio and was appraised at \$840,000. Similarly, Lot 22, located at 5505 East San Miguel, had been purchased by Walker in January 1985 with a \$494,250 loan from the 84 Fund. It similarly required a 60% loan-to-value ratio and was appraised at \$927,000.

"11. Phillips informed Khalaf that the two properties, Lots 22 and 39, would be good investment acquisitions for Khalaf because buyers were already lined up to purchase the homes at a price exceeding the price at which Khalaf could purchase them.

"12. Phillips told Khalaf that if Khalaf were unable to sell either of the two homes, Sasak or Avanti would guarantee the repurchase of the houses from Khalaf. To persuade Khalaf that the buyback agreement was made in good faith, Sasak, on behalf of AA 5112, signed a promissory note to Khalaf, which Khalaf conveyed to First National Bank to obtain loans to purchase the two homes.

"13. The transactions described below were designed to create funds to make distributions to the 84 Fund investors so the investors would believe the Funds were operating properly and at a profit.

"THE LOT 39 ESCROWS

"A. ATA 801,450; 84 FUND TO KHALAF

"14. On or about April 19, 1986, in connection with the buyback agreement, Sasak signed a contract on behalf of the 84 Fund, the Seller. Under the terms of the contract, the purchase price of Lot 39 was \$435,000 payable with a \$10,000 check for the earnest deposit, and \$425,000 cash due at the close of escrow. Phillips signed the contract on April 18, 1986. The contract additionally provided that broker's fees in the amount of 1% were to be paid to John Hall.

"15. On or about April 21, 1986, Advanced Title Agency Inc. ('ATA') Escrow No. 801,450 was opened. The escrow instructions, amending the original real estate purchase contract, were signed by Sasak on behalf of the 84 Fund, as seller, and Khalaf, as buyer. The escrow instructions also provided for a \$435,000 sales price, specified that the \$10,000 earnest money was deposited 'upon signing of these instructions,' and that the broker's commission would be paid by the Seller 'by separate agreement.'

"16. On or about April 25, 1986, ATA 801,450 closed. The escrow closing statement discloses: (1) Khalaf never paid the \$10,000 deposit required by the escrow instructions; (2) Khalaf never deposited \$425,000 cash as required by the escrow instructions. Instead, Khalaf only deposited \$352,000. Additionally, Khalaf signed a \$88,638.88 carry back promissory note in favor of the 84 Fund. This \$88,638.88 note was paid off by 85 Fund monies July 8, 1986, from ATA 801,480.

///

"17. Contrary to any escrow instructions, Khalaf received a \$50,000 check from ATA 801,450 which he endorsed to Phillips. Neither Phillips nor Douglas-Phillips provided the 84 Fund with information about their receipt of the \$50,000 from ATA 801,450.

"18. On April 22, 1986, Avanti Mortgage advised ATA to transfer \$48,000 of the total loan proceeds of Escrow No. 801,486 to Escrow No. 801,450.

"19. On or about April 25, 1986, a check was made payable to Khalaf in the amount of \$50,000 from ATA for 'refund of over deposit of closing costs.' The check was endorsed by Khalaf to Phillips and deposited into Phillips' account number 22084129. Khalaf failed to advise the investors, lenders, or other parties to this transaction that either he or Phillips had received the \$50,000 check.

"20. On or about April 23, 1986, ATA returned to Khalaf his earnest money deposit check. Phillips never advised the investors, lenders or John Hall that the check was returned and never went through escrow. There were no amendment instructions to permit the return of the \$10,000 deposit to Khalaf.

"B. ATA 801,486: KHALAF TO TOMTER

"21. On or about April 19, 1986, Khalaf, as seller and Thomas McKean ('McKean') on behalf of Tomter Realty, as buyer, signed a real estate purchase contract for the sale of Lot 39. The contract provided for a \$483,000 sales price to be paid by a \$48,000 earnest deposit and \$435,000 cash due at the close of escrow. Phillips signed the contract on April 18, 1986, although the contract specifically provided that John hall would not receive any broker's fees.

"22. On or about April 21, 1986, ATA 801,486 was opened and Khalaf and McKean signed escrow instructions specifying the \$483,000 purchase price, the \$48,000 earnest money deposit to be paid on or before April 23, 1986, that \$435,000 cash was due on or before the close of escrow and the broker's commission was to be paid 'by separate agreement.'

"23. Phillips and Douglas-Phillips never gave John Hall a receipt for the earnest money, but instead provided a copy of a \$48,000 check dated April 17, 1986, for 'Earnest Money Deposit 5339' payable to ATA and signed by McKean. The check was never deposited into escrow.

"24. The 85 Fund deposited a total of \$481,496.52 of monies into ATA 801,486 between April 22, 1986 and June 19, 1986, but never received a recorded interest in the property, and was never reimbursed from the subsequent sale of Lot 39 to the Engelgaus (ATA 801,858).

"25. Between April 22, 1986 and August 12, 1986, \$208,429.43 was disbursed to Khalaf, \$48,000 was transferred to ATA 801,450, \$202,367.09 was disbursed to First National Bank (to pay off the loan Khalaf had obtained to purchase Lot 39 in ATA 801,450), and \$22,700 was disbursed to Phillips.

"26. Phillips never disclosed that on May 29, 1986, he received a \$22,700 check from ATA from an escrow.

"27. Phillips never disclosed the double escrow to the buyer, the seller and John Hall. The only documentation indicating the transfer of \$48,000 from 801,486 to 801,450 were documents from the escrow company's files.

"C. ATA 801,858; UPSIDE TO ENGELGAUS

"28. On or about August 7, 1986, ATA 801,858 was opened for the Richard and Leslie Engelgau ('the Engelgaus') purchase of Lot 39 for \$265,000. Under the terms of the escrow instructions signed by the seller, Sasak on behalf of Upside, and the Engelgaus, the \$265,000 sales price was to be paid by the Engelgaus obtaining a new loan for \$200,000, and creating a new note secured by a deed of trust in favor of Upside in the amount of \$65,000.

"29. The escrow instructions specified that Roger Phillips was to receive a \$15,000 commission, and the contract was contingent upon the closing of the Villa Monterey Country Club deal.

"30. Khalaf, who had title to Lot 39 until it was transferred to Upside on August 6, 1986, also had joint ownership with the Engelgaus, in an agreement undisclosed in any documentation supplied to the escrow company, John Hall, or any recorded documents.

"THE LOT 22 ESCROWS

"A. ATA 801,451; 84 FUND TO KHALAF

"31. On or about April 12, 1986, Khalaf signed a real estate contract pursuant to the buyback agreement described above to purchase Lot 22 from the 84 Fund for \$500,000. Sasak signed the contract as seller, on behalf of the 84 Fund.

"32. Under the terms of the real estate purchase contract signed by the parties, Khalaf agreed to deposit \$10,000 earnest money with \$490,000 due on or before the close of escrow.

///

"33. Escrow instructions dated April 17, 1986, signed by Sasak on behalf of the 84 Fund and Khalaf, provided for the \$500,000 sales price, \$10,000 earnest money deposit, and \$490,000 to be deposited into escrow, with the broker's commission to be paid by separate agreement.

"34. ATA 801,451 was funded with \$240,000 from Khalaf's loan from First National Bank, \$207,113.55 from Khalaf, and \$57,000 of the 85 Fund's money transferred from ATA 801,480.

"35. John Hall received a \$5,000 commission check from ATA 801,451 as a result of Respondent's services, and Respondent received payment as a consequence.

"B. ATA 801,480; KHALAF TO AMERISPEC

"36. On or about April 12, 1986, Steven M. Silverman ('Silverman'), on behalf of Amerispec, signed a real estate purchase contract to purchase Lot 22 from Khalaf, \$557,000 to be paid by a \$57,000 non-refundable earnest deposit and \$500,000 cash on or before the close of escrow.

"37. On or about April 17, 1986, ATA 801,480 was opened. Silverman, as buyer, and Khalaf signed escrow instructions that provided for the \$557,000 sales price, \$57,000 earnest money, and the broker's commission to be paid 'by separate agreement.'

"38. Between April 23, 1986 and July 8, 1986, ATA 801,480 was funded with \$557,000 from the 85 Fund. However, the 85 Fund never received a recorded interest in the property, and was never reimbursed from the subsequent sale of Lot 22 to the Engelgaus.

"39. Between April 23, 1986 and July 8, 1986, \$88,638.88 was disbursed to the 84 Fund to repay the balance due from Khalaf's purchase of Lot 39, \$167,494.82 was disbursed to Khalaf, \$243,866.30 was disbursed to First National Bank (to pay off Khalaf's loan to purchase Lot 22 from the 84 Fund in ATA 801,451), and \$57,000 was transferred to ATA 801,451.

"40. On or about August 8, 1986, Khalaf and Silverman for Amerispec, signed mutual cancellation instructions regarding ATA 801,480.

"41. Upside received title to Lot 22 on August 6, 1986, contrary to any provisions in the real estate purchase contract or escrow instructions for ATA 801,480.

///

"C. TRANSACTION ESCROW 801,859, UPSIDE TO ENGELGAUS

"42. On or about August 8, 1986, ATA 801,859 was opened for the sale of Lot 22 for \$371,000 from Upside to Richard and Leslie Engelgau (the 'Engelgaus'). Phillips and Douglas-Phillips acted as agents of broker John Hall in the transaction.

"43. The original escrow instructions provided for a \$371,000 sale price, no money down and a broker's commission of '100% John Hall & Assoc.' The instructions further provided that the closing was contingent on concurrent closing of the Villa Monterey Country Club deal.

"44. On or about August 12, 1986, escrow closed and the escrow closing statement showed that a commission of \$21,000 was disbursed to John Hall for the benefit of Phillips and Douglas-Phillips.

"45. Phillips paid closing costs in the amount of \$1,858.24, but did not disclose this fact to the seller or John Hall.

"46. The escrow instructions dated August 8, 1986, did not disclose either the percentage or the dollar amount to be paid as a broker's commission. The escrow instructions merely stated that John Hall would receive 100% of the commission. No other document setting forth the amount of commission was provided to the broker for his files as required by the broker's procedures.

"47. As a consequence of their actions in the previously mentioned transactions, Phillips and Douglas-Phillips facilitated Sasak's misappropriation of investors' monies. In these and other transactions, Sasak misappropriated more than \$32 million from at least 3,500 investors in Arizona and other states.

"48. Roger D. Phillips asserts and states that he had no direct involvement in the transactions carried out by the Sasak entities and other individuals, as set forth above."

12. As a result of the above facts, admitted by Respondent, the Arizona Department of Real Estate found (1) that Respondent had failed to maintain a complete record of each transaction, (2) that Respondent had been negligent and (3) that cause existed to impose a civil penalty of ten thousand dollars (\$10,000) against Respondent, all pursuant to certain Arizona statutes. The Arizona Department of Real Estate suspended Respondent's real estate license retroactively from February 27, 1991 through the date of the Consent Order (December 9, 1991) and for an additional two (2) years. It also imposed a civil penalty of ten thousand dollars (\$10,000).

///

13. Respondent was not involved in selling interests in Amerispec, the 84 Fund, the 85 Fund or any other investment opportunities offered by Sasak. Despite his admission, he does not believe he did anything to facilitate any of Sasak's schemes, but rather simply sold properties at Sasak's behest, turning all commissions over to John Hall. He was unaware Sasak was involved in any dishonest dealings. The check he received directly from Khalaf was for money Khalaf owed to him independent of the real estate transaction in connection with which Khalaf received the check. Khalaf simply endorsed the check over to Respondent to pay off his debt.

14. During the time he was doing business with Sasak, Respondent believed Sasak to be an honest and legitimate businessman. Respondent was impressed by the fact that Sasak employed in-house and outside counsel as well as certified public accountants. He believed working with Sasak was a good opportunity for him because of the large number of properties held by Sasak, many of which were repossessions which Sasak wanted Respondent to sell.

15. Respondent held his California real estate salesperson license for four (4) years. He allowed it to expire because of the poor real estate market at that time. No disciplinary action was ever taken against his California license.

16. When Respondent applied for a real estate salesperson license in June of 1998, he attached the Consent Order from the Arizona Department of Real Estate to prove his honesty regarding his past, and to show both that he had paid the civil penalty and that he was eligible to reapply for his Arizona real estate license. He did not reapply for that license because he had relocated to California and wished to pursue his career here.

17. In addition to paying the civil penalty imposed on him by the Arizona Department of Real Estate, Respondent has paid all fines and penalties assessed against him pursuant to the Consent Judgment imposed against him by the State of Arizona. He was not ordered to pay restitution to any investors.

18. Respondent believes he will not become involved in a similar situation again. Looking back, he would carefully document his files and ensure he had everything necessary to place into the file. He would make certain he understood the terms of the transactions in which he was involved. He believes he has learned a very valuable lesson and promises to deal honestly and ethically in the future.

19. The broker for whom Respondent worked while he was licensed in California is aware of the actions taken in Arizona, and the existence and content of this Statement of Issues. Nonetheless, he is willing to hire Respondent with either a restricted or unrestricted license.

20. Respondent and his wife divorced in April of 1992. Respondent has sole custody of their 7-year-old son. His former wife does not pay child support. Respondent's is his son's sole source of support.

21. Respondent is active in his son's PTA and has been nominated for President of that organization. He also assists the school's teachers through his volunteer activities in the "Homework Club". In addition, he has been approved as a licensed foster care parent and is a member of the Community Emergency Response Team which works with the local fire department in the event of a large-scale disaster.

LEGAL CONCLUSIONS

Pursuant to the foregoing Factual Findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists for the denial of Respondent's application pursuant to Business and Professions Code section 480, as that section interacts with section 10177(f), for acts which, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, or denial of an application for real estate license, as set forth in Findings 3, 5, 6, 7, 8, 9, 10, 11 and 12.

2. Cause does not exist for the denial of Respondent's application pursuant to Business and Professions Code section 480, as that section interacts with section 10177(j) for other conduct involving fraud or dishonest dealing as set forth in Findings 3, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14.

The language of Business and Professions Code section 10177(f) refers to certain acts which would warrant denial of an application for California real estate license, or revocation or suspension of a California real estate license. Therefore, it is Respondent's acts and omissions in Arizona rather than the language of the Arizona statutes, which provide the basis for denial of the application. Those acts and omissions are established by Respondent's own admission, and they exist regardless of the wording of the Arizona statutes. In other words, it is the nature of the act, rather than the language of a sister state statute, which controls.

On the other hand, the evidence failed to reveal any fraud or dishonest dealing by Respondent even though he performed real estate services for an individual who was so involved. Although Respondent admitted to certain wrongful acts having been committed by Sasak, the evidence did not establish that Respondent knew of those acts at the time they were committed.

///

///

///

The events which formed the basis for the discipline of Respondent's Arizona real estate license and the Consent Judgment imposed against Respondent by the State of Arizona are fairly remote in time. Further, the action taken against Respondent's license in Arizona (suspension and civil penalty following findings of failure to properly maintain records and negligence) evidences an impression by the Arizona Department of Real Estate that Respondent's acts with respect to Sasak's schemes were not deemed sufficiently serious to warrant the revocation of his real estate license. However, despite that temporal remoteness and the level of discipline imposed on his license in Arizona, the nexus between the events to which Respondent admitted and the qualifications, functions and duties of a real estate licensee are so substantial as to warrant particular caution in the issuance of a California real estate license.

Respondent has learned a difficult lesson and has had no other discipline imposed on him in either Arizona or California. He has shown strong signs of rehabilitation both by satisfying the conditions imposed upon him in Arizona and in his devotion to his son and service to his community. The public should be adequately protected by the issuance of a properly conditioned restricted license.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Respondent's application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code. The restricted license issued to the 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 said Code:

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

(a) The conviction of Respondent (including a plea of nolo contendere) of a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee; or

(b) The receipt of evidence 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 this restricted license.

///

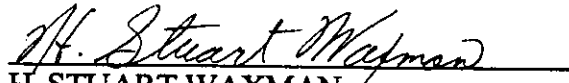
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until three (3) years have elapsed from the date of issuance of the restricted license to Respondent.

3. With the application for license, or with the application for transfer to a new employing broker, Respondent shall submit a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify as follows:

(a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

(b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

DATED: May 18, 1999


H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings

*Adm
Jury*

FILED
MAR - 3 1999
BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA DEPARTMENT OF REAL ESTATE

In the Matter of the Application of
ROGER DEAN PHILLIPS,

By K. Niederholt

Case No. H-28009 LA

OAH No. L-1999020213

Respondent

NOTICE OF HEARING ON APPLICATION

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, 320 West Fourth Street, 6th Floor
Ste. 630, Los Angeles, CA 90013

on April 16, 1999, at the hour of 9:00 a.m.,
or as soon thereafter as the matter can be heard, upon the Statement of Issues 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.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you are not present nor represented at the hearing, the Department may act upon your application without taking evidence.

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.

DEPARTMENT OF REAL ESTATE

Dated: March 3, 1999

By Martha M. [Signature]
Counsel

cc: Roger Dean Phillips
Lawrence H. Lackman, Esq.
RE 500 (Rev. 1/92) Sacto OAH LK

kw

1 MARTHA J. ROSETT, Counsel
2 State Bar # 142072
3 Department of Real Estate
4 107 South Broadway, Room 8107
5 Los Angeles, California 90012

6 (213) 897-3937

FILED
JAN 29 1999
DEPARTMENT OF REAL ESTATE

By K. Kriederholt

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

11 In the Matter of the Application of) No. H-28009 LA
12)
13 ROGER DEAN PHILLIPS,)
14)
15 Respondent.)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)

STATEMENT OF ISSUES

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for Statement of Issues against ROGER DEAN PHILLIPS alleges as follows:

I

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, makes this Statement of Issues in his official capacity.

II

Respondent was originally licensed by the Department of Real Estate of the State of California ("Department") as a real estate salesperson on or about January 2, 1990. His license

1 expired on January 1, 1994, and was not renewed within two years
2 following the expiration.

3 III

4 On or about June 10, 1998, pursuant to the provisions of
5 Section 10153.3 of the Business and Professions Code, made
6 application to the Department of Real Estate of the State of
7 California (Department) for a real estate salesperson license.

8 BACKGROUND

9 IV

10 On or about April 18, 1991, the Department of Real
11 Estate of the State of Arizona filed a Notice of Hearing and
12 Complaint against the real estate license and license rights of
13 Respondent under Arizona law, in case no. H-1414. The Complaint
14 contained allegations that Respondent, licensed as a real estate
15 salesperson in the State of Arizona, along with his wife Susan
16 Douglas Phillips, a licensed real estate broker, assisted Timothy
17 L. Sasak ("Sasak") in carrying out illegal or fraudulent
18 transactions. Said transactions involved manipulations to
19 misappropriate investors' funds through inappropriate loans, sales
20 of partnership properties at bargain values to Sasak's associates,
21 sham transactions designed to generate returns which would lull
22 investors into believing the funds were operating properly, Ponzi
23 schemes, and loans from investors funds based upon inflated
24 appraisal reports. It further alleged that PHILLIPS knew or
25 should have known that Sasak engaged in fraud, misrepresentation,
26 and misappropriation of investors' funds.

27



1 On or about December 9, 1992, in Case No. H-1414,
2 Respondent entered into a Consent Order with the Department of
3 Real Estate of the State of Arizona whereby he consented to the
4 suspension of his real estate salesperson license, retroactive to
5 a date ten months prior to the order, for a period of two years
6 after the Order. The Consent Order indicated that Sasak
7 misappropriated more than \$32 million from at least 3,500
8 investors. As to Respondent PHILLIPS, the Order found that he was
9 negligent, failed to maintain a complete record of each
10 transaction, and that grounds existed to levy a civil penalty of
11 \$10,000 against him. It was also ordered that Respondent's real
12 estate license be suspended retroactively to February 27, 1991,
13 and for an additional two (2) years until December 9, 1994.

14 IV

15 In relation to the illegal or fraudulent activities
16 described above in Paragraph III, the State of Arizona, including
17 the Attorney General, the Superintendent of Banks and the Arizona
18 Corporations Commission filed Complaint No. CV 88-12008 in which
19 Respondent PHILLIPS, along with his wife, Susan Douglas Phillips,
20 and his business partner, Timothy L. Sasak, were named as
21 Defendants. The complaint alleged violations of the Arizona
22 banking, racketeering, consumer fraud and securities law. As a
23 result of this complaint, a Consent Judgment was entered into on
24 or about September 24, 1991, whereby Respondent was enjoined from
25 engaging in securities, commodities, blind pool investment funds,
26 escrow, mortgage brokerage, and the sale or lease of real estate
27 the State of Arizona for at least five years. The bank accounts



1 of a business in which Respondent was a partner were turned over
2 to the State as well.

3 V

4 The acts described in paragraphs III and IV above,
5 whereby Respondent's real estate salesperson's license in the
6 State of Arizona was suspended for acts which if done by a real
7 estate licensee would be grounds for the suspension or revocation
8 of a California real estate license, constitute grounds for denial
9 of Respondent's application for a California real estate license
10 pursuant to Business and Professions Code Section 10177(f).

11 These proceedings are brought under the provisions of
12 Section 10100, Division 4 of the Business and Professions Code of
13 the State of California and Sections 11500 through 11528 of the
14 Government Code.

15 /

16 /

17 /

18 /

19 /

20 /

21 /

22 /

23 /

24 /

25 /

26 /

27 /



WHEREFORE, the Complainant prays that the above-entitled matter be set for hearing and, upon proof of the charges contained herein, that the Commissioner refuse to authorize the issuance of, and deny the issuance of, a real estate salesperson license to Respondent ROGER DEAN PHILLIPS and for such other and further relief as may be proper under the law.

Dated at Los Angeles, California

this 29th day of January, 1999.

THOMAS MC CRADY

Deputy Real Estate Commissioner

cc: ROGER DEAN PHILLIPS
Sacto.
LF
Glendora Avenue Corporation