

FILED
JUL 28 2000
DEPARTMENT OF REAL ESTATE

By C3

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) NO. H-28345 LA
JEFFRY JAMIESON SHINDLER,) L-2000010085
Respondent.)

DECISION AFTER REJECTION

The matter came on for hearing before Roy A. Hewitt, Administrative Law Judge of the Office of Administrative Hearings at Los Angeles, California, on March 7, 2000.

Darlene Averetta, Counsel, represented the Complainant.

Respondent was present and represented himself.

Evidence was received and the matter stood submitted on March 7, 2000.

On March 26, 2000, the Administrative Law Judge submitted a Proposed Decision which I declined to adopt as the decision of the Real Estate Commissioner. Pursuant to Section 11517(c) of the Government Code of the State of California, Respondent was served with a copy of the Proposed Decision dated

1 March 26, 2000, and with notice of my determination not to adopt
2 the Proposed Decision. Respondent was notified that the case
3 would be decided by me upon the record, including the transcript
4 of proceedings held on March 7, 2000, and upon any written
5 argument offered by the parties.

6 Argument has been submitted by the parties.

7 I have given careful consideration to the record in
8 this case, including the transcript of proceedings of March 7,
9 2000.

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 in the
14 Proposed Decision of the Administrative Law Judge, dated
15 March 26, 2000, are not appropriate with respect to Finding 5,
16 and it not adopted as a Findings of Fact of the Real Estate
17 Commissioner in this proceeding. All other Findings of Fact in
18 the Proposed Decision of the Administrative Law Judge, dated
19 March 26, 2000, are hereby adopted as part of this Decision with
20 the following additions. Paragraph 4(a) is added as follows:

21 4(a).

22 The Accusation in Department Case No. H-1644 SA was
23 dismissed pursuant to Business and Professions Code Sections
24 10153.4 and 10154. Respondent's conditional salesperson license
25 had expired, and he had no renewal rights.

26 ///

27 ///



Findings of Fact 5 and 6 shall be as follows:

5.

Respondent knowingly omitted to state a material fact in his salesperson license application. Respondent asserts that he believed he was not required to disclose his Possession for Sale conviction, because he knew the Department already had knowledge of the conviction because of his 1994 hearing. Respondent's assertion is not credible.

6.

Question No. 25 of the license application clearly states that any violation of law except convictions for drunk driving, reckless driving and minor traffic citations which are not misdemeanors or felonies, must be disclosed. In addition, at the hearing, Respondent stated that he had told a Deputy Real Estate Commissioner that he failed to disclose his conviction because he didn't want his company to know about it.

DETERMINATION OF ISSUES

I have determined that the Legal Conclusions in the Proposed Decision of the Administrative Law Judge, dated March 26, 2000, are not appropriate, and they are not adopted as the Determination of Issues of the Real Estate Commissioner in this proceeding. The Determination of Issues shall be as follows:

1.

Respondent made a material misstatement of fact in his license application and he knowingly omitted to state a material fact, in his license application.

Cause exists to discipline Respondent's license pursuant to Business and Professions Code Sections 498 and 10177(a).

ORDER

I have determined that the Order in the Proposed Decision of the Administrative Law Judge, dated March 26, 2000, is not appropriate.

The Order of the Real Estate Commissioner in this proceeding shall be as follows:

All licenses and licensing rights of Respondent JEFFRY JAMIESON SHINDLER under the Real Estate Law are revoked.

This Decision shall become effective at 12 o'clock noon on August 17, 2000.

IT IS SO ORDERED

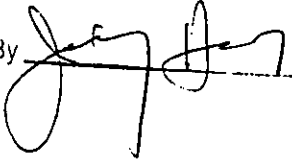
July 24, 2000
PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish Zinnemann

10070

FILED
APR 20 2000

DEPARTMENT OF REAL ESTATE

By 

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

In the Matter of the Accusation of)	No. H-28345 LA
)	
JEFFRY JAMIESON SHINDLER,)	L-2000010085
)	
Respondent.)	
)	

NOTICE

TO: Respondent JEFFRY JAMIESON SHINDLER.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated March 26, 2000, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated March 26, 2000, is attached 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 7,

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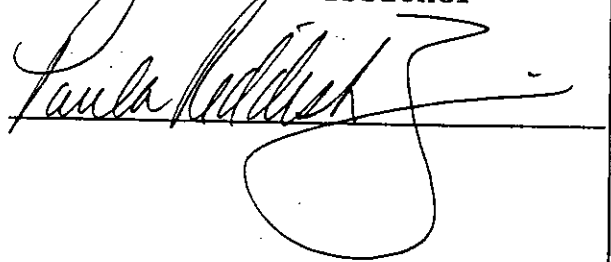
1 2000, and any written argument hereafter submitted on behalf of
2 Respondent and Complainant.

3 Written argument of Respondent to be considered by me
4 must be submitted within 15 days after receipt of the transcript
5 of the proceedings of March 7, 2000, at the Los Angeles office of
6 the Department of Real Estate unless an extension of the time is
7 granted for good cause shown.

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

13 DATED: April 10, 2000

14
15 PAULA REDDISH ZINNEMANN
Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JEFFRY JAMIESON SHINDLER,

Respondent.

OAH NO. L-2000010085

CASE NO. H-28345 LA

PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge ("ALJ"), Office of Administrative Hearings, at Los Angeles, California on March 7, 2000. Department of Real Estate Counsel, Darlene Averetta, represented complainant. Respondent, Jeffry J. Shindler, personally appeared and represented himself.

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

FACTUAL FINDINGS

The ALJ makes the following Factual Findings:

1. The First Amended Accusation was filed by Thomas McCrady, in his official capacity as Deputy Real Estate Commissioner, Department of Real Estate, State of California ("the Department").

2. On February 1, 1999, respondent filed an application with the Department for a real estate salesperson's license.

On April 9, 1999, the Department issued respondent a conditional real estate salesperson's license.

3. In his February 1, 1999 application, respondent checked the "yes" box in response to question 25, which asked, "Have you ever been convicted of any violation of law? (You may omit convictions for drunk driving, reckless driving, and minor traffic citations which do not constitute a misdemeanor or felony offense)". Then in the explanation section of the application, number 27, respondent wrote "See attached letter". The "explanation" letter respondent included with his application disclosed that on October 21, 1992 respondent was arrested for a "felony DUI". He went on to explain that he had complied with all of the terms and conditions of his

probation by making full restitution, attending all meetings and completing his community service. Respondent, however, failed to mention that on January 13, 1993, in the Orange County Superior Court, California, respondent was convicted of violation Health and Safety Code section 11351 (Possession for Sale of a Controlled Substance), a felony substantially related to the qualifications, functions and duties of a departmental licensee.

4. Respondent previously held a conditional salesperson's license, which was issued by the Department on January 30, 1990. That conditional license was the subject of disciplinary proceedings in Case number H-1644 SA; OAH number L-61929. The disciplinary proceedings were initiated because of respondent's conviction, as described in Finding 3, above. At the conclusion of the hearing the Administrative Law Judge ("ALJ") issued a proposed decision revoking respondent's conditional license. On March 16, 1994, however, the Real Estate Commissioner declined to adopt the ALJ's proposed decision and ordered the accusation against respondent dismissed.

Respondent now claims that since the Department already knew about his conviction for Possession for Sale of a Controlled Substance, he saw no need to disclose the conviction on his April 9, 1999 application.

5. Respondent is wrong in his belief that he was not required to disclose his Possession for Sale conviction, however, the ALJ further concludes that respondent's actions do not rise to the level of procuring a real estate license by fraud, misrepresentation or deceit. Although respondent did knowingly omit to state a material fact in his application, he did so with the knowledge and belief that the Department already knew of his Possession for Sale conviction. Considering the fact respondent underwent a complete hearing before an ALJ concerning the Possession for Sale conviction it would be difficult to conclude that now respondent would fail to disclose the conviction in an attempt to conceal it from the Department, especially since he knew that the Department had, in 1994, already decided to allow him to be licensed notwithstanding the Possession for Sale conviction.

LEGAL CONCLUSIONS

The Administrative Law Judge makes the following Legal Conclusions:

1. Based on the Factual Findings, considered in their entirety, cause does not exist for discipline of respondent's license pursuant to Business and Professions Code sections 498, and 10177, subdivision (a).

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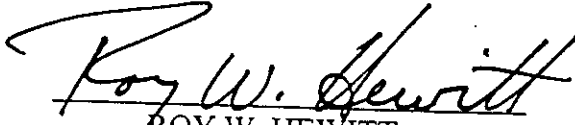
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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The First Amended Accusation filed against respondent on December 15, 1999, is Dismissed.

Dated: March 26, 2000.


ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings

SAC

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of) Case No. H-28345 LA
)
JEFFRY JAMIESON SHINDLER,) OAH No. L-200010085
)
_____) Respondent(s)

FILED
JAN 10 2000
DEPARTMENT OF REAL ESTATE

NOTICE OF HEARING ON ACCUSATION

To the above-named Respondent(s):

By C. B.

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, CA 90013-1105 on TUESDAY, MARCH 7, 2000, 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.

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.

DEPARTMENT OF REAL ESTATE

Dated: January 10, 2000

By

Darlene Averetta
DARLENE AVERETTA, Counsel

cc: Jeffry Jamieson Shindler
Millennia Mortgage Corporation
Sacto.
OAH

1 DARLENE AVERETTA, Counsel (SBN 159969)
2 Department of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982
6 (Direct) (213) 576-6904

FILED
DEC 15 1999
DEPARTMENT OF REAL ESTATE

By C. B.

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11 In the Matter of the Accusation of)
12 JEFFRY JAMIESON SHINDLER,)
13)
14 Respondent.)
15

NO. H-28345 LA

FIRST AMENDED
ACCUSATION

16 This Accusation amends the Accusation filed on
17 December 9, 1999.

18 The Complainant, Thomas McCrady, a Deputy Real Estate
19 Commissioner of the State of California, for cause of Accusation
20 against JEFFRY JAMIESON SHINDLER (hereinafter "Respondent"), is
21 informed and alleges as follows:

22 I

23 Respondent is presently licensed and/or has license
24 rights under the Real Estate Law, Part 1 of Division 4 of the
25 California Business and Professions Code (hereinafter "Code"),
26 as a real estate salesperson subject to Code Section 10153.4.

27 ///



II

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

III

Respondent was issued a conditional real estate salesperson license by the Department of Real Estate of the State of California on April 9, 1999, following Respondent's application therefor filed on or about February 1, 1999.

IV

In response to Question 25 on said application, to wit: "Have you ever been convicted of any violation of law? (You may omit convictions for drunk driving, reckless driving, and minor traffic citations which do not constitute a misdemeanor or felony offense)", Respondent marked the answer box denoting "Yes"; however, he failed to reveal the conviction against him set forth in Paragraph, V, below.

V

On or about January 13, 1993, in the Superior Court of California, County of Orange, Respondent was convicted on his plea of guilty, of violating Section 11351 of the Health and Safety Code ("Possession for Sale of a Controlled Substance"). Said crime was a felony involving moral turpitude, which bears a substantial relationship under Section 2910, Title 10, Chapter 6, California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

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Respondent's failure to reveal the conviction against him as set forth in Paragraph V, above, constitutes the procurement of a real estate license by fraud, misrepresentation or deceit, or by making a material misstatement of fact, or by making a knowing misrepresentation of a material fact, or by knowingly omitting to state a material fact in his application for a real estate license. Said failure, act and/or omission, constitutes cause under Code Sections 498 and 10177(a) for the suspension or revocation of Respondent's real estate license and license rights under the Real Estate Law.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondent, JEFFRY JAMIESON SHINDLER, under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California
this 15th day of December, 1999.

THOMAS MCCRADY

Deputy Real Estate Commissioner

cc: Jeffry Jamieson Shindler
Millennia Mortgage Corporation
Sacto.
RJ



1 DARLENE AVERETTA, Counsel (SBN 159969)
2 Department of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013-1105
5
6
7
8 Telephone: (213) 576-6982
9 (Direct) (213) 576-6904
10

FILED
DEC - 9 1999
DEPARTMENT OF REAL ESTATE

By C. [Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	NO. H-28345 LA
JEFFRY JAMIESON SHINDLER,)	
)	A C C U S A T I O N
)	
Respondent.)	

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against JEFFRY JAMIESON SHINDLER (hereinafter "Respondent"), is informed and alleges as follows:

I

Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereinafter "Code"), as a real estate salesperson subject to Code Section 10153.4.

///
///
///

II

1 The Complainant, Thomas McCrady, a Deputy Real Estate
2 Commissioner of the State of California, makes this Accusation
3 against Respondent in his official capacity.
4

III

5 Respondent was issued a conditional real estate
6 salesperson license by the Department of Real Estate of the
7 State of California on April 9, 1999, following Respondent's
8 application therefor filed on or about February 1, 1999.
9

IV

10 In response to Question 25 on said application, to wit:
11 "Have you ever been convicted of any violation of law? (You may
12 omit convictions for drunk driving, reckless driving, and minor
13 traffic citations which do not constitute a misdemeanor or felony
14 offense)", Respondent marked the answer box denoting "No".
15

V

16 On or about January 13, 1993, in the Superior Court
17 of California, County of Orange, Respondent was convicted on his
18 plea of guilty, of violating Section 11351 of the Health and
19 Safety Code ("Possession for Sale of a Controlled Substance").
20 Said crime was a felony involving moral turpitude, which bears a
21 substantial relationship under Section 2910, Title 10, Chapter 6,
22 California Code of Regulations, to the qualifications, functions
23 or duties of a real estate licensee.
24

25 ///

26 ///

27 ///



Respondent's failure to reveal the conviction against him as set forth in Paragraph V, above, constitutes the procurement of a real estate license by fraud, misrepresentation or deceit, or by making a material misstatement of fact, or by making a knowing misrepresentation of a material fact, or by knowingly omitting to state a material fact in his application for a real estate license. Said failure, act and/or omission, constitutes cause under Code Sections 498 and 10177(a) for the suspension or revocation of Respondent's real estate license and license rights under the Real Estate Law.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondent, JEFFRY JAMIESON SHINDLER, under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California
this 9th day of December, 1999.

THOMAS MCCRADY

Deputy Real Estate Commissioner

cc: Jeffry Jamieson Shindler
Millennia Mortgage Corporation
Sacto.
RJ

