

SECRET
File

FILED
MAR 10 2004
DEPARTMENT OF REAL ESTATE

By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) NO. H-28408 LA
MARK STEVEN KECKEISEN,)
Respondent.)

ORDER DENYING REINSTATEMENT OF LICENSE

On August 14, 2000, a Decision was rendered
herein revoking Respondent's real estate broker license.

On September 15, 2003, 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.

I have considered Respondent's petition and the
evidence and arguments in support thereof. Respondent has
failed to demonstrate to my satisfaction that Respondent has
undergone sufficient rehabilitation to warrant the issuance
to Respondent of an unrestricted real estate broker license,

1 in that:

2 I

3 In the Decision which revoked Respondent's real
4 estate broker license, there were determination of issues
5 made that there was cause to revoke Respondent's license
6 pursuant to Business and Professions Code ("Code") Sections
7 490 and 10177(b).

9 On October 20, 1999, in the United States District
10 Court, Southern District of New York, Respondent was convicted
11 on his plea of guilty to one count each of violating 18 United
12 States Code (U.S.C.) Sections 1314 and 1346 (mail fraud) and
13 Section 1343 (wire fraud), felonies. Said crimes involve moral
14 turpitude and bear a substantial relationship under Section
15 2910, Title 10, Chapter 6, California Code of Regulations, to
16 the qualifications, functions or duties of a real estate
17 licensee.
18

19 The facts and circumstances surrounding the
20 conviction of U.S.C. Code Sections 1314 and 1346 were that
21 Respondent knowingly prepared account statements falsely
22 purporting to show that a firm named S.A. Zimco Management,
23 P.L.C. had purchased and was holding on behalf of Qualis,
24 securities with a value of over \$15 million.
25

26 ///

27 ///

The facts and circumstances surrounding the conviction of U.S.C. Code Section 1343 were that Respondent knowingly devised a scheme to defraud and obtain money by means of false representations, to wit, a scheme to defraud and obtain a home mortgage loan including, among other things, false accounts, false income, false tax returns, false assets and false employment information.

II

The burden of proving rehabilitation rests with the petitioner (Feinstein v. State Bar (1952) 39 Cal. 2d 541). A petitioner is required to show greater proof of honesty and integrity than an applicant for first time licensure. The proof must be sufficient to overcome the prior adverse judgment on the applicant's character (Tardiff v. State Bar (1980) 27 Cal. 3d 395).

The Department has developed criteria in Section 2911 of Title 10, Chapter 6, California Code of Regulations (Regulations), to assist in evaluating the rehabilitation of an applicant for reinstatement of a license. Among the criteria relevant in this proceeding are:

Regulation 2911(a): The passage of not less than two years since the most recent criminal conviction. A longer period will be required if there is a history of acts or conduct substantially related to the qualifications, functions or duties of a licensee of the Department. Given Respondent's history of

1 substantially related acts as set forth in Paragraph I, above,
2 additional time is needed to assess Respondent's rehabilitation.

3 Regulation 2911(c): Expungement of criminal
4 convictions resulting from immoral or antisocial acts.

5 Respondent's conviction has not been expunged.

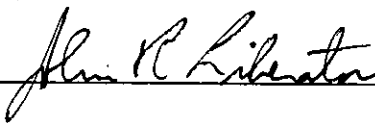
6 Given the fact that Respondent has not established
7 that he has met the criteria of Regulations 2911(a) and 2911(c),
8 I am not satisfied that Respondent is sufficiently rehabilitated
9 to receive a real estate broker license.

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

13
14 This Order shall become effective at 12 o'clock noon
15 on March 30, 2004

16 DATED: February 23, 2004

17 JOHN R. LIBERATOR
18 Acting Real Estate Commissioner

19
20 

21
22
23
24
25 cc: Mark Keckeisen
26 11357 Burnham
27 Los Angeles, CA 90049

John Jay

FILED
AUG 24 2000
DEPARTMENT OF REAL ESTATE

By *Laura B. Quinn*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
MARK STEVEN KECKEISEN,) NO. H- 28408 LA
Respondent.) L- 2000020554

ORDER STAYING EFFECTIVE DATE

On August 14, 2000, a Decision was rendered in the above-entitled matter to become effective September 7, 2000.

IT IS HEREBY ORDERED that the effective date of the Decision of August 14, 2000 is stayed for a period of Thirty (30) days.

The Decision of August 14, 2000 shall become effective at 12 o'clock noon on October 6, 2000.

DATED: August 24, 2000

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

By: *Randolph Brendia*
RANDOLPH BRENDIA
Regional Manager

AUG 18 2000
DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Laura B. Crane

* * * * *

In the Matter of the Accusation of

MARK STEVEN KECKEISEN,

Respondent.

No. H-28408 LA

L-2000020554

DECISION

The Proposed Decision dated July 19, 2000, 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.

noon on This Decision shall become effective at 12 o'clock
September 7, 2000

IT IS SO ORDERED

PAULA REDDISH ZINNEBANN
Real Estate Commissioner

Real Estate Commissioner

Paula Reddick

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

MARK STEVEN KECKEISEN,

Respondent.

Case No. H-28408 LA

OAH No. L-2000020554

PROPOSED DECISION

This matter came on regularly for hearing before Leslie H. Greenfield, Administrative Law Judge, Office of Administrative Hearings, at Los Angeles, California, on April 25, 2000.

Martha J. Rosett, Real Estate Counsel, represented the complainant Department of Real Estate. Laurie J. Butler, Attorney at Law, represented respondent Mark S. Keckeisen who was present throughout the hearing.

The record was left open for the parties to furnish post-hearing briefs. Complainant's Closing Argument and Opposition to Respondent's Motion to Dismiss previously received and Marked as Exhibit A, was received on May 23, 2000, and marked as Exhibit 8 for identification only. Respondent's Reply Brief was received on June 20, 2000, marked as Exhibit J for identification only and the matter was deemed submitted.

At the hearing, the Accusation was amended at page 2, paragraph III, line 3, by adding after was convicted "and sentenced" thereto.

Oral and documentary evidence having been received and the matter submitted, the Administrative Law Judge finds as follows:

FACTUAL FINDINGS

1. Thomas McCrady, Deputy Real Estate Commissioner, Department of Real Estate made the Accusation in his official capacity.

2. Respondent has been licensed as a real estate salesperson since March 14, 1986 and as a real estate broker since March 27, 1990, under license ID#00917489. Said license expires March 26, 2002.

3. A. On October 20, 1999, in the United States District Court, Southern District of New York, respondent was convicted on his plea of guilty to one count each of violating 18 United States Code sections 1314 and 1346 (mail fraud) and section 1343 (wire fraud), felonies and crimes involving moral turpitude which bear substantial relationship under 10 California Code of Regulation section 2910, to the duties, qualifications or functions of a real estate licensee.

B. Respondent was placed on probation for a period of three years commencing September 28, 1999, subject to certain terms and condition including a fine and restitution in the amount of \$25,000.

C. The facts and circumstances surrounding the conviction of sections 1314 and 1346 were that respondent knowingly prepared account statements falsely purporting to show that a firm named S.A. Zimco Management, P.L.C. had purchased and was holding on behalf of Qualis, securities with a value of over \$15 million.

D. The facts and circumstances surrounding the conviction of section 1343 were that respondent knowingly devised a scheme to defraud and obtain money by means of false representations, to wit, a scheme to obtain a home mortgage loan, including among other things false accounts, false income, false tax returns, false assets and false employment information.

4. Respondent is 48 years of age, married for a period of 18 years with two minor children. He has been a resident of Southern California all of his life. He received an undergraduate degree from the University of Southern California and a MBA from Loyola Marymount University in 1985.

5. Respondent has no prior or subsequent record of criminal convictions. He has been a responsible member of the community with no prior disciplinary hearings. Although it appears that the criminal convictions are an aberration, the conduct underlying the conviction regarding his home loan does not appear to be a singular event and by respondent's own testimony, he believes that it is alright to lie to get refinancing in tough times. Such an attitude is impermissible in a real estate licensee.

6. Respondent has requested a dismissal of the accusation on the grounds that accusation is barred by the statute of limitations contained in Business and Profession Code section 10101, which provides, in pertinent part:

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" The accusation provided for by Section 11503 of the Government code shall be filed not later than three years from the occurrence of the alleged grounds for disciplinary action unless the acts or omissions with which the license is charge involves fraud, misrepresentation or a false promise in which case the accusation shall be filed within one year after the date of discovery by the aggrieved party of the fraud, misrepresentation or false promise of within three years after the occurrence thereof, whichever is later, except that in no case shall an accusation be filed later than ten years from the occurrence of the alleged grounds for disciplinary action.

7. Respondent contends that the Complainant should have brought the accusation within three years of respondent's entering his plea of guilty in 1995. Complainant contends that the Department need not commence its action until the conviction had become final and the completion of or lapsing of the time for appeal.

8. Business and Professions Code section 490 provides as follows:

" A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere." The section then continues:

"Any action which a board is permitted to take following the establishment of a conviction may be taken when the appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of section 1203.4 of the Penal Code."

9. Section 10177 of the Business and Profession Code sets forth the grounds upon which the Department may suspend or revoke the license of a real estate licensee. Section 10177(b), which is the applicable ground herein provides as follows:

" Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony involving moral turpitude, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order..."

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10. Although respondent entered a plea of guilty on October 19, 1995, he was not convicted and sentenced until October 21, 1999. At that time the court docketed a Judgment In A Criminal Case. As such there was no conviction until October 21, 1999. Thus under the statutes cited above the statute of limitations began to run on that date and the Department has three years thereafter to act. As such respondent's contention is without merit and the motion to dismiss is denied.

11. Respondent further contends that the accusation is barred by the doctrine of laches. The defense of laches requires a showing of unreasonable delay plus prejudice to the licensee resulting from the delay. Fahmy v Medical Board of California (1995) 38 Cal.App. 4th 810.; Gates v Dept of Motor Vehicles (1979) 94 CA3d 921. Since, as found above, the board filed its accusation in a reasonable time after respondent's sentencing in 1999, respondent has failed to show an unreasonable delay. Further, respondent has made no substantial evidentiary showing of prejudice. It was not established what testimony would have been adduced from respondent's priest and how it could have had a material affect in the trial result. Respondent's claim of laches is without merit.

12. In order to determine the correct degree of discipline necessary to protect the public, examination must be made of the Department's rehabilitation guide found in 10 California Code of regulation section 2912. The applicable sections are as follows.

a. Less than two years have passed since the entry of the Judgment of conviction in 1999. The time passed since his plea of guilty is not relevant in making this determination.

b. Respondent has made full restitution as ordered by the court and also made some additional payment in the amount of \$60,000 to the injured party.

f. Respondent has paid his fines in full.

g. Respondent contends that he has corrected his business practices, which were responsible in some degree for his crimes. While it is true that he no longer prepares financial documentation without verifying the accuracy of the underlying data, he still believes that in tough times it is alright to falsify data for his personal refinancing requirements.

h. Respondent has severed connection with all individuals connected with his commissions of the crimes.

i. Respondent clearly has a stable family and assumes fulfillment of his parental responsibilities.

k. Respondent is involved in church finance and fund raising committees and is active in a homeowners association.

l. While respondent did in fact cooperate with the Government in the prosecution of its claims against others, and did make full disclosure of his crimes to the Department, his attitude has not changed with regard to the propriety of falsifying documents for his own personal needs.

13. Respondent may not collaterally attack his conviction, although he may explain the facts and circumstances surrounding it. Here he plead guilty to the two fraud crimes and may not now contend that the acts were not fraudulent. To do so it to fail to accept responsibility for his conduct. Although respondent has taken many steps toward rehabilitation, his attitude that allows to him falsify documents for his own personal gain shows that in fact he is not rehabilitated but remains a danger to the public. As such the Order below is necessary to protect the public welfare.

14. Except as found herein, all other contentions, allegations, arguments, assertions and constructions suggested by the parties are found to be not established or without merit and are rejected.

* * * * *

LEGAL CONCLUSIONS

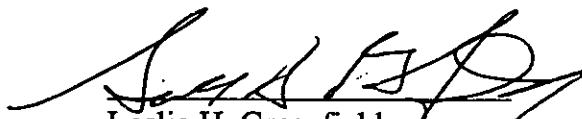
Cause exists to suspend or revoke the real estate license of respondent pursuant to Business and Profession Code sections 490 and 10177(b), by reason of Finding 3.

* * * * *

ORDER

All licenses and licensing rights of respondent Mark Keckeisen are revoked.

Dated: July 19, 2000


Leslie H. Greenfield
Administrative Law Judge
Office of Administrative Hearings

LHG:me

FILED
MAR 6 2000
BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

MARK STEVEN KECKEISEN,

By K. Melnick

Case No. H-28408 LA

OAH No. L-2000020554

Respondent

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, 320 W. Fourth St., Ste. 630, Los Angeles, CA on April 25, 2000, 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.

DEPARTMENT OF REAL ESTATE

Dated: March 3, 2000

By Martha Melnick Counsel

cc: Mark Steven Keckeisen
Sacto
OAH
EC

RE 501 (Rev. 8/97)

kw

1 MARTHA J. ROSETT, Counsel (SBN # 142072)
2 Department of Real Estate
3 320 West Fourth St. #350
4 Los Angeles, CA 90013

5 (213) 576-6982
6 (213) 576-6914

FILED
FEB 11 2000
DEPARTMENT OF REAL ESTATE

By K. Kiederholtz

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8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * *

11 In the Matter of the Accusation of) No. H-28408 LA
12 MARK STEVEN KECKEISEN,) A C C U S A T I O N
13 Respondent.)
14

15 The Complainant, Thomas McCrady, a Deputy Real
16 Estate Commissioner of the State of California, for cause of
17 Accusation against MARK STEVEN KECKEISEN ("Respondent")
18 alleges as follows:

19 I

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

23 II

24 Respondent is presently licensed and has license
25 rights under the Real Estate Law (Part 1 of Division 4 of
26 the California Business and Professions Code, hereinafter
27 "Code") as a real estate broker. Said license is due to
expire on March 26, 2002.



III

On or about October 20, 1999, in the United States District Court, Southern District of New York, Respondent was convicted on his plea of guilty to one count each of violating Title 18 United States Code, Sections 1314 and 1346 (mail fraud) and Title 18 United State Code, Section 1343 (wire fraud), felonies and a crimes involving moral turpitude which bear substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

IV

The facts alleged above constitute cause under Sections 490 and 10177(b) of the Business and Professions 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
2 conducted on the allegations of this Accusation and that
3 upon proof thereof, a decision be rendered imposing
4 disciplinary action against all licenses and/or license
5 rights of MARK STEVEN KECKEISEN under the Real Estate Law
6 and for such other and further relief as may be proper under
7 applicable provisions of law.

8 Dated at Los Angeles, California
9 this 11th day of February, 2000.

10
11 THOMAS MC CRADY

12 Deputy Real Estate Commissioner
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24 cc: MARK STEVEN KECKEISEN
25 Sacto.
26 EC
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