

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Laura B. Orma

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In the Matter of the Accusation of)	No. H-28634 LA
))
ROBERT H. YACOOB,) L-2000100242
))
))
Respondent.)
))

DECISION

The Proposed Decision dated December 12, 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 knowingly making a false statement of fact required to be revealed in an application for license.

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.

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

IT IS SO ORDERED

January 3, 2001

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish Zinnemann

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

In the Matter of the Accusation against:)	
)	File No.: H-28634 LA
ROBERT H. YACOOB,)	
)	OAH No.: L2000100242
Respondent.)	
_____)	

PROPOSED DECISION

Barbara Bailey Barnes, Administrative Law Judge with the Office of Administrative Hearings, State of California, heard this matter on November 21, 2000.

Martha J. Rosett, Agency Counsel, represented Complainant, Thomas McCrady.

Respondent, Robert H. YacooB, hereinafter "Respondent", appeared and was assisted by his friend, Jeffrey Allan Markell.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on November 21, 2000.

FACTUAL FINDINGS

1. Thomas McCrady, Complainant and a Deputy Commissioner for the Department of Real Estate of the State of California, hereinafter "the Department", brought this Accusation acting solely in his official capacity.
2. Respondent applied to the Department for a real estate salesperson license in an application signed by him and dated November 6, 1999. The Department initially issued Respondent a real estate salesperson license, under number 01272013, on December 16, 1999. The license will expire on December 15, 2003, unless renewed.
3. In his November 9, 1999 application to the Department, Respondent knowingly gave incorrect, false and misleading information by failing to disclose, when requested to do so in Question #25 of the application, a criminal conviction of May 9, 1989.

4. Question #25 of the application asks:

"Have you ever been convicted of any violation of the law? (You may omit convictions for drunk driving and minor traffic citations which do not constitute a misdemeanor or felony offense)."

An admonishment in a boldly outlined box precedes Question #25 of the application wherein it warns applicants to "read and provide detailed answers to questions #24-26" and states therein:

"All convictions must be disclosed whether or not the plea or verdict was set aside, the conviction against you was dismissed, or expunged or if you have been pardoned."

5. Respondent checked "No" as his answer to Question 25. He entered no information within the section of the application where details of the conviction, such as date of conviction, court of conviction, description of the offense and disposition of the case are to be listed. In actuality, at the time of his completion of the application to the Department, Respondent had incurred the conviction noted below in Factual Finding 6.

6. On May 9, 1989, in the Municipal Court of Los Angeles County, state of California, Culver City Judicial District, in case number 89M00472, Respondent was convicted, on his plea of nolo contendere, of violating California Penal Code ("P.C.") section 496, *receiving stolen property*, a misdemeanor. The violation of section 496 P.C. is a crime involving moral turpitude and it is substantially related to the qualifications, functions and duties of a real estate licensee.

7. On May 9, 1989, imposition of sentence was suspended and the court placed Respondent on summary probation for eighteen (18) months on condition he pay a \$470 fine. Respondent was further ordered to obey all laws, rules and orders of the court.

8. On June 22, 1995, Respondent petitioned the Court for dismissal of his case pursuant to Section 1203.4 (a) P.C. On that date, the Court granted Respondent's petition and ordered the plea and finding of guilt in case number 89M00472 set aside and vacated, a plea of not guilty entered and the case dismissed. Respondent was given a copy of the granted petition.

9. Section 1203.4 (a) P.C. provides that when a conviction is dismissed and set aside pursuant to this section that:

"The order shall state, and the probationer shall be informed, that the order does not relieve him or her of the obligation to disclose the conviction in

response to any direct question contained in any questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California state lottery.” (Emphasis added)

10. Based on the misdemeanor Complaint, arrest report and Respondent's testimony during the hearing of the instant matter, the facts and circumstances surrounding Respondent's conviction are as follows: On March 16, 1985, patrolling police officers observed a vehicle with no license plates in front of them. They made a traffic stop and contacted the driver, later identified as the Respondent. When the officers asked Respondent to produce his driver's license, he indicated he did not have it on him.

After complying with the officers' request to exit the vehicle, Respondent granted them permission to search his vehicle for some type of confirmation of his identity. During the search, officers found a disheveled wallet on the floorboard of the vehicle, next to a floor mat. Under the floor mat, officers found gasoline credit cards in the name of Ann O'Leary. Based upon the arrest report, at that time, Respondent spontaneously denied that the credit cards were his and stated that he had "bought them". The license plates were found in the vehicles' interior. Respondent was arrested for possessing stolen property. In a later interview at the station, he admitted buying the credit cards from a person at a service station and admitted knowing the cards were stolen.

11. In his testimony at the hearing of the instant matter, Respondent disagreed with the account given by officers in the arrest report. He admitted possessing the credit cards, but stated he had no idea they were there. He denied he purchased the cards, indicating that he was wrongly accused of the crime. His explanation was that he had his car detailed and, during the detailing, the license plates were removed. He surmised that some person who detailed his car or worked at that location must have placed the credit cards under the mat.

In a written statement to the Department, dated March 31, 2000, Respondent stated, "There was a friend with me when I got arrested and these cards may have been his or they may have been left in my car at the detail shop."

12. Regarding his failure to reveal his 1989 conviction, Respondent said he answered, "No" to Question #25 because the lawyer who represented him during the criminal proceedings told him that after eighteen months the conviction would be off his record and there would be "no need" to disclose it. Respondent stated that the attorneys' fees paid to his lawyer during the criminal proceedings included a fee for the lawyer to obtain an "expungement" of his conviction. However, he never contacted the lawyer to verify that this was done. In the meantime, he attended college, graduated and then looked into his records. He discovered that the conviction was not dismissed and in 1995 he petitioned the court himself. He denied he had any intent to deceive the Department.

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Respondent could not recall if he had read the boldly-outlined box on the application requiring disclosure, although he stated, "I'm 100% sure I did read it, but it's been one year since." He also could not recall reading the mandatory disclosure provision of Section 1203.4 (a) P.C., which would have been on his granted petition, a copy of which he received from the Court. He indicated that because it was granted over five (5) years ago, he could not recall reading the provision and he did not review the petition and order before completing his application to the Department.

13. Respondent has incurred no other convictions. Since his conviction in 1985, he has been law abiding and obtained his degree in finance from California State University. He is married and resides with his wife. Nelson-Shelton and Associates currently employ him part-time as a residential property specialist. His supervising brokers are unaware of his conviction. (Respondent indicated he felt it unnecessary to disclose the matter to them.) Respondent works full-time as a field representative for a company selling semiconductors. Bank of America employed him, for five (5) years, as a loan officer. Respondent believes he is a trustworthy person who should be allowed to retain his license. He indicated he is willing to abide by the conditions of a restricted license if so ordered.

14. Jeffrey Allan Markell, a licensed real estate sales person, testified at the hearing of this matter. He has known Respondent and his family for fourteen (14) years. He describes Respondent as coming from a "very fine, up-standing and loving family." Respondent first contacted Mr. Markell over a year ago for advice regarding obtaining his real estate license. He directed Respondent to the Department's courses and examination. He also offered to hire Respondent to work under his supervision after Respondent obtained his license. Mr. Markell and Respondent entered into a written stipulation for employment, approved by one of the owners, Mark Shelton. This stipulation, still in effect at the time of the hearing, provides that in transactions involving Respondent, all disclosures written and verbal to clients and all matters involving deposit checks are to be handled by Mr. Markell.

Mr. Markell was "surprised" to hear of Respondent's conviction and did not become aware of it until the Department filed the present Accusation. He stated that upon becoming aware of it, he tried to help his friend and, "It seemed that he wasn't an active criminal...it was thought that the matter was excused by the law." He continued that if Respondent was allowed to retain his license, he would be required to be supervised by Mr. Markell, who sees Respondent's actions as "an innocent mistake." Mr. Markell also stated that neither he nor Respondent has informed the owners and supervising brokers of Respondent's conviction or of this Accusation. At the time of the hearing, Respondent had been involved in three (3) real estate transactions with Mr. Markell and there had been no complaints from any client.

15. Respondent presented a letter of reference from Jonnie Maretti, one of his former real estate clients, who described Respondent as a "concerned, ethical, and highly professional real estate agent."

LEGAL CONCLUSIONS

Pursuant to the foregoing Factual Findings, the Administrative Law Judge makes the following Legal Conclusions:

1. Cause exists to suspend or revoke the real estate salesperson license of the Respondent pursuant to Business and Professions Code Sections 498 and 10177 (a), in that Respondent fraudulently secured his license as a real estate salesperson from the Department. Respondent knowingly gave fraudulent information and concealed material facts by failing to disclose, in his application for licensure, his May 9, 1989 conviction for violation of section 496 P.C., *receiving stolen property*, as set forth in Factual Findings 3 through 10.

2. The crime of which Respondent was convicted and Respondent's fraudulent procurement of his license are acts involving moral turpitude and substantially related to the qualifications, functions and duties of a real estate licensee, pursuant to the criteria of California Code of Regulations, Title 10, Section 2910.

3. Although the conviction occurred over ten (10) years ago and it has now been dismissed and set aside pursuant to Section 1203.4 (a) P.C., the Administrative Law Judge is struck by the fact that Respondent accepts little or no responsibility for his conviction. The crime involved an act of dishonesty and his conflicting explanations for his involvement are less than credible. However, based upon the criteria set forth by California Code of Regulations, Title 10, Section 2912, Respondent has satisfied many of the criteria set forth therein as guidelines for determining rehabilitation. He has had no subsequent convictions and has maintained steady employment. He pursued an educational plan to better his position in life and successfully completed it. He apparently has close family ties.

4. Respondent's failure to disclose the conviction, however, is serious cause for concern and indicative of a lack of rehabilitation. In all probability, Respondent failed to reveal the conviction due to his fear of being denied a license by the Department. Whatever, the reason, his argument of believing it unnecessary to disclose the conviction is not convincing. Respondent is college-educated. He has prior experience as a loan broker. He has been involved in a few real estate transactions. All of these pursuits demand attention to detail. His intellect and experience belie his naiveté. Attention to detail is a prerequisite for real estate sales persons who engage in complicated transactions with members of the public on a daily basis.

In addition, Respondent was placed on notice by the box-preceding Question #25 on the application, and by the Order dismissing and setting aside the conviction, that full disclosure is mandatory. The language of Question #25 is clear. Respondent's failure to disclose is not an innocent mistake. It was an intention to deceive the Department.

The public must have confidence that licensees of this state acquire such licenses in an honest and forthright manner. Undesirable qualities such as a lack of integrity and trustworthiness combined with the presence of deceit in a Department licensee pose a significant threat to the public. Respondent's evidence of full rehabilitation is unconvincing and it is in this light that the following Order is made.


Nevertheless, considering the strides that the Respondent is making towards full rehabilitation, pursuant to Government Code section 11522, Respondent may petition the Department for reinstatement of the revoked license one (1) year after the effective date of the revocation.

ORDER

WHEREFORE, the following Order is hereby made:

All licenses and licensing rights of Respondent, ROBERT H. YACOOB, under the Real Estate law are revoked.

December 12, 2000


BARBARA BAILEY BARNES
Administrative Law Judge
Office of Administrative Hearings

Sacto

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILE
OCT 23 2000
DEPARTMENT OF REAL ESTATE

* * * *

In the Matter of the Accusation)
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ROBERT H. YACOOB,)
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Respondent(s).)

Case No. H-28634 LA
OAH No. L-2000100242

By *Laure B. Dean*

NOTICE OF HEARING ON ACCUSATION

To the above-named Respondent(s):

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, 6th Floor, Suite 630, Los Angeles, California, on NOVEMBER 21, 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 upon you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: October 23, 2000

DEPARTMENT OF REAL ESTATE

By: *Martha J. Rosett*
MARTHA J. ROSETT, Counsel

cc: Robert H. YacooB
Sacto.
OAH

1 .estate salesperson license.

2 3.

3 In response to Question 25 of said application, to wit:
4 "Have you ever been convicted of any violation of law?"
5 Respondent marked the box, "No." Relying on the representations
6 made in this application, the Department issued Respondent a real
7 estate salesperson license on or about December 16, 1999.

8 4.

9 On or about May 9, 1989, Respondent was convicted on
10 his plea of nolo contendere to one count of violating California
11 Penal Code Section 496 (receiving stolen property), a crime of
12 moral turpitude substantially related to the qualifications,
13 functions and duties of a real estate licensee. Respondent was
14 placed on 18 months summary probation, which was completed. On
15 or about June 22, 1995, in accordance with the provisions of
16 Penal Code Section 1203.4A, the plea was set aside and a plea of
17 not guilty was entered. The case was dismissed.

18 5.

19 Respondent's failure to accurately reveal the
20 conviction set forth in Paragraph 4 above in his application for
21 a real estate license constitutes the procurement of a real
22 estate license by fraud, misrepresentation, deceit or by making a
23 material misstatement of fact and omitting material facts in said
24 application, which procurement is cause for suspension,
25 revocation or other restriction of Respondent's license and/or
26 license rights under Sections 498 and 10177(a) of the Code.

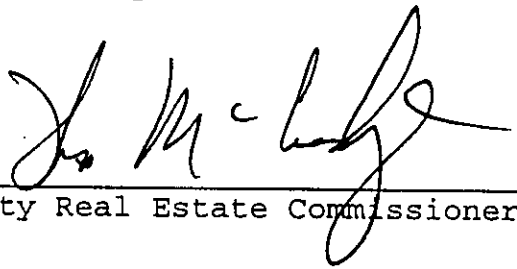
27 WHEREFORE, Complainant prays that a hearing be



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conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and/or license rights of ROBERT H. YACOOB, under the Real Estate Law and for such other and further relief as may be proper under applicable provisions of law.

Dated at Los Angeles, California
this 12th day of July, 2000.


Deputy Real Estate Commissioner

cc: ROBERT H. YACOOB
Sacto.
MB