

FILED
NOV 16 2005
DEPARTMENT OF REAL ESTATE

By CA

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) NO. H-29485 LA
JOSEPH RUSSELL NALLEY,)
Respondent.)

ORDER DENYING REINSTATEMENT OF LICENSE

On October 16, 2002, an Order Accepting Voluntary Surrender of Respondent's real estate broker license, was rendered. Said Order became effective on November 7, 2002.

On January 12, 2005, 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

1 to Respondent of an unrestricted real estate broker license,
2 in that:

3
4 I

5 On May 10, 2002, an Accusation was filed by the
6 Department of Real Estate ("Department"), against Respondent
7 in Department Case No. H-29485 LA. The Accusation stated the
8 following: On about December 8, 2000, in the Superior Court of
9 California, County of San Bernardino, Respondent was convicted
10 of violating Penal Code Section 548(A) (defrauding or
11 prejudicing insurer), a felony and crime of moral turpitude,
12 which is substantially related to the qualifications, functions
13 or duties of a real estate licensee pursuant to Section 2910,
14 Title 10, Chapter 6, California Code of Regulations. Said
15 conviction constituted cause to revoke or suspend Respondent's
16 real estate license under Sections 490 and 10177(b) of the
17 California Business and Professions Code ("Code").

18 Respondent, in his Declaration of Petition to
19 Surrender Real Estate License, stated that all allegations
20 contained in Accusation H-29485 LA may be considered by the
21 Department to be true and correct for the purpose of deciding
22 whether or not to grant reinstatement of his license.

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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).

Given the serious nature of Respondent's crime, I am not satisfied that the issuance of a plenary real estate broker license to Respondent is consistent with protection of the public interest.

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

I am satisfied, however, that it will not be against the public interest to issue a restricted real estate broker license to Respondent.

A restricted real estate broker license shall be issued to Respondent pursuant to Code Section 10156.5 if Respondent within twelve (12) months from the date hereof:

(a) takes and passes the written examination required to obtain a real estate broker license.

///

1 **(b) makes application therefor and pays the**
2 appropriate fee for said license.

3 **The restricted license issued to Respondent shall be**
4 subject to all of the provisions of Code Section 10156.7 and to
5 the following limitations, conditions and restrictions imposed
6 under authority of Code Section 10156.6:
7

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

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

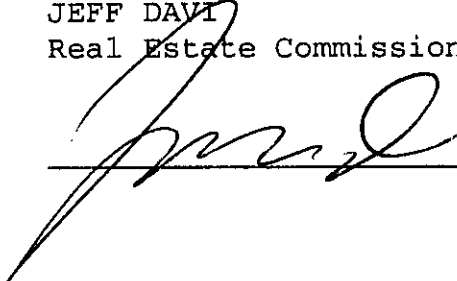
22 **3. Respondent shall not be eligible to apply**
23 for the issuance of an unrestricted real estate license
24 nor for the removal of any of the conditions, limitations
25 or restrictions of a restricted license **until two (2) years**
26 from the date of issuance of any restricted license.
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1 This Order shall become effective at 12 o'clock noon
2 on December 6, 2005.

3 DATED: _____

11-8-05

4 JEFF DAVI
5 Real Estate Commissioner

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25 cc: Joseph R. Nalley
26 41170 Crooked Stick Drive
27 Temecula, CA 92591

2002

FILED
OCT 18 2002
DEPARTMENT OF REAL ESTATE

By Laura B. [Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of) No. H-29485 LA
JOSEPH RUSSELL NALLEY,) L-20020663
Respondent.)

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On May 10, 2002, an Accusation was filed in this matter against Respondent JOSEPH RUSSELL NALLEY.

On September 11, 2002, Respondent petitioned the Commissioner to voluntarily surrender his real estate broker license pursuant to Section 10100.2 of the Business and Professions Code.

IT IS HEREBY ORDERED that Respondent
JOSEPH RUSSELL NALLEY's petition for voluntary surrender of
his real estate broker license is accepted as of the effective
date of this Order as set forth below, based upon the
understanding and agreement expressed in Respondent's

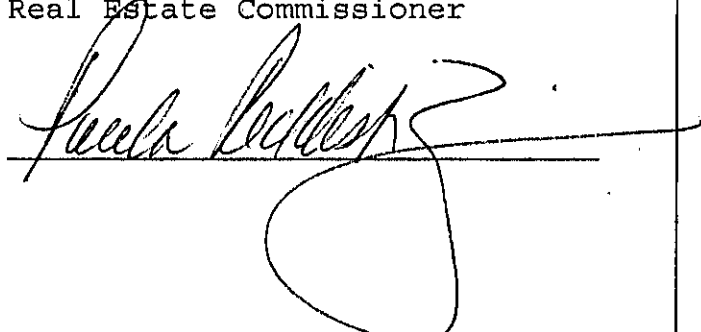
1 Declaration dated September 11, 2002 (attached as Exhibit "A"
2 hereto). Respondent's license certificate(s) and pocket
3 card(s) and any branch office license shall be sent to the
4 below listed address so that they reach the Department on or
5 before the effective date of this Order:

6 DEPARTMENT OF REAL ESTATE
7 Attn: Licensing Flag Section
8 P.O. Box 187000
9 Sacramento, CA 95818-7000

10 This Order shall become effective at 12 o'clock noon
11 on November 7, 2002.

12 DATED: October 16, 2002

13 PAULA REDDISH ZINNEMANN
14 Real Estate Commissioner

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"Exhibit A"

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of) No. H-29485 LA
JOSEPH RUSSELL NALLEY,)
Respondent.)

DECLARATION

My name is JOSEPH RUSSELL NALLEY and I am currently
licensed as a real estate broker and/or have license rights with
respect to said license. I am represented by William T. Pascoe,
Attorney at Law, in this matter.

In lieu of proceeding in this matter in accordance with
the provisions of the Administrative Procedure Act (Sections
11400 et seq., of the Government Code) I wish to voluntarily
surrender my real estate license issued by the Department of Real
Estate ("Department"), pursuant to Business and Professions Code
Section 10100.2.

1 I understand that by so voluntarily surrendering my
2 license, it can only be reinstated in accordance with the
3 provisions of Section 11522 of the Government Code. I also
4 understand that by so voluntarily surrendering my license, I
5 agree to the following:

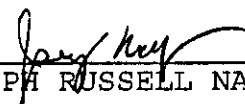
6 The filing of this Declaration shall be deemed as my
7 petition for voluntary surrender. It shall also be deemed to be
8 an understanding and agreement by me that I waive all rights I
9 have to require the Commissioner to prove the allegations
10 contained in the Accusation filed in this matter at a hearing
11 held in accordance with the provisions of the Administrative
12 Procedure Act (Sections 11400 et seq. of the Government Code),
13 and that I also waive other rights afforded to me in connection
14 with the hearing such as the right to discovery, the right to
15 present evidence in defense of the allegations in the Accusation
16 and the right to cross-examine witnesses. I further agree that
17 upon acceptance by the Commissioner, as evidenced by an
18 appropriate order, all affidavits and all relevant evidence
19 obtained by the Department in this matter prior to the
20 Commissioner's acceptance, and all allegations contained in the
21 Accusation filed in the Department Case No. H-29485 LA, may be
22 considered by the Department to be true and correct for the
23 purpose of deciding whether or not to grant reinstatement of my
24 license pursuant to Government Code Section 11522.

25 Respondent can signify acceptance and approval of
26 the terms and conditions of this Declaration by faxing a copy
27 of its signature page, as actually signed by Respondent, to

1 the Department at the following telephone/fax number: (213)
2 576-6917. Respondent agrees, acknowledges and understands
3 that by electronically sending to the Department a fax copy of
4 his actual signature as it appears on the Declaration, that
5 receipt of the faxed copy by the Department shall be as
6 binding on Respondent as if the Department had received the
7 original signed Declaration.

8 I declare under penalty of perjury under the laws of
9 the State of California that the above is true and correct and
10 that I freely and voluntarily surrender my license and all
11 license rights attached thereto.

12 9/11/02
13 _____
14 Date and Place

15 
16 _____
17 JOSEPH RUSSELL NALLEY
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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

FILE
AUG 30 2002
DEPARTMENT OF REAL ESTATE
Laura B. [Signature]

[Signature]
In the Matter of the Accusation

) Case No. H-29485 LA

) OAH No. L-2002060663

JOSEPH RUSSELL NALLEY,

)
)
)
Respondent(s).)

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 SEPTEMBER 19, 2002, 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: August 30, 2002

DEPARTMENT OF REAL ESTATE

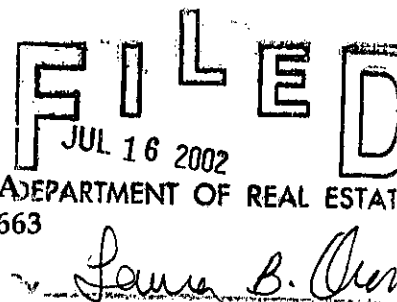
By:

[Signature: Martha J. Rosett]
MARTHA J. ROSETT, Counsel

cc: Joseph Russell Nalley
William T. Pascoe
Sacto., OAH

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *



In the Matter of the Accusation

Case No. H-29485 LA

OAH No. L-2002060663

JOSEPH RUSSELL NALLEY,

Respondent(s).

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 AUGUST 30, 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: July 16, 2002

DEPARTMENT OF REAL ESTATE

By:

Marttha J. Rosett
MARTHA J. ROSETT, Counsel

cc: Joseph Russell Nalley
William T. Pascoe
Sacto., OAH

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

*Suits
Jag*

FILED
MAY 10 2002
DEPARTMENT OF REAL ESTATE

Sam B. Chan

MARTHA J. ROSETT, Counsel (SBN #142072)
Department of Real Estate
320 West Fourth Street, #350
Los Angeles, California 90013

(213) 576-6982
(213) 576-6914

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of	)	No. H-29485 LA
	)	
JOSEPH RUSSELL NALLEY,	)	<u>A C C U S A T I O N</u>
	)	
	)	
Respondent.	)	
	)	

The Complainant, Maria Suarez, a Deputy Real Estate
Commissioner of the State of California, for cause of Accusation
against JOSEPH RUSSELL NALLEY is informed and alleges as
follows:

1.

The Complainant, Maria Suarez, a Deputy Real Estate
Commissioner of the State of California, makes this Accusation
in her official capacity.

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1 2.

2 Respondent JOSEPH RUSSELL NALLEY (hereinafter
3 "Respondent") is presently licensed and/or has license rights
4 under the Real Estate Law, Part 1 of Division 4 of the
5 California Business and Professions Code (hereinafter "Code") as
6 a real estate broker.

7 3.

8 On or about December 8, 2000, in the San Bernardino
9 County Superior Court, Joshua Tree Division, State of
10 California, Respondent was convicted on his plea of guilty to
11 one count of violating Penal Code Section 548(A) (defrauding or
12 prejudicing insurer), a felony and crime of moral turpitude
13 which is substantially related to the qualifications, functions
14 and duties of a real estate licensee pursuant to Title 10,
15 Chapter 6 of the California Code of Regulations, Regulation
16 2910(a).

17 4.

18 The facts set forth in Paragraph 3 above constitute
19 cause under Sections 490 and 10177(b) of the Business and
20 Professions Code for the suspension or revocation of all
21 licenses and license rights of Respondent under the Real Estate
22 Law.

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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 all licenses and license rights of JOSEPH RUSSELL
5 NALLEY, under the Real Estate Law (Part 1 of Division 4 of the
6 Business and Professions Code), and for such other and further
7 relief as may be proper under other applicable provisions of
8 law.

9 Dated at Los Angeles, California

10 this *9th day of May 2002.*

11 
12 Deputy Real Estate Commissioner

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24 cc: Joseph Russell Nalley
25 Sacto.
26 Maria Suarez
27 LM