



BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

DON RANDALL COOK,

Respondent.

Case No.: H-33458 LA

OAH No.: L2007040731

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 June 28, 2007.

Elliott Mac Lennan, Staff Counsel, represented the Complainant.

Respondent appeared in person and represented himself.

Oral and documentary evidence and evidence by way of official notice was received.

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. Respondent is presently licensed and has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code, as a real estate salesperson.
3. Respondent was originally licensed by the Department of Real Estate of the State of California as a real estate salesperson on May 3, 2002.
4. For many years Respondent owned and operated a vehicle restoration business. He specialized in the restoration of Austin Healey Automobiles, entrusted to Respondent by the vehicle owners. In March 2002, Respondent closed his business and at least three of the Austin Healeys were never returned to their rightful owners, which Respondent was obligated to do. Subsequently, in 2003 Respondent was arrested and charged with six counts

of grand theft of personal property, and five counts of grand theft auto. After prosecutorial investigation, and Respondent's pledge to make full restitution to the three owners, all grand theft charges were dropped and Respondent was charged with a single misdemeanor. Thereafter, on August 4, 2005, in the Superior Court of California, County of Los Angeles, Respondent was convicted by a plea to one count of Penal Code section 484, subdivision (b) (theft: non return of rental property), a misdemeanor, which by its facts and circumstances involves moral turpitude and is substantially related under section 2910, subdivision (a)(1), Chapter 6, title 10 of the California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

5. As a result of the conviction Respondent was ordered to pay fines, ordered to pay restitution to the owners, and placed on a one year summary probation. Respondent timely paid all fines. Respondent fulfilled his pledge and complied with the order of restitution by making the three victims whole. To do that Respondent paid in excess of \$160,000 in less than one year by drawing upon his savings, mortgaging his home and borrowing money from his parents. Respondent did timely and successfully complete probation and is in the process of having the conviction expunged.

6. At the time of his wrongful conduct, Respondent was in combined states of anxiety and depression in that his wife, after arduous pre-delivery labor, gave birth to the couple's son. The infant died within seven hours of birth, having been diagnosed with a rare malformation of the lungs. These circumstances do not excuse his wrongful conduct but do mitigate same.

7. Despite his troubles with the law (Finding 4), and with his personal loss (Finding 6), Respondent has been a licensee of the Department and has competently and honestly fulfilled the obligations and duties of a real estate licensee. He is presently employed as a loan officer, in Quartz Hill for Suburban Realty, and has worked for Suburban with diligence, industry and trustworthiness.

8. Respondent has a change in attitude from that which existed at the time of the crime. The change in attitude was due to a number of factors: his embarrassment for his wrongdoing and the recognition at the hearing that what he did was wrong; his return to emotional stability after the loss of his son, and the need to be a responsible and competent real estate salesperson. The change was demonstrated when Respondent voluntarily pledged full restitution during the early stages of the criminal process and did make full restitution.

## LEGAL CONCLUSIONS

### *Applicable Law*

1. Business and Professions Code section 490 provides:

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of section 1203.4 of the Penal Code.

2. Business and Professions Code section 10177, subdivision (b) provides:

The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation.

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- (b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

*Violations*

3. The crime set forth in Finding 3, by its facts and circumstances, is a crime of moral turpitude and, therefore, cause exists under Business and Professions Code section 10177, subdivision (b) for discipline of Respondent's licensure.

4. The crime set forth in Finding 3, is substantially related to the qualifications, functions or duties of a licensee of the Department and, therefore, cause exists under Business and Professions Code section 490 for the discipline of Respondent's license.

*Disposition*

5. The objective of an administrative proceeding relating to licensing is to protect the public. Such proceedings are not for the primary purpose of punishment. *Fahmy v. MBC* (1995) 38 Cal.App.4<sup>th</sup> 810, 817; *Ex Parte Brounell* (1778) 2 Cowp. 829, 98 Eng.Rep. 1385. The rationale of *Harrington v. Department of Real Estate* (1995) 214 Cal.App.3<sup>rd</sup> 394, involving real estate licensing proceedings applies to this proceeding. *Harrington* at page 406:

... As the ALJ accurately noted, "One's character trait for honesty and integrity is an important qualification to be a real estate salesperson inasmuch as clients rely on the licensee's integrity in representing them, disclosing important facts about the properties he is privy to and holding monies in a fiduciary capacity." The public exposing itself to a real estate licensee has reason to believe the licensee must have demonstrated a degree of honesty and integrity in order to have obtained a license. (*Golde v. Fox, supra*, 98 Cal.App. 3<sup>rd</sup> at p. 178)

As can be reasonably inferred from Finding 7, clients can rely on Respondent's integrity in representing them, in disclosing important facts about the properties he is privy to and in holding monies in a fiduciary capacity. However, Respondent has recently completed criminal probation. Accordingly, the issuance of a restricted license for a period of two years is consistent with the public interest.

ORDER

All licenses and licensing rights of Respondent Don Randall Cook, under the Real Estate Law are revoked, provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to section 10156.5 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.

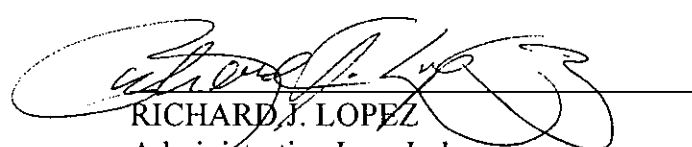
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.

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 activities for which a real estate license is required.

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: July 23 2007

  
RICHARD J. LOPEZ  
Administrative Law Judge  
Office of Administrative Hearings

RJL:rfm

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4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6911 (direct)  
6 -or- (213) 576-6982 (office)

**FILED**

NOV 27 2006

DEPARTMENT OF REAL ESTATE  
BY: *[Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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11 In the Matter of the Accusation of	)	No. H-33458LA
12 DON RANDALL COOK,	)	<u>ACCUSATION</u>
13 Respondent.	)	

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15 The Complainant, Maria Suarez, a Deputy Real Estate  
16 Commissioner of the State of California, for cause of accusation  
17 against DON RANDALL COOK, is informed and alleges in her official  
18 capacity as follows:

19 1.

20 Respondent is presently licensed and/or has license  
21 rights as a real estate salesperson under the Real Estate Law  
22 (Part 1 of Division 4 of the California Business and Professions  
23 Code) (Code).

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2.

1 Respondent was originally licensed by the Department of  
2 Real Estate of the State California as a real estate salesperson  
3 on May 03, 2002.  
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3.

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6 On August 4, 2005, Superior Court of California, County  
7 of Los Angeles, respondent was convicted by a plea to one count  
8 of Penal Code Section 484(b) (theft: non return of rental  
9 property), a misdemeanor, which by its facts and circumstances  
10 involves moral turpitude and is substantially related under  
11 Section 2910(a)(1), Chapter 6, Title 10 of the California Code of  
12 Regulations, to the qualifications, functions or duties of a real  
13 estate licensee.  
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16 The crime alleged in Paragraph 3, constitutes cause for  
17 the suspension or revocation of the license and license rights of  
18 respondent under Sections 490 and/or 10177(b) of the Code.  
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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 therof, a decision be rendered imposing disciplinary action  
4 against the license and license rights of respondent DON RANDALL  
5 COOK 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 provision of law.

8 Dated at Los Angeles, California

9 This *17<sup>th</sup> day of November 2005.*

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14 Deputy Real Estate Commissioner

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24 cc: Don Randall Cook  
25 Weger Mortgage Corp./Mark L. Weger  
26 Maria Suarez  
27 Sacto  
LF