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DEPARTMENT OF REAL ESTATE

By [Signature]

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of  
  
JIM C. MESSICK,  
  
Respondent.

No. H-2630 SD

ORDER GRANTING REINSTATEMENT OF LICENSE

On November 26, 2001, a Decision was rendered herein revoking the real estate salesperson license of Respondent effective December 17, 2001, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on December 17, 2001, and Respondent has operated as a restricted licensee since that time.

On September 6, 2007, Respondent petitioned for reinstatement of said real estate salesperson license, and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered the petition of Respondent and the evidence and arguments in support thereof. Respondent has demonstrated to my satisfaction that Respondent meets the requirements of law for the issuance to Respondent of an unrestricted real estate salesperson license and that it would not be against the public interest to issue said license to Respondent.

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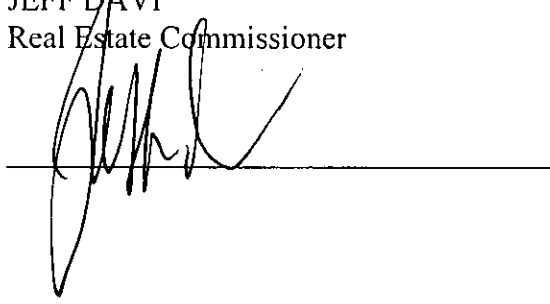
NOW, THEREFORE, IT IS ORDERED that Respondent's petition for  
reinstatement is granted and that a real estate salesperson license be issued to Respondent if  
Respondent satisfies the following conditions within nine (9) months from the date of this Order:

1. Submittal of a completed application and payment of the fee for a real estate salesperson license.
2. Submittal of evidence of having, 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.

This Order shall become effective immediately.

IT IS SO ORDERED 12-18-08

JEFF DAVI  
Real Estate Commissioner



BEFORE THE  
DEPARTMENT OF REAL ESTATE

FILED  
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STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

\* \* \*

By *Jean Brunson*

In the Matter of the Accusation of )  
JIM C. MESSICK, )  
Respondent. )

NO. H-2630 SD  
OAH NO. L2001050556

**DECISION**

The Proposed Decision dated October 17, 2001, 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.

The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon  
on December 17, 2001.

IT IS SO ORDERED November 26, 2001.

PAULA REDDISH ZINNEMANN  
Real Estate Commissioner

*John R. Liberator*

BY: John R. Liberator  
Chief Deputy Commissioner

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

JIM C. MESSICK

Respondent.

DRE No. H-2630-SD  
OAH No. L2001050556

**PROPOSED DECISION**

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on August 28, 2001.

David B. Seals, Counsel, represented complainant J. Chris Graves, Deputy Real Estate Commissioner, Department of Real Estate.

Michael Spilger, Attorney at Law, represented Jim C. Messick, who was present throughout the entire proceeding.

The matter was submitted on September 17, 2001.

**ISSUES**

Was respondent's misdemeanor conviction for collecting an advance fee when he was acting as a foreclosure consultant in violation of Civil Code section 2945.4(a) a crime involving moral turpitude?

Was respondent's misdemeanor conviction substantially related to the qualifications, functions or duties of a real estate salesperson?

Does respondent possess the good moral character required to hold a real estate salesperson license?

**FACTUAL FINDINGS**

*Jurisdictional Matters*

1. On April 24, 2001, complainant J. Chris Graves, Deputy Real Estate Commissioner, Department of Real Estate (the Department) signed the Accusation in

his official capacity. The Accusation and other required jurisdictional documents were served on Jim C. Messick (respondent) thereafter.

On May 23, 2001, a Notice of Defense was timely filed with the Department.

On August 28, 2001, the record in the administrative hearing was opened and jurisdictional documents were presented. Sworn testimony and documentary evidence was received. Oral closing arguments were given, after which each party was permitted to file written closing arguments (complainant's written argument was marked as Exhibit 12 for identification and respondent's written argument was marked as Exhibit 13 for identification).

On September 17, 2001, following the receipt of written argument, the record was closed and the matter was submitted.

#### *Background Information*

2. Respondent was born on May 19, 1950. He grew up in Southern California, graduating from high school in 1969.

Respondent enlisted in the United States Air Force and was on active duty from 1969 through 1972, serving in Thailand and Korea in ground support missions. He was honorably discharged in 1972.

Respondent worked for a water district as a heavy equipment operator until he became permanently disabled as a result of an injury to his lumbar spine. He retired from that occupation in 1989.

Respondent married in the 1970s. Respondent and his first wife, Coleen, had two children, a son who now is 25 years old and a daughter who is now 24 years old. Their marriage ended in divorce.

Respondent remarried in 1993. Respondent's second wife, Olivia, had four children from a previous marriage. Two of those children, an 18-year-old daughter and a 16-year-old daughter, reside with respondent and Olivia in the family home in San Diego County.

3. In 1998 respondent was reading the classified ads when an advertisement caught his eye. It said:

REAL ESTATE  
EARN \$2K-\$8K \* (comm. Per  
Month. PT/FT as a Consultant/  
Buyer for our Co. No exp or lic  
Will train 619 209 2900 24 Hr.

4. Respondent replied to the advertisement. He went to a seminar where he learned about helping out homeowners who were behind in their mortgage payments or whose homes were in foreclosure.

5. Respondent began working for a foreclosure consultant. When the consultant did not pay respondent the commissions he had earned, respondent quit and opened his own business, Sequoia Consulting.

6. Respondent ran a fictitious business name statement in the newspaper, rented office space, and began meeting with persons who were behind in the mortgage payments or whose homes were in foreclosure.

Respondent met with prospective clients, completed financial statements to determine if they had the wherewithal to save their homes, counseled his clients, and attempted to negotiate repayment plans his clients could meet. Respondent accepted advance fees ranging from \$200 to \$1,200 for his services.

7. Respondent's new enterprise met with success. Because he was not emotionally involved in the outcomes, he was able to conclude many renegotiations without angering either the homeowners or the lenders. Most of respondent's clients were satisfied. A few were not. One or more dissatisfied clients contacted the San Diego County District Attorney's Office.

8. A representative of the District Attorney's Office contacted respondent and said that the District Attorney's Office was investigating consumer complaints. Respondent was cooperative in that investigation.

When respondent was told that it was illegal to collect an advance fee before performing every service he had contracted to perform, respondent closed his doors. He had never secured his fee with a deed of trust and had never purchased property from a client.

9. Before meeting with the representative from the District Attorney's Office, respondent was not aware that it was illegal to claim and collect an advance fee as a foreclosure consultant before each and every service he had agreed to perform was performed.

#### *Respondent's Conviction*

10. On April 6, 2000, following the filing of a felony criminal complaint, a preliminary hearing was held in the Superior Court of California, County of San Diego. Probable cause was established and respondent was held to answer for four violations of Civil Code section 2954.4. Respondent's motion to reduce the charges to misdemeanors was denied.

11. On April 18, 2000, an Information was filed in the Superior Court of California, County of San Diego, charging respondent with four felony counts of violating Civil Code section 2945.4.

12. On May 11, 2000, respondent was convicted on his plea of guilty to one misdemeanor count of violating Civil Code section 2945.4. The remaining counts were dismissed as a part of the plea agreement. Respondent stated he "accepted up front fees before fully performing each and every service contracted to perform" in his written change of plea form.

13. As a consequence of his conviction, respondent was granted two years probation (which will expire on May 10, 2002), was ordered to pay a fine of \$200, and was ordered to make \$1,800 in restitution. The fine and restitution were paid.

*Civil Code section 2945 et seq.*

14. At all times relevant to this matter, Civil Code section 2954 provided in pertinent part:

"(a) The Legislature finds and declares that homeowners whose residences are in foreclosure are subject to fraud, deception, harassment, and unfair dealing by foreclosure consultants from the time a Notice of Default is recorded . . . until the time of the foreclosure sale. Foreclosure consultants represent that they can assist homeowners who have defaulted on obligations secured by their residences. These foreclosure consultants, however, often charge high fees, the payment of which is often secured by a deed of trust on the residence to be saved, and perform no service or essentially a worthless service.

Homeowners, relying on the foreclosure consultants' promises of help, take no other action, are diverted from lawful businesses which could render beneficial services, and often lose their homes, sometimes to the foreclosure consultants who purchase homes at a fraction of their value before the sale.

(b) The Legislature further finds and declares that foreclosure consultants have a significant impact on the economy of this state and on the welfare of its citizens.

(c) The intent and purposes of this article are the following:

(1) To require that foreclosure consultant service agreements be expressed in writing; to safeguard the public against deceit and financial hardship; to permit rescission of foreclosure consultation contracts; to prohibit representations that tend to mislead; and to encourage fair dealing in the rendition of foreclosure services.

(2) The provisions of this article shall be liberally construed to effectuate this intent and to achieve these purposes.”

15. Civil Code section 2954 provided in pertinent part:

“It shall be a violation for a foreclosure consultant to:

(a) Claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented he would perform.  
..”

16. It was *not* established that respondent engaged in any fraud, deception, harassment or unfair dealing. It was *not* established that respondent charged unreasonably high fees or that he ever secured his fees with a deed of trust on the residence to be saved. It was *not* established that he provided either no service or an essentially a worthless service to clients. It was *not* established that any client sold his or her home to respondent.

17. It was established that several clients whose homes were in foreclosure were appreciative of respondent’s successful efforts.

18. It was established that respondent *always* took an advance fee before performing all of the services he promised to perform as a foreclosure consultant.

#### *Evidence of Rehabilitation*

19. As soon as respondent discovered that taking an advance fee was illegal, respondent stopped his foreclosure consulting operation. He began working as a short-haul truck driver.

Respondent fully cooperated with law enforcement officers during the criminal investigation and he cooperated with the District Attorney’s Office after charges were filed.

Respondent promptly made restitution as ordered by the court. Respondent promptly paid his fines and penalty assessments.



Respondent became interested in working in the real estate profession. After passing the required real estate salesperson licensing examination, respondent began working for Century-21 Award in La Mesa.

At some point after he was licensed, respondent contacted the Department to advise of the conviction he suffered following his licensure.

20. Steve Whitson (Whitson), the broker for Century-21 Award, testified that he would closely supervise respondent if respondent were given the opportunity to apply for a restricted license. Respondent has closed 13 transactions since he was licensed without incident and Whitson considers respondent to be an outstanding realtor. Whitson described respondent as "a good guy who made a mistake."<sup>1</sup>

21. Real estate is currently respondent's sole source of income.

## LEGAL CONCLUSIONS

### *Burden and Standard of Proof*

1. The standard of proof in this disciplinary proceeding is "clear and convincing evidence." *Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204.

"Clear and convincing" evidence means evidence of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth of the facts for which it is offered as proof. Such evidence requires a higher standard of proof than proof by a preponderance of the evidence. See, *BAJI* 2.62.

Clear and convincing evidence requires a finding of high probability. The evidence must be so clear as to leave no substantial doubt. It must be sufficiently strong to command the unhesitating assent of every reasonable mind. *In re David C.* (1984) 153 Cal.App.3d 1189.

### *License Discipline May Be Imposed Based Upon Proof of a Conviction of a Crime Involving Moral Turpitude*

2. Business and Professions Code section 10117 provides in pertinent part:

"The commissioner may suspend or revoke the license of a real estate licensee . . . who has done any of the following. . . :

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<sup>1</sup> Whitson was unaware that it was unlawful for a foreclosure consultant to take an advance fee.

- (b) Entered a plea of guilty or nolo contendere to . . . a crime involving moral turpitude. . .”

### *Moral Turpitude*

3. Crimes involving moral turpitude may be divided into two groups. The first includes crimes in which dishonesty is an element (i.e., fraud, perjury, etc.). The second includes crimes that indicate a "general readiness to do evil." Crimes in the second group have been described as involving acts of "baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." See, *People v. Chavez* (2000) 84 Cal.App.4th 25.

4. A violation of Civil Code section 2954.4 is not a true common law crime, but is a "public welfare crime" or a "regulatory offense."<sup>2</sup>

A conviction of Civil Code section 2954.4 does not require any intent to violate the law or any intent to engage in wrongdoing. A conviction of Civil Code section 22954.4 does not evidence any baseness, vileness or depravity.

While there appears to be no specific authority on point, it is concluded that the mere conviction of Civil Code section 2954.4 does not necessarily establish conduct involving moral turpitude.

5. Even though the commission of a public welfare crime may not necessarily involve moral turpitude, the conduct underlying a conviction may involve moral turpitude as a matter of fact.

For example, *In re Higbie* (1972) 6 Cal.3d 562 held that while an attorney's conviction of violating a statute imposing a transfer tax on marijuana did not necessarily involve moral turpitude because the federal statute did not require any criminal intent, the attorney's underlying conduct did involve moral turpitude because it was established that the attorney invited his friends to engage in an unlawful conspiracy, he failed to sever himself from the conspiracy, and he used his legal knowledge to assist in a violation of law.

As another example, *In re Clark* (1965) 63 Cal.2d 610 held that an attorney's violations of the Corporate Securities Act involved moral turpitude where it was

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<sup>2</sup> Certain kinds of regulatory offenses, not common law crimes, classified as "malum prohibitum" rather than "malum in se," are punishable despite the absence of criminal intent in any of the accepted senses. Commentators usually refer to them by such terms as "public welfare offenses," "regulatory offenses," or "civil offenses," to distinguish them from "true crimes." 1 Witkin, Cal. Criminal Law (3d ed., 2000) Elements, section 17, page 220.

established that those violations were not merely technical, but were also accompanied by the attorney's intent to evade the act with the object of gain or profit.

In this matter, it was not established that respondent was guilty of any crime, any act or any conduct involving moral turpitude.

6. The clear and convincing evidence did not establish cause to impose discipline against respondent's real estate license under Business and Professions Code section 10117(b). Respondent was not convicted of any crime involving moral turpitude, nor was it established that he engaged in any act or conduct involving moral turpitude as a factual matter.

This conclusion is based on Legal Conclusions 1-6 and Factual Findings 5-18.

*License Discipline May Be Imposed Based on  
Proof of a Conviction of a Crime Having a Substantial Relationship  
to the Qualifications, Functions and Duties of a Real Estate Licensee*

7. Business and Professions Code section 490 provides in pertinent part:

"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. . ."

*Substantial Relationship*

8. Title 10, California Code of Regulations, section 2910 sets forth "Criteria of Substantial Relationship." That regulation provides in pertinent part as follows:

"(a) When considering whether a license should be . . . suspended or revoked on the basis of the conviction of a crime . . . the crime . . . shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of Sections 480 and 490 of the Code if it involves:

...

(8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

...

(c) If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or acts

were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the . . . licensee.”

9. Complainant contended that respondent’s conviction was substantially related to the qualifications, functions or duties of a real estate licensee because respondent performed an unlawful act with the intent to gain a financial benefit.

Respondent did not argue this point other than to note that imposing discipline under Business and Professions Code section 490 is discretionary.

10. The Real Estate Law and its disciplinary statutes were designed to protect the public not only from conniving real estate salesmen but also from the uninformed, negligent, or unknowledgeable salesman. See, *Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513.

11. Cause exists under Business and Professions Code section 490 and under Title 10, California Code of Regulations, section 2910, to impose discipline against respondent’s real estate license. Respondent’s conviction arose out of his ignorance of the law governing his fledging real estate related consulting venture and to that extent his conviction was substantially related to the qualifications, functions and duties of a licensed real estate salesperson.

This conclusion is based on Legal Conclusions 1, 7, 8, and 10 and on Factual Findings 5-18.

#### *The Appropriate Measure of License Discipline*

12. No recommendation was made concerning the appropriate measure of discipline that should be imposed. The Department of Real Estate has not enacted disciplinary guidelines.

The appropriate measure of administrative discipline should be based on the nature and gravity of the offense, the application of the Department’s criteria of rehabilitation, and the application of generally recognized criteria of rehabilitation that exist in occupational and professional licensing disciplinary matters for other professions and occupations. The central issue is the protection of the public and whether respondent is presently fit to perform the functions and duties of a real estate salesperson.

#### *Rehabilitation*

13. Title 10, California Code of Regulations, section 2912 provides in pertinent part as follows:

“The following criteria have been developed by the department pursuant to Section 482(b) of the Business and Professions Code for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee.

- (a) The passage of not less than two years from the most recent criminal conviction that is ‘substantially related’ to the qualifications, functions or duties of a licensee of the department. (A longer period will be required if there is a history of criminal convictions or acts substantially related to the qualifications, functions or duties of a licensee of the department.)
- (b) Restitution to any person who has suffered monetary losses through ‘substantially related’ acts or omissions of the licensee.
- (c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action.
- (d) Successful completion or early discharge from probation or parole.
- (e) Abstinence from the use of controlled substances or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance or alcohol.
- (f) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.
- (g) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.
- (h) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.
- (i) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.
- (j) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.
- (k) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(1) Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by any or all of the following:

(1) Testimony of applicant.

(2) Evidence from family members, friends or other persons familiar with the licensee's previous conduct and with subsequent attitudes and behavioral patterns.

(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.

14. Using the Department's regulatory criteria, less than two years has passed since respondent's 'substantially related' criminal conviction. Respondent made restitution and paid his fine. When respondent found out that what he was doing was illegal, he closed his foreclosure consulting business. Respondent's conviction has not been expunged and he is still on probation. Issues related to substance abuse do not exist. The issues of friends or acquaintances being involved in illegal activities do not exist. Respondent has a very stable home and family life and he is fulfilling all of his parental and familial responsibilities, as he always has. Respondent completed the training necessary to become a real estate salesperson. He has a significant and conscientious involvement in school programs. Respondent was extremely remorseful. He was always cooperative and truthful.

15. Using available guidelines in disciplinary matters involving other occupations and professions, there is no other record of administrative discipline (see, *Segretti v. State Bar* (1976) 15 Cal.3d 8781); respondent's misconduct was not coupled with or followed by bad faith, dishonesty or concealment and he did not demonstrate indifference towards the consequences of his misconduct; rather, he admitted his misconduct and made efforts to rectify it by cooperating with authorities and expressing remorse (see, *Bradpiece v. State Bar* (1974) 10 Cal.3d 742; see, also, *Price v. State Bar* (1982) 30 Cal.3d 537; see, also, *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933). Respondent's acting in good faith was not a defense, but it is an important mitigating factor (see, *Grove v. State Bar* (1973) 8 Cal.3d 910).

16. The criteria announced in *Morrison v. Board of Education* (1969) 1 Cal.3d 214 assist in determining present fitness.

Using the *Morrison* criteria, it is unlikely that respondent's misconduct adversely affected others in the real estate profession and it is unlikely that there will be an adverse impact in the future; the misconduct occurred less than five years ago; the misconduct was not particularly blameworthy and, to some extent, respondent's motives were praiseworthy; there is virtually no likelihood of reoccurrence of the

misconduct; imposing sanctions will not have a chilling effect on others in the real estate profession.

17. Cause exists under Business and Professions Code sections 480(a) and 10177(b) to deny Jim C. Messick's application for an unrestricted real estate salesperson license, but cause also exists, in light of his rehabilitation, to permit him to apply for a restricted license.

This conclusion is based on Legal Conclusions 1-15 and on Factual Findings 2-21.

### ORDER

All licenses and licensing rights of respondent Jim C. Messick under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent under Business and Professions Code section 10156.5 if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within ninety (90) days of the effective date of this Decision. The restricted license shall be subject to all of the provisions of Business and Professions Code section 10156.7 and shall be subject to the following limitations, conditions and restrictions imposed under Business and Professions Code section 10156.6:

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 (2) 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.

5. Respondent shall, within nine (9) months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that he 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.

6. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of Respondent's license until Respondent passes the examination.

DATED: 10/17/01.

  
JAMES AHLER  
Administrative Law Judge  
Office of Administrative Hearings



BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED  
MAY 25 2001

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

JIM C. MESSICK

By Shelly Ely

Case No. H-2630 SD

OAH No.

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at THE OFFICE OF ADMINISTRATIVE HEARINGS, 1350 FRONT STREET, ROOM 6022, SAN DIEGO, CALIFORNIA 92101 on TUESDAY--AUGUST 28, 2001, at the hour of 1:30 PM, 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 on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the 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: MAY 25, 2001

DEPARTMENT OF REAL ESTATE  
By David B. Seals  
DAVID B. SEALS, Counsel

1 LARRY A. ALAMAO, Counsel  
2 State Bar No. 47379  
3 Department of Real Estate  
4 P. O. Box 187000  
5 Sacramento, CA 95818-7000  
6  
7 Telephone: (916) 227-0789

FILED  
APR 30 2001

DEPARTMENT OF REAL ESTATE  
By Kathleen Contreras

8 BEFORE THE  
9 DEPARTMENT OF REAL ESTATE  
10 STATE OF CALIFORNIA

11 \* \* \*

12 In the Matter of the Accusation of )  
13 JIM C. MESSICK, ) NO. H-2630 SD  
14 Respondent. ) ACCUSATION  
15 )

16 The Complainant, J. Chris Graves, a Deputy Real Estate  
17 Commissioner of the State of California, for cause of accusation  
18 against JIM C. MESSICK is informed and alleges as follows:

19 I

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

24 II

25 The Complainant, J. Chris Graves, a Deputy Real Estate  
26 Commissioner of the State of California, makes this Accusation  
27 against Respondent in his official capacity.

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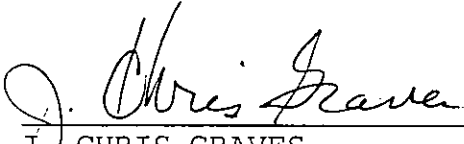
III

On or about May 11, 2000, in the Superior Court, County of San Diego, Respondent was convicted of violation of Section 2945.4 of the California Civil Code (Foreclosure Consultant Violations), a crime involving moral turpitude which is substantially related under Section 2910, Title 10, California Code of Regulations to the qualifications, functions, or duties of a real estate licensee.

IV

The facts alleged above constitute cause under Sections 490 and 10177(b) of the Code for suspension or revocation of all licenses and license rights of Respondent under the Real Estate Law.

WHEREFORE, 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 license rights of Respondent, under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other provisions of law.

  
J. CHRIS GRAVES  
Deputy Real Estate Commissioner

26 Dated at San Diego, California,  
27 this 24<sup>th</sup> day of April, 2001