

FILED
OCT 20 2005
DEPARTMENT OF REAL ESTATE

By

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)

KIP R. PIERCE,)

Respondent.)

NO. H-31404 LA

L-2004110594

ORDER DENYING RECONSIDERATION

On August 16, 2005, a Decision was rendered in the above-entitled matter, effective September 12, 2005. The Decision adopted the Proposed Decision of August 1, 2005 of Administrative Law Judge Richard J. Lopez of the Office of Administrative Hearings. The effective date of the Decision was stayed by separate orders, and the Decision now becomes effective on October 21, 2005.

On September 22, 2005, Respondent petitioned for reconsideration of the Decision of August 16, 2005.

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1 I have given due consideration to the petition of
2 Respondent. I find no good cause to reconsider the Decision
3 of August 16, 2005, and reconsideration is hereby denied.

4 IT IS SO ORDERED

5 10-19-05
6 JEFF DAVI
7 Real Estate Commissioner
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FILED
OCT 11 2005
DEPARTMENT OF REAL ESTATE

By: C

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
KIP R. PIERCE,) NO. H-31404 LA
Respondent.) L-2004110594

ORDER STAYING EFFECTIVE DATE

On August 16, 2005, a Decision was rendered in
the above-entitled matter to become effective October 12, 2005.

IT IS HEREBY ORDERED that the effective date of the
Decision of August 16, 2005, is stayed for a period of 10 days
to consider Respondent's petition for reconsideration.

The Decision of August 16, 2005, shall become
effective at 12 o'clock noon on October 21, 2005.

DATED: October 11, 2005.

JEFF DAVI
Real Estate Commissioner

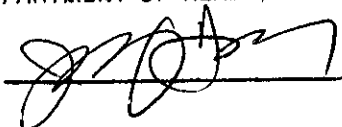
By:

Phillip Hyde
PHILLIP HYDE
Regional Manager

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FILED
SEP 12 2005

DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of) NO. H-31404 LA
KIP R. PIERCE,) L-2004110594
Respondent.)

ORDER STAYING EFFECTIVE DATE

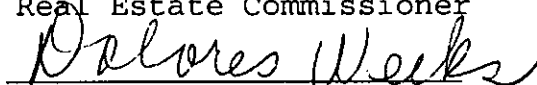
On August 16, 2005, a Decision was rendered in
the above-entitled matter to become effective September 12, 2005.

IT IS HEREBY ORDERED that the effective date of
the Decision of August 16, 2005, is stayed for a period of
thirty (30) days to allow Respondent KIP R. PIERCE to file a
petition for reconsideration.

The Decision of August 16, 2005, shall become effective
at 12 o'clock noon on October 12, 2005.

DATED: September 12, 2005.

JEFF DAVI
Real Estate Commissioner

By: 

DOLORES WEEKS
Regional Manager

FILED
AUG 22 2005
DEPARTMENT OF REAL ESTATE

By C. B. [Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-31404 LA
)	
KIP R. PIERCE,	) L-2004110594
)	
Respondent.	)
)	

DECISION

The Proposed Decision dated August 1, 2005,
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.

This Decision shall become effective at 12 o'clock
noon on September 12, 2005.

IT IS SO ORDERED

August 16 2005
JEFF DAVIS
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

KIP R. PIERCE,

Respondent.

Case No. H-31404 LA

OAH No. L2004110594

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on July 12, 2005.

Martha Rosett, Staff Counsel, represented the Complainant.

Respondent appeared in person and was represented by Edward O. Lear, Attorney at Law.

Oral and documentary evidence and evidence by way of official notice was received and the matter then argued and thereafter submitted.

The Administrative Law Judge now finds, concludes, and orders as follows:

FACTUAL FINDINGS

1. Maria Suarez, Complainant herein, a Deputy Real Estate Commissioner of the State of California, brought the Accusation in her official capacity.

2. At all times herein mentioned, Kip R. Pierce, Respondent, was and still is licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code). Respondent was first licensed by the Department as a real estate salesperson on January 6, 2001. On May 10, 2003, Respondent was licensed as a real estate broker.

3. On April 9, 2002, the Oregon Real Estate Agency revoked Respondent's real estate salesperson license (Oregon Decision). The grounds for the revocation included Legal Conclusions that Respondent demonstrated negligence or incompetence in performing any act for which he has required to hold a license and engaging in conduct which constitutes bad faith, incompetence, untrustworthiness, or dishonest, fraudulent or improper dealings. The Oregon Decision was a Decision by Default.

4. On April 21, 2003, Respondent submitted an application for a real estate broker license. In response to Question #19A, to wit, "Have you ever had a denied, suspended, restricted or revoked business or professional license (including real estate) in California or any other state", Respondent marked the box answering, "No". In reliance on this application, the Department issued Respondent a real estate broker license and on July 9, 2003, Respondent became the broker-officer for real estate corporation Verity Enterprises Inc. Respondent's "No" answer constitutes a misrepresentation and a material misstatement of fact in the application in that, in truth and fact, Respondent's Oregon real estate license had been revoked as a result of the Oregon Decision.

5. At or about the time of the disciplinary proceeding in Oregon Respondent was having marital difficulties. Despite the requirement that Respondent, then an Oregon Real Estate Licensee, keep the Oregon Real Estate Commissioner apprised of his whereabouts, Respondent – negligently – failed to do so. Respondent moved to Southern California with his wife and children. His marriage ended in a divorce and he had no permanent address. While last in Oregon he had been acting as an agent to one of the principals in the sales transaction giving rise to the Oregon Decision. He moved to Los Angeles before that transaction was completed.

6. By reason of his itinerant status Respondent was unaware of the Oregon Disciplinary Action. The Oregon Decision, included the following language:

2.4 The mailings in the handwritten envelopes have not been returned to the Real Estate Agency. In accordance with ORS 40.13591)(q), there is a presumption that the mailings properly addressed and placed with the U.S. Postal Service were delivered and that presumption is not overcome by any evidence.

2.5 Over twenty (20) days have elapsed since the mailing of the notice and no written request for a hearing has been received.

A reasonable and prudent real estate licensee would have kept the Oregon Authorities informed of his current address and therefore would have been aware of the Oregon disciplinary proceeding and the potential consequences thereof. That negligence, gross in degree, was the cause of the material misrepresentation in the application.

7. Respondent did make another misrepresentation to the Department. On the Department's Interview Information Statement he stated that his Oregon license had "Expired 8-31-00" when, in truth and fact, it had not. It was not established that the misrepresentation was intentionally made, but that misrepresentation when combined with the negligence demonstrated in Findings 3 and 6 does constitute a pattern of negligent conduct.

8. The Oregon Decision included the following notice:

NOTICE

You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review 60 days from the date of this order. Judicial review is pursuant to the provisions of ORS 183482.

Respondent failed to seek judicial review and therefore the Oregon Decision is final and is binding on the parties. That Decision, when combined with the material misrepresentation in the application and the misrepresentation in the Interview demonstrates that, at present, Respondent is not qualified to fulfill the duties and responsibilities of a real estate broker. However, in the absence of a pattern of dishonesty, it would not be inconsistent to allow Respondent to operate with a restricted salesperson's license under supervision of a competent real estate broker.

LEGAL CONCLUSIONS

1. The revocation of Respondent's real estate salesperson license in Oregon as set forth in Finding 3, constitutes grounds to discipline Respondent's real estate broker license pursuant to Business and Professions Code section 10177, subdivision (f).

2. Respondent's failure to disclose the revocation of his real estate salesperson license in Oregon, as set forth in Findings 3 and 4, constitutes grounds to revoke or suspend his real estate broker license pursuant to Business and Professions Code sections 10177, subdivision (a) and 498.

3. Cause exists to revoke Respondent's broker's license by reason of Legal Conclusions 1 and 2 and to issue a restricted salesperson's license by reason of Finding 8.

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ORDER

All licenses and licensing rights of Respondent Kip R. Pierce under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to section 10153.5 of the Business and Professions Code if Respondent makes application therefore 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 two years have elapsed from the effective date of this Decision.

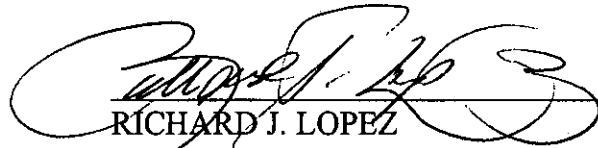
4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

- (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.

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

Dated: August 1, 2005


RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:rfm

1 MARTHA J. ROSETT, Counsel (SBN 142072)
2 Department of Real Estate
3 320 West Fourth St., #350
4 Los Angeles, CA 90013-1105

FILED
OCT 21 2004
DEPARTMENT OF REAL ESTATE

By James B. Olson

4 (213) 576-6982
5 (213) 576-6907

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * *

11 In the Matter of the Accusation of)
12)
13 KIP R. PIERCE,)
14 Respondent.)

No. H-31404 LA

A C C U S A T I O N

15
16 The Complainant, Maria Suarez, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against KIP R. PIERCE (hereinafter "Respondent"), is informed and
19 alleges as follows:

20 1.

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

24 2.

25 At all times herein mentioned, Respondent was and still
26 is licensed and/or has license rights under the Real Estate Law
27 (Part 1 of Division 4 of the Business and Professions Code).

1 Respondent was first licensed by the Department as a real estate
2 salesperson on or about January 6, 2001. On or about May 10,
3 2003, Respondent was licensed as a real estate broker.

4 3.

5 On or about April 21, 2003, Respondent submitted an
6 application for a real estate broker license. In response to
7 Question #19A, to wit, "Have you ever had a denied, suspended,
8 restricted or revoked business or professional license (including
9 real estate) in California or any other state", Respondent marked
10 the box answering, "No". In reliance on this application, the
11 Department issued Respondent a real estate broker license. On or
12 about July 9, 2003, Respondent became the broker-officer for real
13 estate corporation Verity Enterprises Inc.

14 4.

15 On or about April 9, 2002, the Oregon Real Estate
16 Agency revoked Respondent's real estate salesperson license. The
17 grounds for the revocation included findings that Respondent
18 demonstrated negligence or incompetence in performing any act for
19 which he was required to hold a license and engaging in conduct
20 which constitutes bad faith, incompetence, untrustworthiness, or
21 dishonest, fraudulent or improper dealings.

22 5.

23 The revocation of Respondent's real estate salesperson
24 license in Oregon as set forth in Paragraph 4 above constitutes
25 grounds to discipline Respondent real estate broker license
26 pursuant to Business and Professions Code Section 10177(f).

27 ///

6.

Respondent's failure to disclose the revocation of his real estate salesperson license in Oregon, as set forth in Paragraphs 3 and 4 above, constitutes grounds to revoke or suspend his license pursuant to Business and Professions Code Sections 10177(a) and 498.

WHEREFORE, the Complainant prays that a hearing be 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 Respondent KIP R. PIERCE 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 19th day of October, 2004.


Deputy Real Estate Commissioner

cc: Kip R. Pierce
Sacto.
Maria Suarez
EE