

BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ROBERT LaVERN CONLEE,

Respondent.

DC file no. 963-1983

OAH NO. L2004020472

FINAL DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on March 10, 2004, in Los Angeles, California.

Sean M. Rooney, Corporations Counsel, and Lesa Andelson, Legal Intern, represented the California Corporations Commissioner ("Commissioner" or "Complainant"). Matthew R. Eccles, Esq., represented Robert LaVern Conlee ("Respondent"), who also appeared.

Oral and documentary evidence was received and the matter argued. The record was closed and the matter submitted on March 10, 2004.

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1 On March 15, 2004, the Administrative Law Judge issued a Proposed Decision, which was
2 served on all parties by the Department of Corporations on April 13, 2004, in accordance with
3 Government Code Section 11517(c)(1). The Proposed Decision was not adopted as the Final
4 Decision in this matter. Pursuant to Section 11517(c)(2)(E) of the Government Code, all parties
5 were served on June 25, 2004 with notice of the determination not to adopt the Proposed Decision
6 of the Administrative Law Judge and notified that the case would be decided by the Commissioner
7 upon the record, including the transcript of the proceedings held on March 10, 2004, and upon any
8 written argument offered by the parties.
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12 The parties were given the opportunity to present written arguments by August 6, 2004.
13 The Department of Corporations received a letter dated July 30, 2004, wherein Respondent
14 requested a thirty-day continuance for the submission of Respondent's written argument. The
15 Department of Corporations granted the continuance for all parties and communicated the new
16 deadline of September 6, 2004 in a letter dated August 2, 2004. However, neither party submitted
17 written arguments by the September 6, 2004 deadline. The Department of Corporations sent
18 letters dated September 13, 2004 to both parties indicating that the deadline had passed without
19 receipt of written arguments. Thereafter, Complainant submitted a letter dated September 17,
20 2004. Respondent sent a letter dated September 20, 2004 providing a reason for the "unexpected
21 delay" and submitted written argument served on September 21, 2004. All of the documents
22 pertaining to the parties' written arguments are part of the record.
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1 The record in this case, including the transcript of the proceedings of March 10, 2004, has
2 been given careful consideration. The following shall constitute the Final Decision of the
3 Commissioner in the above-entitled matter. The below order BARS Respondent from any
4 position of employment, management or control of any escrow agent.

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6 FACTUAL FINDINGS

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8 1. Affiliated Escrow, Inc. holds an escrow license issued by the Commissioner under
9 the California Financial code.

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11 2. On August 19, 2003, Affiliated Escrow, Inc. submitted a Statement of Identity and
12 Questionnaire ("Statement"), completed and signed by Respondent, indicating that although he
13 would fill the position of "Director" there, he would be "employed" in any capacity. Respondent
14 is 73 years old. During the hearing, he testified that he would only be a figurehead as a
15 "Director," and would have no active involvement in any escrow activities.

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17 3A. William P. Wood is the Commissioner. On February 4, 2004, Corporations
18 Counsel Sean M. Rooney, on behalf of the Commissioner, issued an Accusation against
19 Respondent, pursuant to California Financial Code Section 17423, which was thereafter properly
20 served.

21
22 3B. The Accusation alleges that Respondent made willful misstatements in the
23 Statement, and requests that he therefore be barred from any position of employment, management
24 or control of any escrow agent.

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26 3C. Respondent timely submitted a Notice of Defense, which requested a hearing.
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1 4. The Statement, at Question #4, asked specifically: "Have you ever been refused a
2 license to engage in any business in this state or any other state, or has such license been
3 suspended or revoked?". Respondent answered "No".
4

5 5. Respondent signed the Statement under penalty of perjury that all of the
6 information submitted was true and correct.
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8 6. In fact, the Commissioner of the California Department of Real Estate ("DRE") had
9 previously disciplined Respondent. Specifically, Respondent was licensed by the DRE as a real
10 estate broker and as the designated officer of First & LA Realty Corporation. Pursuant to a
11 Stipulation and Agreement executed by the parties, in resolution of an Accusation brought against
12 Respondent by the DRE, the DRE Commissioner issued an Order, effective May 26, 1998, which
13 revoked Respondent's real estate broker's license, but allowed him to thereafter apply for a
14 restricted broker's license, upon compliance of certain conditions. Respondent successfully did so
15 and was issued a restricted license, requiring him to comply with terms and conditions.
16 Respondent later petitioned the DRE for reinstatement of his full real estate broker's license. The
17 DRE Commissioner issued an Order denying that request on July 10, 2003, one month before
18 Respondent submitted the instant Statement.
19

20 7. By falsely answering "No" to Question #4, Respondent did willfully fail to disclose
21 his disciplinary history with the DRE, including the revocation of his real estate broker's license.
22 Respondent knew of the DRE's action taken against his broker's license when completing the
23 Statement. He intentionally decided to not disclose it. His stated excuse for not disclosing it was
24 not credible. His stated belief that a restricted broker's license did not signify to him that his full
25 broker's license had been previously revoked was based on an overly artificial, parsed
26 interpretation of Question #4 to avoid disclosure. The DRE had clearly revoked his broker's
27 license. Respondent was required to apply for a restricted broker's license, which he did.
28 Respondent acknowledged during the hearing that a restricted license meant increased DRE

1 scrutiny over his real estate activities, and admitted that he had applied for reinstatement of his full
2 broker's license to remove the stigma attached to his real estate career by its revocation.
3 Respondent undertook no efforts to ask his counsel in the DRE matter, the DRE staff attorney
4 involved (currently involved in a second reinstatement request) or staff of the Department of
5 Corporations regarding any ambiguity.

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7 8. Respondent's excuse for not disclosing his revoked DRE broker's license was
8 further undercut by his appearance and demeanor while testifying, in which he did not provide an
9 air of candor. He made limited eye contact. (Respondent provided a letter dated October 1, 2003
10 from David S. Boyer, M.D., Inc. to Nelson Murata, O.D. stating that Respondent indicated about 3
11 1/2 years from the date of the letter that he was diagnosed and treated for age-related macular
12 degeneration in his right eye.) Respondent further displayed a terrible attitude, seemingly blaming
13 the Commissioner for his situation. He gave no indication of any remorse whatsoever for
14 answering Question #4 as he did. By his deeds, words and demeanor, there is not indication that
15 in completing Question #4 Respondent was attempting to be candid or disclose requested
16 information.

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18 9. A finding regarding Respondent's answer to Question #3 of the Statement is
19 unnecessary since it has already been found that he willfully failed to disclose his disciplinary
20 history with the DRE by providing a false answer to Question #4.

21 22 LEGAL CONCLUSIONS

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24 1. The parties agree Complainant has the burden of proof in this case. As no other
25 statute or law specifically applies to this case, the standard of proof is preponderance of the
26 evidence. See Evidence Code Section 115. Respondent erroneously argues the proper standard is
27 clear and convincing evidence, citing the cases of *Ettinger v. Board of Medical Quality Assurance*
28 (1982) 135 Cal.App.3d 853, and *San Benito Foods v. Veneman* (1996) 50 Cal. App.4th 1889.

1 Those cases hold that standard only applies to disciplinary actions against professional licenses,
2 obtained after extensive education, training, and passing a rigorous state-administered
3 examination. In this case, Respondent has no license with the Commissioner. Moreover, no
4 evidence was submitted indicating the position he sought to take with the Commissioner's licensee
5 involved professional employment or activity. Respondent himself admitted the position he
6 sought involved no escrow agent activities.

7
8 2A. California Financial Code Section 17702 provides, in pertinent part, that "[i]t is
9 unlawful for any person to willfully make any untrue statement of a material fact in any
10 application, notice, or report filed with the commissioner[], or to willfully omit any material fact
11 which is required to be stated in any application, notice, or report." According to the Department
12 of Corporations precedential decision of *In Re: Stacy Ann Maspero* (2003) OAH #L2002090534¹,
13 "willfully", as used in Financial Code Section 17702, does not mean an intent to violate the law,
14 but simply is "... a purpose or willingness to commit the act, or make the omission referred to." In
15 this case, it was established by more than a preponderance of the evidence that Respondent knew
16 of his revoked broker's license and yet willfully refused to disclose it in answer to a question
17 directly requesting such information.

18
19 2B. Respondent violated Financial Code Section 17702 when he falsely answered "No"
20 to Statement Question #4, and therefore willfully failed to disclose that the DRE previously
21 revoked his real estate broker's license. Factual Findings 4-8.

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23 3. Any reference to Question #3 of the Statement in the Accusation issued against
24 Respondent on February 4, 2004 is hereby stricken.

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28 ¹ As authorized by Government Code Section 11425.60, an agency may designate certain Decisions as a precedent to be followed in similar cases.

