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FILED
JAN 10 2001
DEPARTMENT OF REAL ESTATE

By R. Niederholdt

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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|--------------------------------------|--------------------|
| In the Matter of the Application of) | DRE No. H-28608 LA |
| REX CHAPMAN MCKOWN, |) |
| Respondent. |) |
| _____ |) |

DECISION AFTER REJECTION

The matter came on for hearing before Milford A. Maron, Administrative Law Judge, of the Office of Administrative Hearings, in Los Angeles, California, on September 7, 2000.

Elliott Mac Lennan, Counsel, represented the Complainant. Respondent represented himself.

Evidence was received, the hearing was closed, and the matter was submitted.

On September 13, 2000, the Administrative Law Judge submitted a Proposed Decision 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 Proposed Decision of

1 the Administrative Law Judge along with a copy of said Proposed
2 Decision. On November 2, 2000, Respondent was notified that the
3 case would be decided by me upon the record, the transcript of
4 proceedings held on September 7, 2000, and upon written argument
5 offered by Respondent, which has now been received.

6 I have given careful consideration to the record in
7 this case, including the transcript of the proceedings of
8 September 7, 2000, and the written argument submitted by
9 Respondent on November 16, 2000.

10 After further consideration of the matter, the
11 following shall constitute the Decision of the Real Estate
12 Commissioner in the above-entitled matter:

13 FACTUAL FINDINGS

14 The Findings Of Fact set forth in the Proposed Decision
15 dated September 13, 2000, of the Administrative Law Judge are
16 hereby adopted as the Findings of Fact of the Real Estate
17 Commissioner.

18 CONCLUSIONS OF LAW

19 The first sentence of Conclusions of Law number 1 that
20 states "Cause for denial exists against Respondent pursuant to
21 Sections 480(a) and 10177(b) of the Business and Professions
22 Code" is hereby adopted.

23 The second sentence of Conclusion of Law 1. that states
24 "No public purpose would be furthered by denying Respondent a
25 restricted license" is not adopted. Contrary to the
26 Administrative Law Judge I do not feel that the public interest
27 would be adequately served or protected if Respondent were

1 granted a real estate license, albeit restricted, because
2 insufficient time has elapsed to determine if complete
3 rehabilitation has been effected given the length and severity of
4 his addiction to methamphetamine, his criminal history and
5 subsequent incarceration. Respondent remains on parole until
6 October 8, 2002.

7 ORDER

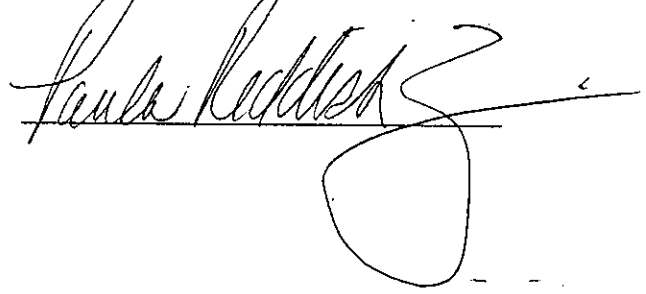
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9 The real estate salesperson application of Respondent
10 REX CHAPMAN MCKOWN under the Real Estate Law (Part 1 of Division
11 4 of the Business and Professions Code) is denied.

12
13 This Decision shall become effective at 12 o'clock
14 noon on January 30, 2001

15 IT IS SO ORDERED January 4, 2001.

16 PAULA REDDISH ZINNEMANN.
17 Real Estate Commissioner

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By K. Miederholz

* * *

- 1 -

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

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

11 DATED: September 27, 2000

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13 PAULA REDDISH ZINNEMANN
14 Real Estate Commissioner

15 *Paula Reddish Zinnemann*
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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of

REX CHAPMAN MCKOWN,

Respondent.

Case No. H-28608 LA

OAH No. L-2000070069

PROPOSED DECISION

This matter came on regularly for hearing before Milford A. Maron, Administrative Law Judge with the Office of Administrative Hearings on September 7, 2000, at Los Angeles, California. The Complainant was represented by Elliott Mac Lennan, Counsel. The Respondent, Rex Chapman McKown, appeared in person without counsel. Oral and documentary evidence was received and the matter was submitted for decision. It is now found true as follows:

1

Thomas McCrady, Complainant, is a Deputy Real Estate Commissioner of the State of California, and made the Statement of Issues in his official capacity.

2

Respondent, Rex Chapman McKown, made application to the Department of Real Estate of the State of California for a real estate salesperson's license on or about February 4, 2000.

A. On March 19, 1997, in the Superior Court of California, County of San Diego, in case no. SCN 048735, Respondent was convicted upon a guilty plea of violating Sections 11378 – 11770.2(A)HS of the Health and Safety Code (possession of a controlled substance for sale-methamphetamine – with prior), a felony.

B. On May 17, 1994, in the Superior Court of California, County of San Diego, in case no. CR 1444048, Respondent was convicted upon a guilty plea of violating Section 11378 of the Health and Safety code (possession of a controlled substance for sale-methamphetamine), a felony.

* * * * *

The aforesaid convictions involve moral turpitude and are substantially related to the qualifications, functions and duties of a real estate licensee.

Respondent testified in his own behalf and established the following facts:

1. That he was addicted to methamphetamine which resulted in his engaging in sales of the drug to support the addiction.

2. He spent approximately 2½ years in prison for the most recent conviction, before being paroled.

3. He has been clean and sober for approximately four years and continues to receive drug tests by his parole agent.

4. He is currently working for a real estate firm in an unlicensed capacity. He is desirous of continuing with the firm in a licensed capacity.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

Cause for denial exists against Respondent pursuant to Sections 480(a) and 10177(b) of the Business and Professions Code.

No public purpose would be furthered by denying Respondent a restricted license.

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The application of Rex Chapman McKown, for a real estate license is denied; provided, however, a restricted real estate salesperson's license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code, if Respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until three (3) years has elapsed from the effective date of this Decision.
4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:
 - (a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
 - (b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.
5. Respondent shall, within six months from the effective date of the restricted license, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of the restricted license until Respondent passes the examination.

NOT ADOPTED

6. Respondent shall within eighteen (18) months of the issuance of Respondent's original real estate salesperson's license, under the provisions of Section 10153.4 of the Business and Professions Code, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two of the courses listed in Section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If Respondent fails to present satisfactory evidence of successful completion of said courses, the restricted license shall be automatically suspended effective eighteen (18) months after the issuance of Respondent's original real estate salesperson's license. Said suspension shall not be lifted until Respondent has submitted the required evidence of course completion and the Commissioner has given written notice to the Respondent of lifting of the suspension.

Dated: September 13, 2000



MILFORD A. MARON
Administrative Law Judge
Office of Administrative Hearings

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
JUL 2 2000
DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

REX CHAPMAN MC KOWN,

By K. Niederholf

Case No. H-28608 LA

OAH No. L-2000070069

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 W. Fourth St., Ste. 630

Los Angeles, CA 90013

on September 7, 2000, at the hour of 11:00 a.m.
or as soon thereafter as the matter can be heard, upon the Statement of Issues 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.

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 and pay for 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: July 19, 2000

By CT

Counsel

back
1 Elliott Mac Lennan, Counsel SBN 66674
2 Department of Real Estate
3 320 W. 4th Street, Suite 350
4 Los Angeles, CA 90113-1105
5 Telephone: (213) 576-6911

FILED
JUN 13 2000
DEPARTMENT OF REAL ESTATE

By K. Niederholt

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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11 In the Matter of the Application of) No. H-28608 LA
12 REX CHAPMAN MCKOWN,)
13) STATEMENT OF ISSUES
14 Respondent.)
15 _____)

16 The Complainant, Thomas McCrady, a Deputy Real Estate
17 Commissioner of the State of California, for Statement of Issues
18 against REX CHAPMAN MCKOWN, is informed and alleges in his
19 official capacity as follows:

20 1

21 Respondent made application to the Department of Real
22 Estate of the State of California for a real estate salesperson
23 license on or about February 4, 2000, with the knowledge and
24 understanding that any license issued as a result of said
25 application would be subject to Section 10153.4(c) under the Real
26 Estate Law (Part 1 of Division 4 of the California Business and
27 Professions Code) (Code).

/

On March 19, 1997, in the Superior Court of San Diego, State of California, in case no. SCN 048735, respondent was convicted upon a guilty plea of violating Sections 11378 - 11770.2(A)HS of the California Health & Safety Code (possession of controlled substance for sale-methamphetamine - with prior), a felony crime that occurred on or about September 30, 1996.

On May 17, 1994, in the Superior Court of San Diego, State of California, in case no. CR 1444048, respondent was convicted upon a guilty plea of violating Section 11378 of the California Health & Safety Code (possession of controlled substance for sale - methamphetamine), a felony crime that occurred on or about May 5, 1989.

The facts as alleged in Paragraph 2 and 3, by their facts and circumstances, involve moral turpitude and are substantially related under Section 2910, Chapter 6, Title 10 of the California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

The facts as alleged in Paragraph 2 and 3, constitute cause for denial of respondent's application for a real estate license under Sections 480(a) and 10177(b) of the Code.

These proceedings are brought under the provisions of Section 10100, Division 4 of the California Business and Professions Code and Sections 11500 through 11528 of the



1 California Government Code.

2 WHEREFORE, the Complainant prays that above-
3 entitled matter be set for hearing and, upon proof of the
4 charges contained herein, that the Commissioner refuse to
5 authorize the issuance of, and deny the issuance of, a real
6 estate salesperson license to respondent, REX CHAPMAN
7 MCKOWN, and for such other and further relief as may be
8 proper in the premises.

9 Dated at Los Angeles, California

10 This 13th day of June, 2000.

11
12 THOMAS MC CRADY

13 Deputy Real Estate Commissioner
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26 cc: Rex Chapman McKown
27 Sacto
RJ

