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FILED
SEP 20 2002
DEPARTMENT OF REAL ESTATE

Laura B. Stone

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
TSUNEO OGAMI,	NO. H-29363 LA
	L-2002030169
Respondent.	

DECISION AFTER REJECTION

The above-entitled matter came on for hearing before Milford A. Maron, Administrative Law Judge, of the Office of Administrative Hearings, at Los Angeles, California, on May 21, 2002.

Complainant was represented by James R. Peel, Counsel. Respondent TSUNEO OGAMI, was present at the hearing and was represented by T. Michael Fehmel, Esq.

Evidence was received and the matter stood submitted on May 21, 2002.

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1 On May 23, 2002, the Administrative Law Judge submitted
2 a Proposed Decision which I declined to adopt as the Decision of
3 the Real Estate Commissioner.

4 On June 19, 2002, pursuant to Section 11517(c) of the
5 Government Code of the State of California, Respondent was served
6 with a copy of the Proposed Decision dated May 23, 2002, and with
7 notice that the case would be decided by me upon the record
8 including the transcript of proceedings held on May 21, 2002, and
9 upon any written argument offered by the parties.

10 Argument has been submitted on behalf of the parties.

11 I have given careful consideration to the record in
12 this case, including the transcript of proceedings of
13 May 21, 2002.

14 The following shall constitute the Decision of the Real
15 Estate Commissioner in this matter.

16 FINDINGS OF FACT

17 1. Thomas McCrady, Complainant, is a Deputy Real
18 Estate Commissioner of the State of California and made the
19 Accusation in his official capacity.

20 2. At all times herein mentioned, Respondent TSUNEO
21 OGAMI, was licensed by the Department of Real Estate of the State
22 of California as a real estate broker. Respondent was originally
23 licensed as a real estate broker on August 12, 1997. Previously
24 Respondent was licensed as a salesperson from March 9, 1990,
25 through March 8, 1994.

26 3. On or about March 22, 2001, in the Superior Court
27 of the State of California, in and for the County of Los Angeles,

1 State of California, in Case No. KA043510, Respondent was
2 convicted of violating Penal Code Section 67.5, (Bribing a Peace
3 Officer). Said crime was a misdemeanor involving moral turpitude
4 and one which is substantially related to the qualifications,
5 functions and duties of a real estate licensee. Respondent was
6 sentenced to 2 years probation and he served ninety days in
7 detention.

8 4. Respondent testified in his own behalf and
9 established the following facts:

10 1. The conviction arose out of an event wherein
11 Respondent was attempting to apply for the local community's
12 "on-time appointment" inspection program, wherein for an
13 additional sum of money a building inspection could be scheduled
14 for an exact time. The event in question arose at a building
15 site, and although Respondent stands convicted, a language
16 barrier may have been a factor.

17 2. At time of the conviction Respondent, as a broker,
18 represented a non-profit corporation that purchased dilapidated
19 homes from HUD, repaired same and resold them to low-income
20 buyers.

21 3. Respondent no longer engages on site sales
22 activity, but is an office manager of a real estate firm
23 employing fifty salespersons.

24 DETERMINATION OF ISSUES

25 1. Cause for discipline of Respondent's license exists
26 pursuant to Sections 490 ~~480(a)~~ and 10177(b') of the Business and
27 Professions Code.

1 2. In Norman I. Krug Real Estate Investments, Inc. v.
2 Praszker, (1994) 22 Cal. App. 4th 1814, 1821, it was noted that
3 one of the purposes of the Real Estate Law "...is to insure, as far
4 as possible, that real estate licensees will be honest and
5 truthful in their dealings with members of the public." (State
6 of California v. Superior Court (1984) 150 Cal. App. 3d, 848,
7 856, citing Brown v. Gordon (1966) 240 Cal. App. 2nd 659, 667;
8 Buckley vs. Savage (1960) 184 Cal. App. 2d 18, 31-32.

9 The Legislature intended to ensure that real estate
10 brokers and salespersons will be honest, truthful and worthy of
11 the fiduciary responsibilities which they will bear. (Ring v.
12 Smith (1970) 5 Cal. App. 3rd 197, 205, Golde v. Fox 98 Cal. App.
13 3d at 177.). Harrington v. Department of Real Estate (1989) 214
14 Cal. App. 3d at 402.

15 3. Respondent has not shown that he is rehabilitated
16 pursuant to Sections 2912(a) and (d), Title 10, Chapter 6,
17 California Code of Regulations. It has been less than two years
18 since Respondent's conviction, and he remains on probation.
19 "...little weight is generally placed on the fact that a bar
20 applicant did not commit additional crimes or continue addictive
21 behavior while in prison or while on probation or parole..." In Re
22 Gossage 23 Cal.4th, 1080, 1099 (2000).

23 A restricted license on certain terms and conditions is
24 required for protection of the public interest.

25 ORDER

26 All licenses and licensing rights of Respondent TSUNEO
27 OGAMI under the Real Estate Law are revoked; provided, however, a

1 restricted real estate broker license shall be issued to
2 Respondent pursuant to Section 10156.5 of the Business and
3 Professions Code if Respondent makes application therefor and
4 pays to the Department of Real Estate the appropriate fee for the
5 restricted license within 90 days from the effective date of this
6 Decision. The restricted license issued to Respondent shall be
7 subject to all of the provisions of Section 10156.7 of the
8 Business and Professions Code and to the following limitations,
9 conditions and restrictions imposed under authority of Section
10 10156.6 of that Code:

11 1. The restricted license issued to Respondent may be
12 suspended prior to hearing by Order of the Real Estate
13 Commissioner in the event of Respondent's conviction or plea of
14 nolo contendere to a crime which is substantially related to
15 Respondent's fitness or capacity as a real estate licensee.

16 2. The restricted license issued to Respondent may be
17 suspended prior to hearing by Order of the Real Estate
18 Commissioner on evidence satisfactory to the Commissioner that
19 Respondent has violated provisions of the California Real Estate
20 Law, the Subdivided Lands Law, Regulations of the Real Estate
21 Commissioner or conditions attaching to the restricted license.

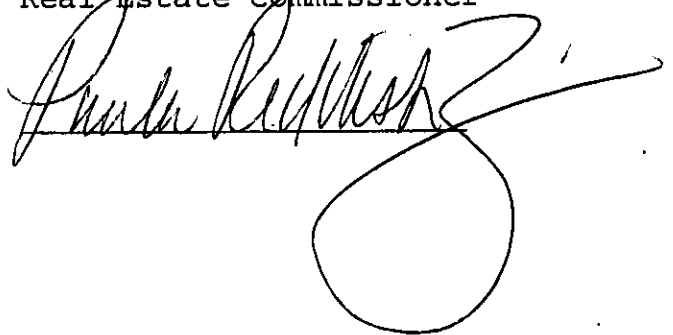
22 3. Respondent shall not be eligible to apply for the
23 issuance of an unrestricted real estate license nor for the
24 removal of any of the conditions, limitations or restrictions of
25 a restricted license until two (2) years have elapsed from the
26 effective date of this Decision.
27

1 4. Respondent shall, within nine months from the
2 effective date of this Decision, present evidence satisfactory to
3 the Real Estate Commissioner that Respondent has, since the most
4 recent issuance of an original or renewal real estate license,
5 taken and successfully completed the continuing education
6 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
7 for renewal of a real estate license. If Respondent fails to
8 satisfy this condition, the Commissioner may order the suspension
9 of the restricted license until the Respondent presents such
10 evidence. The Commissioner shall afford Respondent the
11 opportunity for a hearing pursuant to the Administrative
12 Procedure Act to present such evidence.

13 This Decision shall become effective at 12 o'clock noon
14 on October 10, 2002.

15 IT IS SO ORDERED

16 PAULA REDDISH ZINNEBANN
17 Real Estate Commissioner

18 *Paula Reddish Zinnemann*
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FILED
JUN 19 2002
DEPARTMENT OF REAL ESTATE

Laura B. Brown

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)

No. H-29363 LA

TSUNEO OGAMI,)

L-2002030169

Respondent.)

NOTICE

TO: TSUNEO OGAMI, Respondent, and T. MICHAEL FEHMEL, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision
herein dated May 23, 2002, of the Administrative Law Judge is not
adopted as the Decision of the Real Estate Commissioner. A copy
of the Proposed Decision dated May 23, 2002, 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 May 21,
2002, and any written argument hereafter submitted on behalf of
Respondent and Complainant.

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 May 21, 2002, at the Los Angeles office of
4 the Department of Real Estate unless an extension of the time is
5 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: _____

June 11, 2002

13 PAULA REDDISH ZINNEMANN
14 Real Estate Commissioner

15 *Paula Reddish*
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Sacto
Hear

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

FILE
MAR 11 2002
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation

) Case No. H-29363 LA

) OAH No. L-2002030169

TSUNEO OGAMI,

)
)
)
Respondent(s).)

By: Laura B. Olson

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 MAY 21, 2002, at the hour of 11:00 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: March 11, 2002

DEPARTMENT OF REAL ESTATE

By:

James R. Peel
JAMES R. PEEL, Counsel

cc: Tsuneo Ogami
Michael Fehmel, Esq.
Sacto., OAH

RE Form 501 (Rev. 8-97) JRP:lbo

SEAN CRAHAN, SBN 49351
Department of Real Estate
320 West 4th Street, Ste. 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6907 (direct)
-or- (213) 576-6982 (office)

FILED
JAN 18 2002
DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-29363 LA
)	
TSUNEO OGAMI,)	<u>ACCUSATION</u>
)	
Respondent.)	

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, acting in his official capacity, for cause of accusation against TSUNEO OGAMI, is informed and alleges as follows:

1.

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

2.

TSUNEO OGAMI, sometimes referred to as Respondent, is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the California

1 Business and Professions Code, hereafter cited as the "Code").
2 At all times herein mentioned, Respondent was licensed by the
3 Department of Real Estate of the State of California as a real
4 estate broker.

5 3.

6 On or about March 22, 2001, in the Superior Court,
7 County of Los Angeles, State of California, Case no. KA043510,
8 respondent was convicted of violating Penal Code Section 67.5,
9 [Bribing a Peace Officer], a misdemeanor, a crime of moral
10 turpitude and a crime substantially related to the
11 qualifications, functions or duties of a real estate licensee
12 under Section 2910, Chapter 6, Title 10, of the California Code
13 of Regulations. Respondent was sentenced to 2 years probation
14 and serve 90 days in jail.

15 4.

16 The crime of which Respondent was convicted, as
17 described in Paragraph 3 above, constitutes cause for suspension
18 or revocation of Respondent's real estate licenses and license
19 rights under Code Sections 490 and 10177(b).

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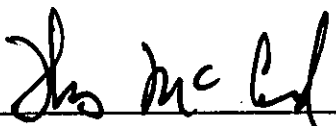
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27

1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against the licenses and license rights of Respondent
5 TSUNEO OGAMI, under the Real Estate Law (Part 1 of Division 4 of
6 the Business and Professions Code) and for such other and further
7 relief as may be proper under other applicable provisions of law.
8

9 Dated at Los Angeles, California

10 this 18th day of January, d 2002.

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12 
13 _____
14 Thomas McCrady
15 Deputy Real Estate Commissioner
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23 cc: Tsuneo Ogami
24 TMC
25 Sacto
26 LF

27 SC/sc