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DEPARTMENT OF REAL ESTATE

By *Laurie L. Zinn*

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-2586 SD
)	
MANUEL RIOS AGUIRRE,)	OAH No. L-2000120081
)	
Respondent.)	
)	

DECISION AFTER REJECTION

This matter came on for hearing before James Ahler, Administrative Law Judge of the Office of Administrative Hearings, in San Diego, California, on March 15, 2001.

James L. Beaver, Counsel, represented the Complainant.

Respondent MANUEL RIOS AGUIRRE appeared in person without counsel.

Evidence was received, the record was closed, and the matter was submitted.

On March 19, 2001, the Administrative Law Judge rendered a Proposed Decision (hereinafter "the Proposed Decision") which I declined to adopt as my Decision herein. Pursuant to Section 11517 of the Government Code of the State of

1 California, Respondent was served with notice of my
2 determination not to adopt the Proposed Decision along with a
3 copy of the Proposed Decision. Respondent was notified that the
4 case would be decided by me upon the record, the transcript of
5 proceedings held on March 15, 2001, and upon written argument
6 offered by Respondent and Complainant.

7 Written argument was submitted on behalf of Respondent
8 by Frank M. Buda, Esq., and filed herein on July 16, 2001.

9 Written argument has been submitted on behalf of Complainant.

10 I have given careful consideration to the record in
11 this case, including the transcript of proceedings of March 15,
12 2001 and written argument offered by Respondent and Complainant.

13 The following shall constitute the Decision of the
14 Real Estate Commissioner in these proceedings.

15 FINDINGS OF FACT

16 1. Paragraphs 1 through 28, inclusive, of the
17 "Factual Findings" in the Proposed Decision are hereby adopted,
18 and Paragraph 29 thereof is not adopted.

19 2. In the prior action, Case No. H-1448 SD, referred
20 to Paragraph 4 of the "Factual Findings" in the Proposed
21 Decision, the Real Estate Commissioner revoked the real estate
22 broker license of Respondent effective March 24, 1988, under
23 Sections 10145, 10176(a), 10176(i), 10177(d), 10177(g), and
24 10177(h) of the Code and Sections 2830, 2831, and 2832 of the
25 Regulations.

26 3. An examination of Respondent's record of prior
27 discipline is helpful in determining what measures are needed

1 now to protect the public. It was found in the prior case that
2 Respondent was subject to discipline under Sections 10177(g) and
3 10177(h), in part because Respondent certified to the Department
4 that he would provide close supervision over a salesperson who
5 was then subject to a restricted license, but failed to do so.
6 That a lack of attention to detail in the operation of
7 Respondent's brokerage accompanied Respondent's violations of
8 Code Sections 10159.5, 10160, and 10161.8 and Regulation 2731 in
9 this case is particularly significant in view of Respondent's
10 prior record of negligence and failure to provide proper
11 supervision.

12 4. Both this case and the prior case involve trust
13 fund handling and recordkeeping violations, particularly
14 including the failure, in both this and the prior case, to
15 maintain the control record required by Section 2831 of the
16 Regulations. Respondent's violations of Regulations 2831 and
17 2831.2 in this case involve serious misconduct. Respondent
18 managed about 45 properties for others. Respondent failed to
19 maintain the control record for his property management trust
20 funds for over three (3) years; and thus, throughout that
21 period, was unable to reconcile the control account to separate
22 records or to reconcile the control account to his bank
23 statements. That Respondent failed, even after prior discipline
24 for trust fund violations, to appreciate why the law requires a
25 broker to maintain accurate, detailed and current trust account
26 records, indicates that more, rather than less, severe sanctions
27 may be in order now.

1 5. In addition to the violations of Sections 10145
2 and 10177(g) of the Code and Sections 2830, 2831 and 2832 of the
3 Regulations, it was found in the prior case that Respondent was
4 subject to discipline under Sections 10176(a) and 10176(i) for
5 misrepresentation and dishonest dealing because Respondent
6 participated in obtaining an offer from a buyer that falsely
7 represented that Respondent held a \$12,000 earnest money
8 deposit, and Respondent participated in presenting the offer to
9 the Seller without disclosing that Respondent did not hold the
10 \$12,000 deposit. Respondent's record of misrepresentation and
11 dishonest dealing requires that Respondent's assurances of
12 future compliance be received with caution.

13 6. Our Supreme Court has concluded that the
14 licensing of those who rent or collect rents from property for
15 others is a legitimate exercise of the police power to ensure
16 the integrity of those engaged in the business of real estate.
17 Sheetz v. Edmonds (1988) 201 Cal. App. 3d 1432, 1435. A real
18 estate license may be subjected to discipline pursuant to the
19 provisions of Section 10177(d) of the Code for violating the
20 Department's trust fund handling and bookkeeping regulations.
21 Apollo Estates, Inc. v. Department of Real Estate (1985) 174
22 Cal. App. 3d 625, 638-639. The purpose of disciplinary
23 procedures provided for in the Business and Professions Code is
24 not to punish, but to afford protection to the public. Norman
25 v. DRE (1979) 93 Cal. App. 3d 768, 778. The fact that the
26 owners may have suffered no detriment from the misconduct of a
27 real estate broker does not operate to protect the broker from

1 revocation of his license for such misconduct. Buckley v.
2 Savage (1960) 184 Cal. App. 2d 18, 32. "The 'degree of harm' to
3 the victim [resulting from a real estate broker's conduct] is
4 not a matter of controlling importance in fixing the penalty in
5 disciplinary proceedings. It is simply one of the facts to be
6 taken into consideration." Marks v. Watson (1952) 112 Cal. App.
7 2d 196, 200. "When a licensee makes repeated and constant
8 flagrant violations of the statutes and rules designed to
9 protect the public, the privilege to act as a real estate broker
10 must be revoked" (Apollo Estates, Inc. v. Department of Real
11 Estate, supra, 642), or at least be subjected to severe
12 sanctions.

13 7. In view of Respondent's prior discipline and the
14 array of trust fund handling, recordkeeping and license status
15 violations in this case, it is advisable in the public interest
16 that any license retained by Respondent be restricted.

17 LEGAL CONCLUSIONS

18 1. Paragraphs 1 through 21, inclusive, of the "Legal
19 Conclusions" in the Proposed Decision are hereby adopted.

20 ORDER

21 All licenses and licensing rights of Respondent MANUEL
22 RIOS AGUIRRE under the Real Estate Law are revoked; provided,
23 however, a restricted real estate broker license shall be issued
24 to said Respondent pursuant to Section 10156.5 of the Business
25 and Professions Code if, within ninety (90) days from the
26 effective date of the Decision entered pursuant to this Order,
27 Respondent MANUEL RIOS AGUIRRE makes application for the

1 restricted license and pays to the Department of Real Estate the
2 appropriate fee therefor.

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

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

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

19 3. Respondent shall not be eligible to apply for the
20 issuance of an unrestricted real estate license nor for the
21 removal of any of the conditions, limitations or restrictions of
22 a restricted license until two (2) years have elapsed from the
23 effective date of this Decision.

24 4. Pursuant to Section 10148 of the Business and
25 Professions Code, Respondent shall pay the Commissioner's
26 reasonable cost for: a) the audit which led to this
27 disciplinary action; and b) a subsequent audit to determine of

1 Respondent has corrected the trust fund violations found in
2 Paragraphs 14 through 17, inclusive, of the "Legal Conclusions"
3 in the Proposed Decision. In calculating the amount of the
4 Commissioner's reasonable cost, the Commissioner may use the
5 estimated average hourly salary for all persons performing
6 audits of real estate brokers, and shall include an allocation
7 for travel time to and from the auditor's place of work.
8 Respondent shall pay such cost within sixty (60) days of
9 receiving an invoice from the Commissioner detailing the
10 activities performed during the audit and the amount of time
11 spent performing those activities. The Commissioner may suspend
12 the restricted license issued to Respondent pending a hearing
13 held in accordance with Section 11500, et seq., of the
14 Government Code, if payment is not timely made as provided for
15 herein, or as provided for in a subsequent agreement between the
16 Respondent and the Commissioner. The suspension shall remain in
17 effect until payment is made in full or until Respondent enters
18 into an agreement satisfactory to the Commissioner to provide
19 for payment, or until a decision providing otherwise is adopted
20 following a hearing held pursuant to this condition.

21 5. Respondent shall, within nine (9) months from the
22 effective date of the Decision, present evidence satisfactory to
23 the Real Estate Commissioner that Respondent has, since the most
24 recent issuance of an original or renewal real estate license,
25 taken and successfully completed the continuing education
26 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
27 for renewal of a real estate license. If Respondent fails to

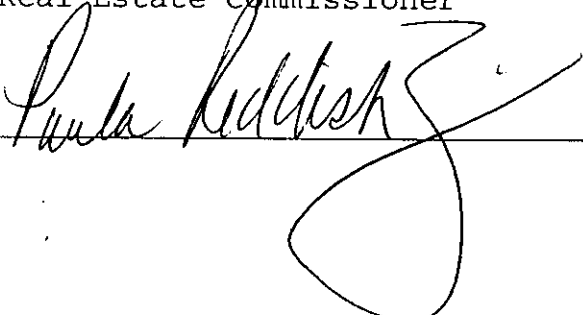
1 satisfy this condition, the Commissioner may order the
2 suspension of the restricted license until the Respondent
3 presents such evidence. The Commissioner shall afford
4 Respondent the opportunity for a hearing pursuant to the
5 Administrative Procedure Act to present such evidence.

6 6. Respondent shall, within six (6) months from the
7 issuance of the restricted license, take and pass the
8 Professional Responsibility Examination administered by the
9 Department, including the payment of the appropriate examination
10 fee. If Respondent fails to satisfy this condition, the
11 Commissioner may order the suspension of the restricted license
12 until Respondent passes the examination.

13 This Decision shall become effective at 12 o'clock
14 noon on SEPTEMBER 26, 2001.

15 IT IS SO ORDERED August 21, 2001.

16 PAULA REDDISH ZINNEMANN
17 Real Estate Commissioner

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DEPARTMENT OF REAL ESTATE

By *Laurie J. [Signature]*

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
MANUEL RIOS AGUIRRE,)	No. H-2586 SD
)	
Respondent.)	L-2000120081
)	

NOTICE

TO: Respondent MANUEL RIOS AGUIRRE.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated March 19, 2001, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated, March 19, 2001, is attached for your information.

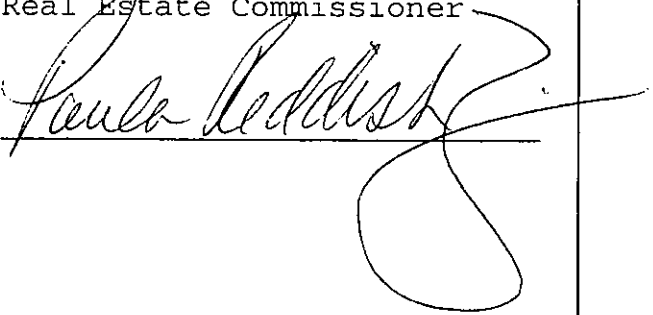
In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on March 15, 2001, and any written argument hereafter submitted on behalf of Respondent and Complainant.

1 Written argument of Respondent to be considered by me
2 must be submitted within 15 days after receipt of the transcript
3 of the proceedings of March 15, 2001, at the Sacramento office of
4 the Department of Real Estate unless an extension of the time is
5 granted for good cause shown.

6 Written argument of Complainant to be considered by me
7 must be submitted within 15 days after receipt of the argument of
8 Respondent at the Sacramento office of the Department of Real
9 Estate unless an extension of the time is granted for good cause
10 shown.

11 DATED: May 21, 2001

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13 PAULA REDDISH ZINNEMANN
14 Real Estate Commissioner

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**BEFORE THE REAL ESTATE COMMISSIONER
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Accusation of:

MANUEL RIOS AGUIRRE,

Respondent.

DRE No. H-2586-SD

OAH Case No. L-2000120081

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on March 15, 2001, in San Diego, California.

James L. Beaver, Counsel, Department of Real Estate, represented complainant J. Chris Graves, Deputy Real Estate Commissioner, Department of Real Estate, State of California.

Manuel Rios Aguirre represented himself and was assisted throughout the administrative hearing by Keith Loughran of Real Estate Compliance Solutions.

The matter was submitted on March 15, 2001.

FACTUAL FINDINGS

Real Estate License History

1. On October 23, 1973, the Department of Real Estate (the Department) issued Real Estate Salesperson License No. 00465082 to Manuel Rios Aguirre (Aguirre or respondent). Aguirre remained a licensed real estate salesperson until he became licensed as a real estate broker on July 12, 1976.

There is no history of any administrative discipline having been imposed against respondent's real estate salesperson license.

2. On July 12, 1976, the Department issued Real Estate Broker License No. 00465082 to Aguirre. Aguirre's real estate broker license is active and expires on July 7, 2002, unless suspended or revoked.

3. On February 19, 1981, the Department authorized Aguirre to do business under the fictitious business name of International Real Estate Network/ARA Investment & Management. The license issued in that name was cancelled on November 12, 1986, when the Department issued Aguirre a license authorizing him to do business under the fictitious business name of International Realty Services ARA Investment Management. The license authorizing the use of that fictitious business name was cancelled on June 12, 1996.

On April 7, 2000, the Department issued Aguirre a license authorizing him to do business under the fictitious business name of International Real Estate Services. It remains in effect.

Previous Administrative Discipline

4. On March 24, 1988, the Real Estate Commissioner revoked Aguirre's real estate broker license in Case No. H-1448-SD, but granted Aguirre the right to the issuance of a restricted real estate broker license subject to terms, conditions and restrictions in accordance with Business and Professions Code sections 10156.6 and 10156.7.

Case No. H-1448-SD involved, among other matters, the theft of earnest money deposits by a salesperson named Ramiro Guerrero (Guerrero), who held a restricted real estate salesperson license by reason of his prior convictions of crimes involving moral turpitude. When Aguirre became Guerrero's employing broker, Aguirre agreed to exercise close supervision over Guerrero's activities.

In Case No. H-1448-SD, it was specifically found that:

"Respondent Aguirre failed to exercise reasonable supervision over the activities of respondent Guerrero in that he failed to deposit the initial \$12,000 cashier's check that respondent Guerrero received from the Buyer...Moreover, respondent Aguirre failed to either personally convey the counter-offer made by the seller...or to assure himself that respondent Guerrero conveyed said counter-offer to the Buyer. As the result of the acts and conduct of respondent Guerrero and the failure of respondent Aguirre to act as required of him as the employing broker, the Buyer believed that he was in escrow for the purchase of the property and was not told otherwise until he made inquiries several months later, well after respondent Guerrero converted the \$22,000 to his own use and benefit."

It was specifically found that:

“...respondent Aguirre failed to keep a record of said earnest money deposits as trust funds received by him as required by Section 2831, Title 10, California Administrative Code.”

On April 30, 1990, the Department granted Aguirre’s petition for the reinstatement of an unrestricted real estate broker license.

There is no other history of any administrative discipline having been imposed against respondent’s real estate broker license.

Jurisdictional Matters

5. On October 18, 2000, complainant J. Chris Graves signed the Accusation in his official capacity as a Deputy Real Estate Commissioner. On October 30, 2000, the Accusation and other required jurisdictional documents were served on Aguirre by mail.

On November 13, 2000, Aguirre timely filed a Notice of Defense.

On December 27, 2000, a Notice of Hearing was served on Aguirre by mail, notifying respondent that an administrative hearing was set for February 1, 2001.

By letter dated January 26, 2001, Aguirre requested a continuance of the administrative hearing as a result of his asserted inability to speak with his retained counsel. Aguirre represented that he needed a continuance “to locate my attorney or hire a new one.”

Respondent’s request for a continuance was granted.

On January 29, 2001, a First Amended Notice of Hearing was served on Aguirre by mail, notifying respondent that the administrative hearing was set for March 15, 2001.

By letter dated March 9, 2001, respondent requested another continuance due to the withdrawal his retained attorney, the same attorney that respondent previously claimed he was unable to speak with. Complainant opposed the request for a continuance.

On March 12, 2001, Presiding Administrative Law Judge Stephen E. Hjelt denied respondent’s request for a continuance without prejudice.

On March 15, 2001, the record in the administrative hearing was opened. Respondent renewed his motion for a continuance on the grounds that he was unable to proceed in the absence of counsel. Complainant opposed respondent’s motion for a

continuance. Good cause to grant a continuance was not established. Over objection, Keith Loughran, a principal with Real Estate Compliance Solutions and a former employee of the Department of Real Estate, was permitted to act as Aguirre's representative throughout the administrative proceeding.

Jurisdictional documents were presented. Official notice was taken. Evidentiary stipulations were recited. Opening statements were waived and sworn testimony and documentary evidence was received. Closing arguments were given, the record was closed and the matter was submitted.

Aguirre's Real Estate Operations

6. At all times pertinent to the Accusation, Aguirre engaged in the management of approximately 45 residential rental properties in and about Chula Vista, San Diego County, and in the sale of real property. Aguirre had approximately ten real estate licensees working under his broker license.

Aguirre usually charged 6%-10% of the collected rents or a flat rate of \$60-\$90 per rental property per month for property management services. Aguirre deposited approximately \$625,000 in annual rents into a trust account he maintained for rents and security deposits. Aguirre's activities in the property management field required him to hold a real estate broker license under Business and Professions Code section 10131(b).

Aguirre and his staff negotiated about a half dozen real property resale transactions per month. Aguirre did not perform escrow on closed sales transactions. Earnest deposits, regardless of the amounts, were recorded in a log entitled "Record of Trust Funds Received – Not Placed in Brokers Trust Account." The earnest money deposits were either forwarded to a title company or to a neutral escrow. Aguirre's real estate sales activities required him to hold a real estate broker license under Business and Professions Code section 10131(a).

The Management of a Trust Fund Account

7. As a licensed real estate broker, Aguirre was required to deposit trust funds into a trust fund account bearing his name as trustee or into a trust account bearing a fictitious name authorized by the Department. He was required to keep a chronological columnar record of all trust funds he received and disbursed. He was required to keep a separate record for each beneficiary or transaction (accounting for all funds deposited into the trust fund account and containing all of the required specific information). At least once a month, he was required to reconcile the balance

of all separate beneficiary or transactions records with the records of all trust funds received into and disbursed from the trust fund account.¹

As onerous and time-consuming as these requirements might appear to some real estate brokers, the statute and regulations governing the maintenance of a trust fund accounts ultimately protect both the public and the broker.

The Retention of Records

8. As a licensed real estate broker, Aguirre was required to retain copies of all canceled checks and other trust records related to transactions for which a real estate broker license was required for three years. He was obligated to make those documents available for inspection and copying by a designated representative of the Real Estate Commissioner on reasonable request.²

The Department's Audit

9. Edilberto Bobby Datan (Datan) has worked as an Auditor with the Department of Real Estate for the past fifteen years. He typically examines the books and records of real estate licensees to determine if the licensees are in compliance with the statutes and regulations governing trust fund accounts, escrow accounts and related accounts. Datan performs about five audits per month.

Datan examined Aguirre's books and records for the period from January 1, 1999, through January 31, 2000. Datan's audit was performed intermittently from January 24, 2000, through April 11, 2000, at his offices in San Diego.

Datan reviewed respondent's bank signature cards, cash receipts and cash disbursements records, separate records, bank statements, deposit slips/bank memos, bank reconciliations, trust account reconciliations, property lists and files, resale transaction files, general account records, and other documents related to respondent's real estate activities. In addition, Datan spoke with Aguirre on several occasions.

10. Datan determined, and Aguirre did not dispute, that during the audit period, Aguirre conducted his business under the unlicensed fictitious business names "International Real Estate Services," "International R.E. Services" and "International Realty Services."

¹ See, Business and Professions Code section 10145 and Title 10, California Code of Regulations, section 2831 et seq.

² See, Business and Professions Code section 10148(a).

When Datan brought this matter to Aguirre's attention, Aguirre immediately obtained a license from the Department to do business under the fictitious business name of "International Real Estate Services."

It was not established that any misunderstandings or actual harm resulted from Aguirre's unauthorized use of the aforementioned fictitious business names, although it evidenced a certain lack of attention to detail in the operation of his brokerage.

11. Aguirre failed to provide Datan with the original license certificates of two salespersons, Esther Garcia and Luis Nieto-Ortega. He did provide Datan with copies of their certificates.

When Aguirre hired Esther Garcia, he asked her for her original certificate and was told that it was in the possession of her previous employer, Century 21. Aguirre telephoned Century 21 in an effort to obtain the original certificate, but it was never forwarded to him. Aguirre did not follow up.

When Aguirre hired Luis Nieto-Ortega, he was given a copy of Nieto-Ortega's certificate. Aguirre was told that the original was misplaced. Aguirre did not request the issuance of a duplicate original.

When Datan brought these matters to Aguirre's attention, Aguirre ordered duplicate original salesperson certificates from the Department. It was not established that any actual harm resulted from Aguirre's failure to obtain original license certificates from Garcia and Nieto-Ortega after he hired them, but it evidenced a certain lack of attention to detail in the operation of his brokerage.

12. Aguirre failed to notify the Department that he reemployed salesperson Agustin Del Toro on October 15, 1999. Del Toro had worked off and on for Aguirre for approximately ten years and, according to Aguirre, he "just missed notifying the Department" when he reemployed Del Toro in October 1999.

It was not established that any actual harm resulted from Aguirre's failure to inform the Department of his reemployment of Del Toro in October 1999, although the potential for harm was certainly there. Again, Aguirre's failure to notify the Department of his employment of Del Toro in October 1999 demonstrated a certain lack of attention to detail.

13. Aguirre had a fiduciary relationship with his customers. He held and disbursed trust collected rents and security deposits through a trust fund account he maintained at the Chula Vista branch of the Union Bank. The trust fund account was

identified as the "International Realty Services Realty Trust Fund" (the "trust fund account").³

14. The trust fund account Aguirre maintained was not in his name as trustee or in a fictitious business name authorized by the Department.

15. Rents and security deposits received by Aguirre were not always deposited into the trust fund account within three business days of receipt.

16. Aguirre did not maintain any control record (a document setting forth all funds received and disbursed) for the trust fund account.

17. The separate records maintained for each beneficiary or transaction for the trust fund account did not always contain accurate dates of deposits or the check numbers for all disbursements.

18. Aguirre did not reconcile the trust fund account with corresponding separate records on a monthly basis. When Datan brought this matter to Aguirre's attention, Aguirre replied, "I'll do it from now on."

19. Aguirre could not produce original voided checks, although he did provide copies of those checks. Aguirre believed that some those voided checks were "lost in the mail" and that was the reason that the checks were voided and that was the reason he could not produce them.

20. Jose Venegas (Venegas) was one of respondent's salesmen. Venegas made an offer on behalf of a buyer to purchase real property known as 813 Cardamon Court.

The buyer gave Venegas a \$5,000 check payable to "International Real Estate." Aguirre was required to deposit the check with the escrow holder within three days after acceptance of the offer to purchase, which was on November 1, 1999. Sometime thereafter, the buyer told Venegas she wanted to cancel the transaction.

³ Aguirre had the obligation to manage and maintain the trust fund account in accordance with Business and Professions Code section 10145 and in accordance with Title 10, California Code of Regulations, section 2830 et seq.

Aguirre's "Record of All Trust Funds received – Not Deposited in Broker's Trust Account" showed the \$5,000 deposit was received on October 29, 1999, and that it was returned to the buyer on November 5, 1999.

There was no record to establish that the \$5,000 deposit was forwarded to the escrow holder within three days after acceptance.

Ultimately, escrow instructions were signed by the buyer and seller in which the parties acknowledged that no funds were deposited into escrow and in which the broker and escrow holder were released from any further liability as a result of the cancellation of escrow.

Matters in Aggravation and Mitigation

21. Aguirre had no persuasive justification or explanation for his failure to maintain required trust fund records.

Aguirre claimed that he intended to keep chronological columnar records, but that his computer was not working. He admitted that it had not worked for three years. Aguirre made the same claim with regard to his failure to make a monthly reconciliation. Had Aguirre not been able to use his computer to access the local Multiple Listing Service, the computer glitch would have been taken care of almost immediately.

Aguirre's failure to list the number of the check containing amounts he paid to himself for property management services on each separate transaction file (he combined the fees for such services into one or more checks drawn on the trust fund account) appeared to be the result of an honest misunderstanding about what the regulations required.

Aguirre claimed he did not need a control record to maintain his trust fund account because he was able to reconstruct matters from individual files.

22. There was no shortage in the trust fund account.

23. Aguirre does not appear to be particularly appreciative of the many good reasons the Department's insists that a broker maintain accurate, detailed and current trust fund account records.

24. After Datan's audit, Aguirre hired Keith Loughran, a former Department of Real Estate auditor, to ensure that Aguirre's records complied with statutory and regulatory law.

25. Datan estimated that he conducts about 60 audits per year and that he finds violations of the Real Estate Law and the Commissioner's Regulations in each and every audit – usually involving the management of trust fund accounts. It is not common to find that a real estate broker fails to maintain control records, but it is not an infrequent occurrence either.

26. No consumer suffered actual injury as a result of Aguirre's violations of the statutory and regulatory law. There was, however, a risk of injury that could have been reduced had Aguirre complied with the laws.

27. There was no evidence that Aguirre intended to violate the laws or that Aguirre engaged in any fraud or dishonest dealing. He did not falsify any records and he did not misrepresent any factual matter in the course of the Department's audit. Aguirre was cooperative in connection with the Department's audit and he provided Datan with all of the records he had.

28. Aguirre's prior disciplinary record is of concern, but the events giving rise to that discipline action occurred almost two decades ago and they were somewhat different in nature than the violations disclosed in the most recent audit.

The Appropriate Measure of Discipline

29 Two disciplinary options are clearly inappropriate – the first would be the dismissal of the Accusation on the basis that Aguirre's violations are so technical and trivial that they do not merit formal discipline, and the second would be the outright revocation of Aguirre's real estate broker license based on the rather typical violations found in the course of Datan's audit.

The remaining options include the suspension of Aguirre's broker license (with part or all of the suspension stayed) or the revocation of Aguirre's broker license with the right to the issuance of a restricted real estate broker license subject to terms, conditions and restrictions in accordance with Business and Professions Code sections 10156.6 and 10156.7.

The order of suspension is the less drastic of the two sanctions, and in light of Aguirre's efforts to bring his operations into compliance with the rules and

regulations governing the real estate profession and the lack of consumer harm, it appears to be the better option.

This option is not, as counsel for complainant suggested, a “slap on the wrist.” Aguirre will be required to pay for Datan’s audit and he will be required to pay for an audit of his business which will probably be performed within the next year. Should Aguirre fail to comply with the Real Estate Law and the Commissioner’s Regulations, his license will be suspended for six months, which will effectively put Aguirre out of business.

LEGAL CONCLUSIONS

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. “Clear and convincing evidence” is 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.

Trust Fund Account Legislation

2. Business and Professions Code section 10145 mandates that trust fund accounts be maintained by licensed real estate brokers in specific situations.

Business and Professions Code section 10145 (a)(1) provides:

“A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained by the broker in a bank or recognized depository in this state. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the person entitled to the funds.”

Business and Professions Code section 10145(g) provides:

“The broker shall maintain a separate record of the receipt and disposition of all funds described in subdivisions (a) and (b), including any interest earned on the funds.”

Trust Fund Account Regulations

3. The Commissioner of Real Estate enacted regulations which licensed brokers must follow in the maintenance of trust fund accounts required by Business and Professions Code section 10145.

4. Title 10, California Code of Regulations, section 2831 provides in pertinent part:

“(a) Every broker shall keep a record of all trust funds received, including uncashed checks held pursuant to instructions of his or her principal. This record, including records maintained under an automated data processing system, shall set forth in chronological sequence the following information in columnar form:

- (1) Date trust funds received.
- (2) From whom trust funds received.
- (3) Amount received.
- (4) With respect to funds deposited in an account, date of said deposit.
- (5) With respect to trust funds previously deposited to an account, check number and date of related disbursement.
- (6) With respect to trust funds not deposited in an account, identity of other depository and date funds were forwarded.
- (7) Daily balance of said account.

(b) For each bank account which contains trust funds, a record of all trust funds received and disbursed shall be maintained in accordance with subdivision (a) or (c).

(c) Maintenance of journals of account cash receipts and disbursements, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles, shall constitute compliance with subdivision (a) provided that such journals, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2.

(d) Nothing in this section shall be construed to permit a violation of Section 10145 of the Code.

(e) A broker is not required to keep records pursuant to this section of checks which are written by a principal, given to the broker and made payable to third parties for the provision of services, including but not limited to escrow, credit and appraisal services, when the total amount of such checks for any transaction from that principal does not exceed \$1,000. Upon request of the Department or the maker of such checks, a broker shall account for the receipt and distribution of such checks. A broker shall retain for three years copies of receipts issued or obtained in connection with the receipt and distribution of such checks.”

5. Title 10, California Code of Regulations, section 2831.1 provides:

“(a) A broker shall keep a separate record for each beneficiary or transaction, accounting for all funds which have been deposited to the broker's trust bank account and interest, if any, earned on the funds on deposit. This record shall include information sufficient to identify the transaction and the parties to the transaction. Each record shall set forth in chronological sequence the following information in columnar form:

- (1) Date of deposit.
- (2) Amount of deposit.
- (3) Date of each related disbursement.
- (4) Check number of each related disbursement.
- (5) Amount of each related disbursement.
- (6) If applicable, dates and amounts of interest earned and credited to the account.
- (7) Balance after posting transactions on any date.

(b) Maintenance of trust ledgers of separate beneficiaries or transactions, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles will constitute compliance with subdivision (a), provided that such ledgers, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2.”

6. Title 10, California Code of Regulations, section 2831.2 provides:

“The balance of all separate beneficiary or transaction records maintained

pursuant to the provisions of Section 2831.1 must be reconciled with the record of all trust funds received and disbursed required by Section 2831, at least once a month, except in those months when the bank account did not have any activities. A record of the reconciliation must be maintained, and it must identify the bank account name and number, the date of the reconciliation, the account number or name of the principals or beneficiaries or transactions, and the trust fund liabilities of the broker to each of the principals, beneficiaries or transactions.”

7. Title 10, California Code of Regulations, section 2832(a) provides:

“Compliance with Section 10145 of the Code requires that the broker place funds accepted on behalf of another into the hands of the owner of the funds, into a neutral escrow depository or into a trust fund account in the name of the broker, or in a fictitious name if the broker is the holder of a license bearing such fictitious name, as trustee at a bank or other financial institution not later than three business days following receipt of the funds by the broker or by the broker's salesperson.”

The Disciplinary and Regulatory Statutes

8. Business and Professions Code Section 10177 provides in pertinent part:

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

....

(d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.”⁴

9. Business and Professions Code section 10148(a) provides:

⁴ The term "willfully" as used in Business and Professions Code section 10177(d) does not require any intent to violate the law, only the intent to engage in act or conduct prohibited by statute. See, *Milner v. Fox* (1980) 102 Cal.App.3d 567.

“(a) A licensed real estate broker shall retain for three years copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed by him or her or obtained by him or her in connection with any transactions for which a real estate broker license is required. The retention period shall run from the date of the closing of the transaction or from the date of the listing if the transaction is not consummated. After notice, the books, accounts, and records shall be made available for examination, inspection, and copying by the commissioner or his or her designated representative during regular business hours; and shall, upon the appearance of sufficient cause, be subject to audit without further notice, except that the audit shall not be harassing in nature.”

10. Business and Professions Code section 10159.5 provides:

“Every person applying for a license under this chapter who desires to have such license issued under a fictitious business name shall file with his application a certified copy of his fictitious business name statement filed with the county clerk pursuant to Chapter 5 (commencing with Section 17900) of Part 3 of Division 7.”

11. Business and Professions Code section 10160 provides:

“The real estate salesman’s license shall remain in the possession of the licensed real estate broker employer until canceled or until the salesman leaves the employ of the broker, and the broker shall make his license and the licenses of his salesman available for inspection by the commissioner or his designated representative.”

12. Business and Professions Code section 10161.8(a) provides:

“Whenever a real estate salesman enters the employ of a real estate broker, the broker shall immediately notify the commissioner thereof in writing.”

13. Business and Professions Code section 10165 provides:

“For a violation of any of the provisions of Section 10160, 10161.8, 10162, or 10163, the commissioner may temporarily suspend or permanently revoke the license of the real estate licensee in accordance with the provisions of this part relating to hearings.”

Cause Exists to Impose License Discipline

14. Cause exists under Business and Professions Code sections 10145 and 10177(d) to impose discipline against Aguirre's real estate broker license for his failure to keep sequential chronological columnar records of all trust funds received and disbursed as required by Title 10, California Code of Regulations, section 2831.

This conclusion is based on Legal Conclusions 1-4 and 8 and on Factual Findings 2, 6, 7, 9, 13 and 16.

15. Cause exists under Business and Professions Code sections 10145 and 10177(d) to impose discipline against Aguirre's real estate broker license for his failure to keep a separate record for each beneficiary or transaction, accounting therein for all funds deposited into the trust fund account and containing all information required by Title 10, California Code of Regulations, section 2831.1.

This conclusion is based on Legal Conclusions 1-3, 5 and 8 and on Factual Findings 2, 6, 7, 9, 13 and 17.

16. Cause exists under Business and Professions Code sections 10145 and 10177(d) to impose discipline against Aguirre's real estate broker license for his failure to reconcile the balance of all separate beneficiary/transaction records with the record of all trust funds received into and disbursed from the trust fund account at least once a month as required by Title 10, California Code of Regulations, section 2831.2.

This conclusion is based on Legal Conclusions 1-3, 6 and 8 and on Factual Findings 2, 6, 7, 9, 13 and 18.

17. Cause exists under Business and Professions Code sections 10145 and 10177(d), to impose discipline against Aguirre's real estate broker license for his failure to place entrusted funds into a neutral escrow depository or into a trust fund account in which Aguirre was named as trustee within three business days of receiving such funds as required Title 10, California Code of Regulations, section 2832(a).

This conclusion is based on Legal Conclusions 1-3, 7 and on Factual Findings 2, 6, 7, 9, 13-15 and 20.

18. Cause does not exist under Business and Professions Code sections 10148 and 10177(d) to impose discipline against Aguirre's real estate broker license

for his failure to deliver original voided checks to Datan upon request that he do so. The evidence was not clear and convincing that Aguirre had those documents and, in any event, he did provide Datan with correct copies thereof.

This conclusion is based on Legal Conclusions 1, 8 and 9 and on Factual Finding 19.

19. Cause exists under Business and Professions Code sections 10159.5 and 10177(d) to impose discipline against Aguirre's real estate broker license in that Aguirre used the fictitious business names "International Real Estate Services," "International Realty Services," "International R.E. Services," and "International Real Estate" without first obtaining authority from the Department to do so as required by Title 10, California Code of Regulations, section 2731(a).

This conclusion is based on Legal Conclusions 1, 8 and 10 and on Factual Findings 2, 3, 6, 9 and 10.

20. Cause exists under Business and Professions Code sections 10160, 10165 and 10177(d) to impose discipline against Aguirre's real estate broker license in that Aguirre failed to obtain and retain possession of original real estate salesperson certificates issued to two of his salespersons.

This conclusion is based on Legal Conclusions 1, 8, 11 and 13 and on Factual Findings 2, 6, and 11.

21. Cause exists under Business and Professions Code sections 10161.8(a), 10165 and 10177(d) to impose discipline against Aguirre's real estate broker license in that Aguirre failed to notify the Department in writing of his employment of real estate salesperson Agustin Del Toro.

This conclusion is based on Legal Conclusions 1, 8, 12 and 13 and on Factual Findings 2, 6 and 12.

ORDER

All licenses and licensing rights of respondent Manuel Rios Aguirre under the Real Estate Law are suspended for a period of one hundred eighty (180) days from the effective date of this Decision; provided, however, that all of the suspension shall be stayed for three (3) years upon the following terms and conditions:

NOT ADMITTED

1. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California.

2. If a determination is made after a hearing or upon stipulation that cause for disciplinary action occurred within three (3) years of the effective date of this Decision, the Commissioner may, in his or her discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. If no such determination is made, then the stay imposed herein shall become permanent.

3. Under Business and Professions Code section 10148, respondent shall pay the Commissioner's reasonable cost for an audit to determine if respondent has corrected the trust fund violations found in paragraphs 14 through 17 of the Legal Conclusions.

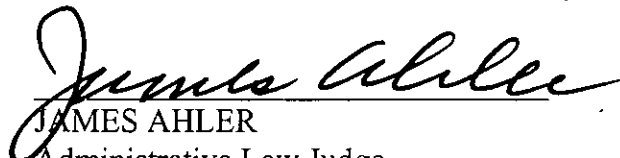
In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary of all persons performing audits of real estate brokers, and shall include an allocation for travel costs, including mileage, time to and from the auditor's place of work and per diem.

Respondent shall pay such reasonable cost within 45 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities.

The Commissioner may, in his or her discretion, vacate and set aside the stay order, if payment of reasonable costs is not timely made as provided for herein, or as may be provided for in a subsequent agreement between respondent and the Commissioner. The vacation and the set aside of the stay shall remain in effect until payment is made in full, or until respondent enters into an agreement satisfactory to the Commissioner to provide for payment.

If no order vacating the stay is issued, either in accordance with this condition or in accordance with condition 2, then the stay imposed herein shall become permanent.

Dated: March 19, 2001


JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings

NOT ADDED

FILED

JAN 29 2001

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Laurie A. Zin

In the Matter of the Accusation of

MANUEL RIOS AGUIRRE,

}

Case No. H-2586 SD

OAH No. L-2000120081

Respondent

FIRST AMENDED
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, CA 92101 on THURSDAY, MARCH 15, 2001, 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 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: January 29, 2001

DEPARTMENT OF REAL ESTATE
By J. L. Beaver
JAMES L. BEAVER Counsel

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

DEC 27 2000

DEPARTMENT OF REAL ESTATE

Laurel J. Jan

In the Matter of the Accusation of
MANUEL RIOS AGUIRRE,

Case No. H-2586 SD

OAH No. L-2000120081

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, CA 92101

on Thursday, February 1, 2001, at the hour of 9:00 AM,
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: December 27, 2000

DEPARTMENT OF REAL ESTATE

By *J. L. Beaver*
JAMES L. BEAVER Counsel

1 JAMES L. BEAVER, Counsel (SBN 60543)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789
6 -or- (916) 227-0788 (Direct)

FILED
OCT 30 2000

DEPARTMENT OF REAL ESTATE

By *Laurie J. Jari*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	No. H-2586 SD
12 MANUEL RIOS AGUIRRE,)	<u>ACCUSATION</u>
13 Respondent.)	
14)	

15 The Complainant, J. Chris Graves, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against MANUEL RIOS AGUIRRE (hereinafter "Respondent"), is
18 informed and alleges as follows:

19 I

20 The Complainant, J. Chris Graves, a Deputy Real Estate
21 Commissioner of the State of California, makes this Accusation in
22 his official capacity.

23 II

24 At all times herein mentioned, Respondent was and now
25 is licensed and/or has license rights under the Real Estate Law
26 (Part 1 of Division 4 of the Business and Professions Code)
27 (hereinafter "the Code") as a real estate broker.

1 III

2 At all times herein mentioned, Respondent engaged in
3 the business of, acted in the capacity of, advertised, or assumed
4 to act as a real estate broker within the State of California
5 within the meaning of Sections 10131(a) and 10131(b) of the Code,
6 including:

7 (a) The operation and conduct of a real estate resale
8 brokerage with the public wherein, on behalf of others, for
9 compensation or in expectation of compensation, Respondent sold
10 and offered to sell, bought and offered to buy, solicited
11 prospective sellers and purchases of, solicited and obtained
12 listings of, and negotiated the purchase and sale of real
13 property; and

14 (b) The operation and conduct of a property management
15 business with the public wherein, on behalf of others, for
16 compensation or in expectation of compensation, Respondent leased
17 or rented and offered to lease or rent, and placed for rent, and
18 solicited listings of places for rent, and solicited for
19 prospective tenants of real property or improvements thereon, and
20 collected rents from real property or improvements thereon.

21 IV

22 In so acting as a real estate broker, as described in
23 Paragraph III above, Respondent accepted or received funds in
24 trust (hereinafter "trust funds") from or on behalf of sellers,
25 buyers, owners, tenants and others in connection with the resale
26 brokerage and property management activities described in

27 ///

1 Paragraph III, above, and thereafter from time to time made
2 disbursements of said funds.

3 V

4 Some but not necessarily all of said trust funds
5 accepted or received by Respondent were deposited or caused to be
6 deposited by Respondent into one or more bank accounts
7 (hereinafter "trust fund accounts") maintained by Respondent for
8 the handling of trust funds, including but not necessarily
9 limited to the "International Realty Services Realty Trust Fund"
10 account, Account Number 0401212667, maintained by Respondent at
11 the Chula Vista, California, branch of Union Bank (hereinafter
12 "T/A #1").

13 VI

14 Between on or about January 1, 1999 and January 31,
15 2000, in connection with the collection and disbursement of said
16 trust funds, Respondent:

17 (a) Failed to keep a columnar record in chronological
18 sequence of all trust funds received and disbursed from T/A #1 as
19 required by Section 2831 of Title 10, California Code of
20 Regulations (hereinafter "the Regulations");

21 (b) Failed to keep a separate record for each
22 beneficiary or transaction, accounting therein for all funds
23 which have been deposited into T/A #1, containing all information
24 required by Section 2831.1 of the Regulations;

25 ///
26 ///
27 ///

1 (c) Failed to reconcile, at least once a month, the
2 balance of all separate beneficiary or transaction records with
3 the record of all trust funds received into and disbursed from
4 T/A #1;

5 (d) Failed to place trust funds entrusted to
6 Respondent into the hands of a principal on whose behalf the
7 funds were received, into a neutral escrow depository, or into a
8 trust fund account in the name of Respondent as trustee at a bank
9 or other financial institution, in conformance with the
10 requirements of Section 10145 of the Code and Section 2832(a) of
11 the Regulations, in that Respondent placed such funds in T/A #1,
12 an account that was not in the name of Respondent as trustee; and

13 (e) Failed to place trust funds entrusted to
14 Respondent into the hands of a principal on whose behalf the
15 funds were received, into a neutral escrow depository, or into a
16 trust fund account within three business days following receipt
17 of the funds, in violation of Section 10145 of the Code and
18 Section 2832(a) of the Regulations.

19 VII

20 Between on or about January 1, 1999 and on or about
21 April 11, 2000, in connection with the collection and
22 disbursement of said trust funds, Respondent:

23 (a) Failed to retain for three years copies of
24 canceled checks and other trust records executed or obtained by
25 Respondent in connection with transactions for which a real
26 estate broker license is required; and/or

27 ///

1 (b) Failed after notice to make such canceled checks
2 and other trust records available for examination, inspection and
3 copying by the designated representative of the Real Estate
4 Commissioner.

5 VIII

6 Between on or about January 1, 1999 and January 31,
7 2000, in course of the property management and real estate resale
8 brokerage business described in Paragraph III, above, Respondent:

9 (a) Used the fictitious business names "International
10 Real Estate Services", "International Realty Services",
11 International R.E. Services", and "International Real Estate"
12 without obtaining a license bearing any such fictitious name, in
13 violation of Section 2731(a) of the Regulations in conjunction
14 with Section 10159.5 of the Code;

15 (b) Failed to retain possession of the real estate
16 licenses of two real estate salespersons, Esther Garcia and Luis
17 Nieto-Ortega, during the period such salespersons were employed
18 by Respondent, in violation of Section 10160 of the Code; and

19 (c) Failed to immediately notify the Real Estate
20 Commissioner in writing when a real estate salesperson, Augustin
21 Del Toro, entered the employ of Respondent, in violation of
22 Section 10161.8(a) of the Code.

23 IX

24 The facts alleged above are grounds for the suspension
25 or revocation of the licenses and license rights of Respondent
26 under the following provisions of the Code and/or the
27 Regulations:

1 (a) As to Paragraph VI(a), under Section 2831 of the
2 Regulations in conjunction with Sections 10145 and 10177(d) of
3 the Code;

4 (b) As to Paragraph VI(b), under Section 2831.1 of the
5 Regulations in conjunction with Sections 10145 and 10177(d) of
6 the Code;

7 (c) As to Paragraph VI(c), under Section 2831.2 of the
8 Regulations in conjunction with Sections 10145 and 10177(d) of
9 the Code;

10 (d) As to Paragraphs VI(d) and VI(e), under Section
11 2832(a) of the Regulations in conjunction with Sections 10145 and
12 10177(d) of the Code;

13 (e) As to Paragraph VII, under Section 10148 of the
14 Code in conjunction with Section 10177(d) of the Code;

15 (f) As to Paragraph VIII(a), under Section 2731(a) of
16 the Regulations in conjunction with Sections 10159.5 and 10177(d)
17 of the Code;

18 (g) As to Paragraph VIII(b), under Section 10160 of
19 the Code in conjunction with Sections 10165 and 10177(d) of the
20 Code; and

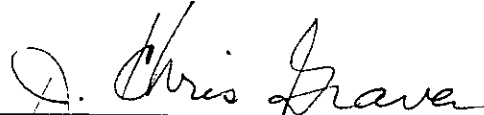
21 (h) As to Paragraph VIII(c), under Section 10161.8(a)
22 of the Code in conjunction with Sections 10165 and 10177(d) of
23 the Code.

24 PRIOR DISCIPLINE

25 Effective March 24, 1988, in Case No. H-1448 SD, the
26 Real Estate Commissioner revoked the real estate broker license
27 of Respondent for violation of Sections 10145, 10176(a),

1 10176(i), 10177(d), 10177(g), and 10177(h) of the Code and
2 Sections 2830, 2831, and 2832 of the Regulations, but granted
3 Respondent the right to the issuance of a restricted real estate
4 broker license, subject to terms, conditions and restrictions
5 pursuant to Sections 10156.6 and 10156.7 of the Code.

6 WHEREFORE, Complainant prays that a hearing be
7 conducted on the allegations of this Accusation and that upon
8 proof thereof, a decision be rendered imposing disciplinary
9 action against all licenses and license rights of Respondent
10 under the Real Estate Law (Part 1 of Division 4 of the Business
11 and Professions Code), and for such other and further relief as
12 may be proper under other provisions of law.

13
14 
15

 J. CHRIS GRAVES
16 Deputy Real Estate Commissioner

16 Dated at San Diego, California,
17 this 18th day of October, 2000.

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