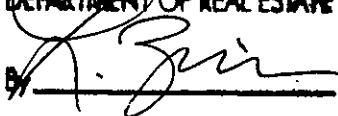


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FILED

MAR 11 2011

DEPARTMENT OF REAL ESTATE  


BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\*\*\*

In the Matter of the Accusation of  
  
ARACELI S. BANIQUED,  
  
Respondent.

No. H-2933 SAC

ORDER DENYING REINSTATEMENT OF BROKER LICENSE  
BUT GRANTING RIGHT TO A RESTRICTED BROKER LICENSE

On November 20, 1995, in Case No. H-2933 SAC, a Stipulation and Decision After Remand was rendered revoking the real estate broker license of Respondent effective December 26, 1995, but granting Respondent the right to the issuance of a restricted salesperson license. A restricted real estate salesperson license was issued to Respondent on December 26, 1995, and Respondent has operated as a restricted licensee since that time.

On November 10, 2010, Respondent petitioned for reinstatement of said real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

The burden of proving rehabilitation rests with the petitioner (*Feinstein v. State Bar* (1952) 39 Cal. 2d 541). A petitioner is required to show greater proof of honesty and

1 integrity than an applicant for first time licensure. The proof must be sufficient to overcome the  
2 prior adverse judgment on the applicant's character (*Tardiff v. State Bar* (1980) 27 Cal. 3d 395).

3 I have considered Respondent's petition and the evidence and arguments in  
4 support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has  
5 undergone sufficient rehabilitation to warrant the reinstatement of Respondent's unrestricted real  
6 estate broker license.

7 The Department has developed criteria in Section 2911 of Title 10, California  
8 Code of Regulations (Regulations) to assist in evaluating the rehabilitation of an applicant for  
9 reinstatement of a license. Among the criteria relevant in this proceeding are:

10 Regulation 2911(j) Discharge of, or bona fide efforts toward discharging,  
11 adjudicated debts or monetary obligations to others.

12 Respondent's debts were discharged in Bankruptcy on or about September 21,  
13 2010.

14 Regulation 2911(k) Correction of business practices resulting in injury to others  
15 or with the potential to cause such injury.

16 When questioned in connection with Respondent's prior petition, she did not  
17 explain what she would do differently now in a similar situation which led to her license  
18 revocation.

19 I am satisfied, however, that it will not be against the public interest to issue a  
20 restricted real estate broker license to Respondent.

21 A restricted real estate broker license shall be issued to Respondent pursuant to  
22 Section 10156.5 of the Business and Professions Code, if Respondent satisfies the following  
23 conditions prior to and as a condition of obtaining a restricted real estate broker license within  
24 twelve (12) months from the date of this Order:

25 1. Submits a completed application and pays the fee for a restricted real  
26 estate broker license within the 12 month period following the date of this Order; and

27 ///

1                    2. Submits proof that Respondent has completed the continuing education  
2 requirements for renewal of the license sought. The continuing education courses must be  
3 completed either (i) within the 12 month period preceding the filing of the completed  
4 application, or (ii) within the 12 month period following the date of this Order.

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

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

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

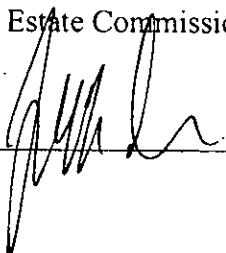
17                    C. Respondent shall not be eligible to apply for the issuance of an  
18 unrestricted real estate license nor the removal of any of the limitations, conditions or restrictions  
19 of a restricted license until two (2) years have elapsed from the date of the issuance of the  
20 restricted license to Respondent.

21                    This Order shall become effective at 12 o'clock noon on

**MAR 11 2011**

22 IT IS SO ORDERED \_\_\_\_\_

23 JEFF DAVI  
24 Real Estate Commissioner

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26 \_\_\_\_\_  
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FILED  
DEC 23 1997

DEPARTMENT OF REAL ESTATE

By Shelley Berg

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )	
ARACELI S. BANIQUED, )	No. H-2933 SAC
Respondent. )	

---

ORDER DENYING REINSTATEMENT OF LICENSE

On November 20, 1995, a Decision After Remand was rendered herein revoking the real estate broker license of Respondent, 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 26, 1995.

On March 24, 1997, Respondent petitioned for reinstatement of said license and the Attorney General of the State of California has been given notice of the filing of said petition.

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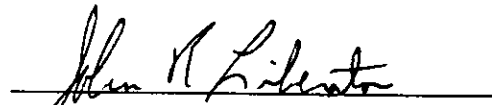
1 On October 20, 1997, an Order Denying Reinstatement of  
2 License was rendered in the above-entitled matter. The Order is  
3 to become effective December 24, 1997.

4 On November 18, 1997, Respondent petitioned for  
5 reconsideration of the Order of October 20, 1997.

6 I have given due consideration to the petition of  
7 Respondent. I find no good cause to reconsider the Order of  
8 October 16, 1997 and reconsideration is hereby denied.

9  
10 IT IS HEREBY ORDERED December 22, 1997.

11 JIM ANTT, JR.  
12 Real Estate Commissioner

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15 BY: John R. Liberator  
16 Chief Deputy Commissioner  
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1 LARRY A. ALAMAO, Counsel  
2 Department of Real Estate  
3 P. O. Box 187000  
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789  
6  
7

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

11 \* \* \*

12 In the Matter of the Accusation of )  
13 )  
14 ARACELI S. BANIQUED, ) NO. H-2933 SAC  
15 ) COMPLAINANT'S RESPONSE  
16 Respondent. ) TO PETITION FOR  
 ) RECONSIDERATION

17 I. PROCEDURAL BACKGROUND

18 As a result of a Decision After Remand on November 20,  
19 1995, the real estate broker license of Respondent was revoked but  
20 Respondent was granted the right to the issuance of a restricted  
21 real estate salesperson license. A restricted real estate  
22 salesperson license was issued to Respondent on December 26, 1995.

23 On March 24, 1997, Respondent filed a Petition for  
24 Reinstatement of her real estate broker license. That petition  
25 was denied on October 20, 1997 on the grounds that Respondent  
26 failed to discharge an \$11,206.08 Judgment in Gagen et al. v.  
27 Baniqued, Contra Costa County Municipal Court, Walnut Creek-



1 Danville Judicial District Case No. 63969. In addition, in  
2 response to a question in the petition application, "Have you ever  
3 been a defendant in any civil court litigation, including small  
4 claims court", Respondent answered "No". Respondent failed to  
5 disclose the judgment.

6 Respondent has petitioned to have the October 20, 1997  
7 denial reconsidered.

8 II. ARGUMENT.

9 Respondent states that she will pay \$7,000 towards the  
10 judgment by December 17, 1997 and will secure a payment plan  
11 payment plan for the balance owed. On December 17, 1997,  
12 Respondent submitted a copy of a cashier's check for \$6,000 and  
13 represented that the judgment creditor would accept \$6,500 by  
14 December 31, 1997 as payment in full. Respondent also states that  
15 her real estate license is the only livelihood for her and her  
16 husband and five children.

17 Reinstatement of a license is not a matter of right.  
18 The burden of proving rehabilitation rests with the petitioner  
19 (Feinstein v. State Bar (1952) 39 Cal. 2d 541). A petitioner is  
20 required to show greater proof of honesty and integrity than an  
21 applicant for first time licensure. The proof must be sufficient  
22 to overcome the prior adverse judgment on the applicant's  
23 character (Tardiff v. State Bar (1980) 27 Cal. 3d 395).

24 Section 2911 of the Regulations of the Real Estate  
25 Commissioner sets forth the criteria for determining whether a  
26 licensee been rehabilitated for purposes of reinstating his  
27 license. Included in the criteria is "(i) Discharge of, or bona



1 fide efforts toward discharging, adjudicated debts or monetary  
2 obligations to others." The issue here is whether Respondent has  
3 made "bona fide" efforts since it is clear that she has not yet  
4 discharged the debt.

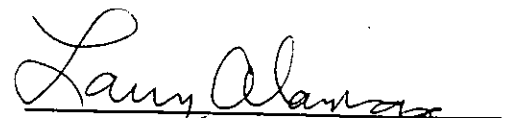
5 Respondent's civil judgment resulted from her failure to  
6 pay her attorney fees in connection with the disciplinary action  
7 in this matter and she still owes over \$6,500 on that debt.  
8 Respondent has made substantial progress in paying her debt.  
9 However, Respondent should not be granted an unrestricted license  
10 until the payment has been made in full because she would no  
11 longer have an incentive to make that payment.

12 III. CONCLUSION

13 Although Respondent's efforts to discharge her debt have  
14 been recent, they do constitute a "bona fide effort toward  
15 discharging ... monetary obligations to others". Respondent still  
16 needs the incentive and control provided by a restricted real  
17 estate broker license to insure that her efforts will continue and  
18 to establish that she is rehabilitated.

19 DATED: December 17, 1997.

20 Respectfully submitted,

21   
22 \_\_\_\_\_  
23 LARRY A. ALAMAO, Counsel  
24 DEPARTMENT OF REAL ESTATE  
25  
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FILED  
NOV 18 1997

DEPARTMENT OF REAL ESTATE

By Shelley Ely

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )  
ARACELI S. BANIQUED, )  
Respondent. )

NO. H-2933 SAC

ORDER STAYING EFFECTIVE DATE

On October 20, 1997, an Order Denying Reinstatement Of License was rendered in the above-entitled matter to become effective November 24, 1997. On November 18, 1997, Respondent petitioned for reconsideration of the Order.

IT IS HEREBY ORDERED that the effective date of the Order of the Commissioner of October 20, 1997, is stayed for a period of thirty (30) days.

The Order of the Commissioner of October 20, 1997, shall become effective at 12 o'clock noon on December 24, 1997.

DATED: 11/18/97

JIM ANTT, JR.  
Real Estate Commissioner

Jm Antt Jr

FILED  
NOV 4 1997

DEPARTMENT OF REAL ESTATE

By Shelly Cly

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BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )  
ARACELI S. BANIQUED, ) NO. H-2933 SAC  
Respondent. )

ORDER DENYING REINSTATEMENT OF LICENSE

On November 20, 1995, a Decision After Remand was rendered herein revoking the real estate broker license of Respondent, 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 26, 1995.

On March 24, 1997, Respondent petitioned for reinstatement of said license and the Attorney General of the State of California has been given notice of the filing of the petition.



1 I have considered Respondent's petition and the evidence  
2 and arguments in support thereof. Respondent has failed to  
3 demonstrate to my satisfaction that Respondent has undergone  
4 sufficient rehabilitation to warrant the reinstatement of  
5 Respondent's real estate broker license, in that Respondent has  
6 failed to discharge the following adjudicated debt:

7 \$11,206.08 Judgment in Gagen et al. v. Baniqued, Contra  
8 Costa County Municipal Court, Walnut Creek-Danville Judicial  
9 District Case No. 63969.

10 Further, in response to a question in the petition  
11 application, "Have you ever been a defendant in any civil court  
12 litigation, including small claims court", Respondent answered  
13 "No". Respondent failed to disclose in her petition the judgment  
14 described above. Respondent's concealment of facts and lack of  
15 candor, demonstrates that Respondent has not changed her attitude  
16 from that which existed at the time the disciplinary action was  
17 taken in this matter.

18 NOW, THEREFORE, IT IS ORDERED that Respondent's petition  
19 for reinstatement of his real estate broker license is denied.

20 This Order shall be effective at 12 o'clock noon on  
21 November 24, 1997.

22 DATED: 10/20, 1997.

23 JIM ANTT, JR.  
24 Real Estate Commissioner

25  
26  
27  




1 DANIEL E. LUNGREN, Attorney General  
of the State of California  
2 PAUL D. GIFFORD, State Bar No. 88440  
Deputy Attorney General  
3 50 Fremont Street, Ste. 300  
San Francisco, CA 94105-2239  
4 Phone No. (510) 286-0583  
FAX No. (510) 286-4020  
5

6 Attorneys for Respondent  
Department of Real Estate

FILED  
DEC - 5 1995  
DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 COUNTY OF CONTRA COSTA  
9

10 ARACELI S. BANIQUED,

11 Plaintiff,

12 v.

13 STATE OF CALIFORNIA, DEPARTMENT  
OF REAL ESTATE and DOES 1-10,

14 Respondents.  
15

No. C94-02991

STIPULATION AND DECISION  
AFTER REMAND

16 On May 6, 1994, the Real Estate Commissioner adopted his Decision in a  
17 Department of Real Estate administrative disciplinary proceeding entitled In the Matter  
18 of the Accusation Against Araceli S. Baniqued, et al., No. H-2933SAC. On or about  
19 July 19, 1994, respondent Araceli S. Baniqued filed a petition for a writ of mandate in  
20 Contra Costa County Superior Court Case No. C94-02991.

21 On May 15, 1995, the Contra Costa County Superior Court filed a  
22 Judgment Granting Peremptory Writ of Mandamus and a Peremptory Writ of  
23 Mandamus. The Contra Costa County Superior Court judgment ordered the  
24 Department of Real Estate to set aside its Decision of May 6, 1994, and remanded the  
25 matter to the Department of Real Estate for reconsideration in light of the Court's  
26 findings in the judgment filed on May 15, 1995.  
27

1 The parties wish to settle this matter without further judicial review or  
2 court proceedings. Accordingly,

3 IT IS HEREBY STIPULATED by and between respondent,  
4 Araceli S. Baniqued, through her attorney of record, Stephen W. Thomas, and the  
5 Complainant, by and through Paul D. Gifford, Deputy Attorney General and counsel  
6 for the Department of Real Estate, as follows for the purpose of settling and disposing  
7 of this matter.

8 1. The parties understand and agree that the Real Estate Commissioner  
9 may adopt this Stipulation and Decision on Remand as his Decision and Order in this  
10 matter, thereby imposing the penalty and sanctions on Respondent's real estate license  
11 and license rights as set forth in the following Decision and Order.

12 2. Respondent Araceli S. Baniqued agrees that she will not seek any  
13 further judicial review of this matter.

14 3. By reason of the foregoing and solely for the purpose of settlement of  
15 the Accusation without further proceedings, the parties stipulate and agree that the  
16 Findings of Fact, Determination of Issues, and Order, which are set forth in the  
17 Proposed Decision adopted by the Commissioner on May 6, 1994, are hereby amended  
18 as follows:

19 **FINDINGS OF FACT**

20 Findings of Fact XVII of the Proposed Decision is hereby deleted.

21 **DETERMINATION OF ISSUES**

22 Determination of Issues III of the Proposed Decision is hereby deleted.

23 **ORDER**

24 1. Based on the Determination of Issues, as amended above, all licenses  
25 and license rights of respondent Araceli S. Baniqued are hereby revoked.

26 2. A restricted real estate salesperson license shall be issued to  
27 respondent pursuant to Section 10156 of the Business and Professions Code, if she

1 makes application therefor and pays to the Department of Real Estate the appropriate  
2 fee for said license within ninety (90) days of the effective date of this Decision and  
3 Order.

4 3. Any restricted real estate license issued to respondent pursuant to this  
5 Decision and Order shall be suspended for one hundred eighty (180) days from the  
6 date of issuance of said restricted license.

7 4. The restricted salesperson license issued to respondent shall be subject  
8 to all of the provisions of Section 10156.7 of the Business and Professions Code and to  
9 the following limitations imposed under Section 10156.6 of the Business and Professions  
10 Code:

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

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

20 (C) Respondent shall, within six (6) months from the effective  
21 date of this Decision and Order, present evidence satisfactory to the Real Estate  
22 Commissioner that Respondent has, since the most recent issuance of an original or  
23 renewal real estate license, taken and successfully completed the continuing education  
24 requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real  
25 estate license. If Respondent fails to satisfy this condition, the Commissioner may  
26 order the suspension of the restricted license until the Respondent presents such  
27 evidence. The Commissioner shall afford Respondent the opportunity for a hearing

1 pursuant to the Administrative Procedures Act to present such evidence.

2 (D) Respondent shall not be eligible to apply for the issuance of  
3 an unrestricted real estate license nor for the removal of any of the conditions,  
4 limitations or restrictions of a restricted license until one (1) year has elapsed from the  
5 effective date of this Decision and Order.

6 (E) Respondent shall submit with any application for licensure  
7 under an employing broker, or any application for transfer to a new employing broker,  
8 a statement signed by the prospective employing broker which shall certify:

9 (1) That the employing broker has read the Decision and  
10 Order of the Real Estate Commissioner which granted the right to a restricted license;  
11 and,

12 (2) That the employing broker will exercise close  
13 supervision over the performance by the restricted licensee of activities for which a real  
14 estate license is required.

15 5. Other than the amendments set forth above, the Findings of Fact,  
16 Determination of Issues, and Order contained in the Decision of May 6, 1994, are

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1 hereby re-affirmed and adopted as the Decision and Order of the Real Estate  
2 Commissioner in this matter.

3 DATED: DANIEL E. LUNGREN, Attorney General  
4 of the State of California

5  
6 PAUL D. GIFFORD  
7 Deputy Attorney General  
8 Attorneys for Complainant  
9 Dept. of Real Estate

10 I have read the Stipulation and Decision After Remand, and its terms are  
11 understood by me and are agreeable and acceptable to me.

12 DATED: 10/31/95  
13 Araceli S. Baniqued  
14 ARACELI S. BANIQUED  
15 Respondent

16 APPROVED AS TO FORM:  
17 DATED: Nov 1 1995 SWTH  
18 STEPHEN W. THOMAS  
19 Attorney for Respondent

20 **DECISION AND ORDER**

21 The foregoing Stipulation and Decision on Remand is hereby adopted by  
22 the Real Estate Commissioner as his Decision and Order and shall become effective at  
23 12:00 noon on December , 26 , 1995.

24 IT IS SO ORDERED. NOVEMBER , 20 , 1995

25 Jr Antt Jr  
26 JIM ANTT, JR. Real Estate Commissioner  
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DEPARTMENT OF REAL ESTATE  
P. O. Box 187000  
Sacramento, CA 95818-7000  
Telephone: (916) 227-0789

**FILED**  
JUN 28 1994  
DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

BEFORE THE  
DEPARTMENT OF REAL ESTATE,  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )	)	
	)	
ARACELI S. BANIQUED,	)	NO. H-2933 SAC
ERNEST ELOY MORENO,	)	<u>ORDER DENYING</u>
	)	<u>RECONSIDERATION</u>
Respondent.	)	
	)	
	)	

On May 6, 1994, the Real Estate Commissioner adopted the Proposed Decision as the Decision of Commissioner. That Decision was to become effective on June 1, 1994.

On May 23, 1994, Respondent BANIQUED, individually, petitioned for reconsideration of that Decision. On June 13, 1994, Respondent BANIQUED submitted a Petition in Reconsideration, including argument in support of the Petition for Reconsideration, together with additional evidence not presented at the administrative hearing. Respondent BANIQUED has failed to specify facts which indicates that Respondent could not, with reasonable

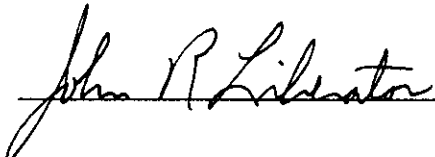
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diligence, have produced the additional evidence at the hearing.  
Absent specific facts indicating good cause for consideration of  
additional evidence, such evidence is not considered at this time.

I have given due consideration to the petition of  
Respondent. I find no good cause to reconsider the Decision of  
May 6, 1994, and reconsideration is hereby denied.

IT IS SO ORDERED June 27, 1994.

CLARK WALLACE  
Real Estate Commissioner



BY: John R. Liberator  
Chief Deputy Commissioner

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**FILED**  
MAY 26 1994  
DEPARTMENT OF REAL ESTATE

By Laurie A. Zian

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )  
ARACELI S. BANIQUED, ) NO. H-2933 SAC  
ERNEST ELOY MORENO, )  
Respondents.)

ORDER STAYING EFFECTIVE DATE

On May 6, 1994, an Order was rendered in the above-entitled matter to become effective June 1, 1994.

IT IS HEREBY ORDERED that the effective date of the Order of the Commissioner of May 6, 1994, is stayed for a period of thirty (30) days as to Respondent ARACELI S. BANIQUED, only.

The Order of the Commissioner of May 6, 1994, shall become effective at 12 o'clock noon on July 1, 1994.

DATED: May 26, 1994

CLARK WALLACE  
Real Estate Commissioner

John R. Liberato  
BY: **John R. Liberato**  
**Chief Deputy Commissioner**

FILED  
MAY 12 1994

DEPARTMENT OF REAL ESTATE

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

By Kathleen Contreras

\* \* \*

In the Matter of the Accusation of )  
 )  
ARACELI S. BANIQUED, )  
ERNEST ELOY MORENO, )  
 )  
Respondents. )

NO. H-2933 SAC  
OAH NO. N-9310087

DECISION

The Proposed Decision dated April 13, 1994, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon  
on June 1, 1994.

IT IS SO ORDERED May 6, 1994.

CLARK WALLACE  
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 )	
ARACELI S. BANIQUED, )	Case No. H-2933 SAC
ERNEST ELOY MORENO, )	
Respondents. )	OAH No. N 9310087
_____ )	

PROPOSED DECISION

This matter was heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, in San Francisco, California on March 15, 1994.

Susan Y. Bennett, Counsel, represented complainant.

Respondent Araceli S. Baniqued was present and was represented by Stanley T. Grydyk, Attorney at Law, 4006 Macdonald Avenue, Richmond, California 94805.

No appearance was made by or on behalf of respondent Ernest Eloy Moreno. On proof of compliance with Government Code sections 11505 and 11509, the matter proceeded as a default as to him pursuant to Government Code section 11520.

FINDINGS OF FACT

I

Complainant Charles W. Koenig made the Accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California.

II

Respondents Araceli S. Baniqued and Ernest Eloy Moreno are licensed under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code). At all times relevant, respondent Baniqued was, and now is, licensed by the Department of Real Estate as a real estate broker doing

business as Realty World-Classique Homes and Classique Mortgage Company. The license has been renewed through September 21, 1996. At all times relevant, respondent Moreno was licensed as a real estate salesperson in the employ of respondent Baniqued. He was terminated from Baniqued's employ on February 21, 1991. Moreno's license has been renewed through March 29, 1997, although he has no current broker of record.

### First and Second Causes For Disciplinary Action

#### III

In August 1990 real property located at 2112 Coalinga Avenue, Richmond, California ("the Richmond property") owned by Louis Beasley was listed for sale for \$130,000 through real estate salesperson Jerry Ruzicka of Realty World-Classique Homes.

On August 28, 1990 Jose Saucedo submitted an offer to purchase the property for \$125,000. The Real Estate Purchase Contract and Receipt for Deposit containing this offer was prepared by respondent Moreno, acting on behalf of Realty World-Classique Homes and respondent Baniqued. The offer recited that Moreno had received \$2,000 from Saucedo as a deposit which would be placed in escrow upon acceptance by Beasley. The offer also provided that Beasley would pay \$2,300 towards "buy-down fees" and \$2,700 towards "non-recurring closing costs."

Saucedo gave Moreno \$2,000 cash on August 28, 1990 and was provided a receipt showing this amount was received as a deposit on the down payment. Moreno told Saucedo he would place these funds into escrow at Stewart Title. Although Saucedo's offer was accepted by Beasley the same day, Moreno failed to deliver these funds to his broker or to deposit them into the escrow he opened at Stewart Title on August 29, 1990. The escrow order sheet showed the applicant as Realty World at 951 San Pablo Avenue, Pinole, and copies were to be sent to both Moreno and Ruzicka at that address.

#### IV

On September 7, 1990 Stewart Title received from Realty World of Northern California an Individual Contract Activity Report and Commission Disbursement Authorization for the transaction. This document, which was inexplicably dated August 15, 1990, showed the Realty World office to be Classique Homes, the sale price to be \$125,000, a projected commission of \$7,500 and a projected closing date of October 19, 1990. The

document was purportedly approved by Realty World's broker on September 1, 1990.

V

On October 25, 1990, at Moreno's request, Saucedo gave Moreno an additional \$1,000 in cash which Moreno said he would deposit in escrow. Shortly after that, Saucedo gave Moreno another \$2,000 in cash to be applied to the purchase of the property. Once more, Moreno represented to Saucedo this money would be deposited into escrow.--

VI

In November 1990 Beasley and Saucedo, who were concerned because the transaction was not proceeding, spoke to Baniqued at the Realty World office. On November 22, at or about the time she was contacted by Beasley and Saucedo, Baniqued prepared a new Real Estate Purchase Contract and Receipt for Deposit purporting to be an offer from Saucedo to purchase the property for \$132,500. Although this offer was signed by Saucedo and someone has noted that the seller "accepted by phone" on November 26, 1990, Beasley was unaware of any \$132,500 offer to purchase the property.

VII

In December 1990 Saucedo made two more payments to Moreno, totaling \$500. Moreno provided Saucedo receipts for these payments and represented they would be deposited to escrow. Moreno did not place any of the \$5,500 he received from Saucedo between August and December 1990 into escrow or into the hands of his broker. Instead, Moreno converted all these funds to his own use.

VIII

In mid-December, Beasley moved out of the property and Saucedo moved in. In late December, after he had made the two additional payments to Moreno totaling \$500, Saucedo became concerned because Moreno kept putting him off about the closing date of the transaction. Moreno took Saucedo to Realty World-Classique Homes where they met with respondent Baniqued. Baniqued told Saucedo not to give any more money to Moreno and said escrow would have to see \$2,000 in his bank account. As a result, Moreno returned to Saucedo the \$2,000 payment Saucedo had made in October or November.

## IX

It appears that little, if anything, was done to further the transaction until January 1991. On January 4, a loan application was submitted to Great Western Bank on behalf of Saucedo and Jose Fragoso, a coworker of Saucedo's who was brought in as a coborrower after Moreno told Saucedo he could not qualify for the loan on his own. Saucedo and Fragoso applied for a 90% loan on a purchase price of \$126,000, with the borrowers making a down payment of \$12,600. At a point not established by the evidence, the loan was reduced to an 80% loan, requiring the borrowers to put \$25,200 into escrow.

## X

On January 15, 1991 Moreno deposited into escrow a check for \$8,000. This check was returned because of insufficient funds. It was not clearly established why Moreno, who still held \$3,500 of Saucedo's funds, sought to deposit this amount into escrow.

Baniqued learned of Moreno's bounced check and asked the bank if she could replace the funds in order to close the deal and then seek recovery from Moreno. On January 21, 1991, Baniqued had Moreno sign a statement in which he acknowledged taking funds from seven people. In that statement, Moreno admitted taking \$3,500 from Saucedo. Despite this statement, Baniqued avers, Moreno told her he had taken \$8,000 from Saucedo.

## XI

On January 29, 1991 Baniqued drew up a new Residential Purchase Agreement and Deposit Receipt containing an offer from Saucedo and his wife to purchase the Richmond property for \$126,000. The offer called for a loan of \$100,800, with a \$2,000 deposit, a \$10,600 additional deposit and a \$12,600 seller financed second loan. Although this offer was signed by Saucedo, it was not signed by Beasley.

## XII

On February 13, 1991, Saucedo and Fragoso signed a Straight Note for \$12,600 in favor of Beasley. On February 20, Saucedo and Fragoso signed a Deed of Trust securing payment of an installment note for \$10,610 signed the same day in favor of Classique Mortgage. Although Classique Mortgage was the purported lender, the funds for this loan actually came from Universal Land, Baniqued's husband's company. On February 20,



Saucedo and Fragoso also signed a Deed of Trust securing payment of the first loan of \$100,800 to Great Western Bank. On February 21, Moreno was terminated from employment at Realty World-Classique Homes.

#### XIII

In order to close the deal, Great Western Bank required Baniqued to submit a statement explaining the reasons she was depositing \$8,000 into escrow. In a document apparently faxed to Great Western from Realty World-Classique Homes on February 25, 1991, Baniqued certified she "put up the \$8,000 funds for Ernest Moreno," further stating "We are going to collect from our agent Moreno on terms to be awarded to us by court decision."

On February 25, \$14,000 was deposited into escrow. These deposits consisted of \$2,000 from Saucedo and three payments from Realty World in the following amounts: \$10,610; \$1,008; and \$382. There was no \$8,000 deposit.

#### XIV

On February 26, 1991 Great Western Bank funded its \$100,800 loan and escrow closed on February 27. Had Great Western known the \$10,610 deposited into escrow by Realty World was a loan to Saucedo, the loan would not have been funded since the bank's policy is that no borrowed funds may be included in a down payment. At no time during the transaction was Great Western advised of the promissory note and deed of trust signed by Saucedo and Fragoso in favor of Classique Mortgage.

#### XVI

The evidence presented demonstrated respondent Moreno's repeated false promises to Saucedo concerning the funds he was accepting from him were substantial misrepresentations designed to induce Saucedo to entrust Moreno with those funds and which constituted a flagrant course of misrepresentation. Moreno's conversion of the funds entrusted to him by Saucedo constituted fraud and dishonest dealing.

#### XVII

The evidence presented demonstrated respondent Baniqued failed to exercise reasonable control and supervision over the real estate activities of respondent Moreno. Baniqued

knew an offer had been written by Moreno on behalf of Saucedo in August. Although she testified she had told Moreno not to present the offer because Saucedo would not qualify for the 90% loan he was seeking, in September Baniqued received a title report on the property. This put Baniqued on notice that the offer had been presented and accepted. Baniqued's testimony that after she received the title report she told Moreno to cancel the escrow is evidence of Baniqued's actual knowledge of the existence of the transaction. Nevertheless, Baniqued took no action to confirm that the escrow had been cancelled, or to otherwise verify the status of the transaction, until late November, when both Beasley and Saucedo questioned her about it. Baniqued's testimony that it was not until Beasley and Saucedo approached her in November that she learned the August offer had been presented to Beasley and signed by him was not credible.

Even if Baniqued's testimony that she first learned in November that the Saucedo/Beasley transaction was proceeding could be accepted as true, her actions after that time demonstrated a lack of supervision of Moreno's activities. This is evidenced by the fact at least two payments were made to Moreno by Saucedo in December 1990, payments which Baniqued failed to ensure were deposited into escrow. Although Baniqued knew in November that Moreno had mishandled trust funds, she apparently made no efforts until January 1991 to ensure that the funds given to Moreno by Saucedo were placed into escrow.

Baniqued's lack of supervision over Moreno's activities does not appear to have been an isolated incident. The Richmond property was Ruzicka's first listing and one of his first transactions as a real estate salesperson. Ruzicka testified he received no training from Baniqued about the handling of trust funds and that there was a general lack of supervision in the office. Baniqued told her sales staff to seek the help of other, more senior, agents if they had problems. Baniqued herself did not supervise the agents.

#### XVIII

The evidence presented also demonstrated that during the course of the Saucedo/Beasley transaction respondent Baniqued made substantial misrepresentations and engaged in fraud and dishonest dealing. In particular, it is found that Baniqued intentionally misled Great Western Bank about the funds she was depositing into escrow in order to induce the bank to make the loan to Saucedo and Fragoso. Baniqued specifically advised the lender on February 25, 1990 that she was depositing \$8,000 in escrow to replace Moreno's bounced check for that amount. Baniqued did not inform the lender of the true circumstances of her deposit--that she was actually

lending these funds (and more) to Saucedo--or that the borrowers had signed an installment note and deed of trust in favor of Classique Mortgage some five days earlier.

#### XIX

While not specifically found here to be fraudulent, Baniqued engaged in a number of other questionable actions during the course of this transaction. First, in November 1990 Baniqued drew up a "new offer" for a sales price greater than that which had already been accepted by Beasley. Baniqued testified she wrote the new offer because the old contract was outdated, although she did not explain how she reached this conclusion. She also testified she wrote the new offer for a selling price of \$132,500 because it was the parties' intent to have the seller pay up to \$5,000 of the closing costs. This explanation is not credible. It does not explain why the new offer was \$7,500 more than the original offer and ignores the fact the original offer had already provided for the seller to pay \$5,000 in closing costs.

Second, Baniqued drew up another "new offer" in January 1991. She testified she drew up this offer because the buyers could not qualify at the higher purchase price and because the appraisal came in at only \$126,000. This explanation ignores the fact the offer which had already been accepted by Beasley was only for a sales price of \$125,000.

Finally, Baniqued drew up a promissory note and deed of trust in favor of Classique Mortgage when the true lender of these funds was Universal Land, an independent entity. Baniqued's explanation for this--that she drew up the note and deed of trust just so she would be able to go after Saucedo if it turned out he and Moreno were conspiring to defraud her--is entirely implausible.

All these facts tend to support the earlier finding of fraud and dishonest dealing in that they evidence a willingness on Baniqued's part to engage in actions for her own benefit without regard to the consequences to other parties.

#### Third Cause for Disciplinary Action

#### XX

On an unspecified date in 1990 salesperson Jose Ramirez of Realty World-Classique Homes showed Gustavo Valladares a house located at 753 El Patio, El Sobrante, California. In December 1990 Valladares went to the Classique Homes office to see Ramirez. He met respondent Moreno who said

Ramirez was on vacation and offered to help Valladares in his absence.

Moreno showed Valladares a termite report on the El Patio home and on December 7, 1990 accepted \$5,000 in cash from Valladares. Moreno represented to Valladares that these funds would be used as a down payment on purchase of the property and he provided Valladares a receipt evidencing this fact. However, no written offer for purchase of the property was prepared by Moreno. When Valladares later asked about an offer, Moreno told him the El Patio home "was not convenient" for Valladares and showed him two other homes, one on 26th Street in San Pablo and the other on Center Avenue in Richmond.

Valladares began to distrust Moreno and asked him for a contract. In early January 1991, Moreno provided a written offer to purchase the Center Avenue property. On January 18, 1991 Valladares gave Moreno a cashier's check for \$2,000 payable to First Alliance Mortgage. The receipt provided Valladares by Moreno represents that these funds were for a down payment on the 26th Street property.

After not hearing from Moreno for about three weeks, Valladares eventually asked to have his money returned. On August 20, 1991 a \$5,000 civil judgment against Moreno was entered in favor of Valladares.

#### XXI

The funds provided by Valladares to Moreno were trust funds. Moreno failed to ensure that these funds were either placed in the hands of his broker or deposited in escrow.

#### XXII

The evidence presented demonstrated respondent Moreno's false representations to Valladares concerning the funds he was accepting from him were substantial misrepresentations designed to induce Valladares to entrust Moreno with those funds. Moreno's conversion of at least \$5,000 of the funds entrusted to him by Valladares constituted fraud and dishonest dealing.

#### Supplemental Findings

#### XXIII

Respondent Baniqued first obtained a real estate salesperson license in 1978 and a real estate broker license in

1980. She has been employed full-time as a real estate broker since 1981. In 1990, respondent Baniqued employed about 20 salespersons.

Realty World-Classique Homes does not maintain a trust account. Baniqued instructs the salespersons in her employ to receive funds only in the form of checks payable to a title company. At Baniqued's expense, her salespeople undertake training by Realty World of Northern California in Concord.

#### DETERMINATION OF ISSUES

##### On the First Cause for Disciplinary Action

###### I.

Cause for disciplinary action against respondent Moreno exists pursuant to Business and Professions Code sections 10145(c) and 10177(d) by reason of the matters set forth in Finding VII.

###### II

Cause for disciplinary action against respondent Moreno exists pursuant to Business and Professions Code sections 10176(a), 10176(b), 10176(c) and 10176(i) by reason of the matters set forth in Finding XVI.

##### On the Second Cause for Disciplinary Action

###### III

*Deleted* ( Cause for disciplinary action against respondent Baniqued exists pursuant to Business and Professions Code section 10177(h) by reason of the matters set forth in Finding XVII. )

###### IV

Cause for disciplinary action against respondent Baniqued exists pursuant to Business and Professions Code sections 10176(a), 10176(b) and 10176(i) by reason of the matters set forth in Finding XVIII.

On the Third Cause for Disciplinary Action

V

Cause for disciplinary action against respondent Moreno exists pursuant to Business and Professions Code sections 10145(c) and 10177(d) by reason of the matters set forth in Finding XXI.

VI

Cause for disciplinary action against respondent Moreno exists pursuant to Business and Professions Code sections 10176(a), 10176(b) and 10176(i) by reason of the matters set forth in Finding XXII.

Supplemental Determination


The matters set forth in Finding XIX have been considered in aggravation of the causes for disciplinary action found against respondent Baniqued. The matters set forth in Finding XXIII have been considered in mitigation. Upon a consideration of all the evidence presented, it is determined protection of the public interest demands revocation of Baniqued's license.

ORDER

1. All licenses and licensing rights of respondent Ernest Eloy Moreno under the Real Estate Law are revoked pursuant to Determinations I, II, V and VI, separately and for each of them.

2. All licenses and licensing rights of respondent Araceli S. Baniqued under the Real Estate Law are revoked pursuant to Determinations III and IV, separately and for each of them.

DATED: April 13, 1994

  
\_\_\_\_\_  
MICHAEL C. COHN  
Administrative Law Judge  
Office of Administrative Hearings

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of

ARACELI S. BANIQUED,  
ERNEST ELOY MORENO,

By Kathleen Contreras

Case No. H-2933 SAC

OAH No. N-9310087

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, 455 Golden Gate Avenue,

Room 2248, San Francisco, California 94102

on March 15, 1994 and March 16, 1994, at the hour of 10:00 AM,  
or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: October 27, 1993

By Susan Y. Bennett  
SUSAN Y. BENNETT Counsel

1 SUSAN Y. BENNETT, Counsel  
2 Department of Real Estate  
3 P. O. Box 187000  
Sacramento, CA 95818-7000

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FILED  
AUG 19 1993  
DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

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

12 \* \* \*

13 In the Matter of the Accusation of )  
14 ) NO. H-2933 SAC  
15 ARACELI S. BANIQUED, )  
16 ERNEST ELOY MORENO, ) ACCUSATION  
17 Respondents. )  
\_\_\_\_\_ )

18 The Complainant, Charles W. Koenig, a Deputy Real Estate  
19 Commissioner of the State of California for cause of Accusation  
20 against ARACELI S. BANIQUED and ERNEST ELOY MORENO, is informed  
21 and alleges as follows:

22 FIRST CAUSE OF ACCUSATION

23 1.

24 The Complainant, Charles W. Koenig, a Deputy Real Estate  
25 Commissioner of the State of California, makes this Accusation in  
26 his official capacity.

27 ///



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2.

ARACELI S. BANIQUED (hereinafter referred to as "Respondent Baniqued"), and ERNEST ELOY MORENO (hereinafter referred to as "Respondent Moreno") is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code) (hereinafter referred to as the "Code").

3.

At all times herein mentioned, Respondent Baniqued was licensed as a real estate broker doing business as Realty World - Classique Homes and Classique Mortgage Company.

4.

At all times herein mentioned, Respondent Moreno was licensed as a real estate salesperson in the employ of Respondent Baniqued.

5.

At all times herein mentioned, Respondent Baniqued engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker selling or offering to sell, buying or offering to buy, soliciting prospective sellers or purchasers of, soliciting or obtaining listings of, or negotiating the purchase, sale or exchange of real property.

6.

On or about August 28, 1990, Jose Saucedo (hereinafter referred to as "Saucedo" ) submitted an offer to purchase real property located at 2112 Coalinga Avenue, Richmond, California (hereinafter referred to as the "Richmond Property") through

1 Respondent Moreno acting on behalf of Respondent Baniqued. Said  
2 Richmond Property was owned by Louis Beasley (hereinafter referred  
3 to as "Beasley").

4 7.

5 In order to induce Saucedo to make said offer to  
6 purchase the Richmond Property, Respondent Moreno represented or  
7 caused the following representations to be made to Saucedo:

- 8 a. Respondent Moreno would give Saucedo's initial  
9 deposit which would accompany the offer to purchase  
10 to Respondent Baniqued until acceptance of the  
11 offer when it would be placed into escrow; and,  
12 b. Beasley had offered Saucedo \$5,000.00 to be applied  
13 towards the deposit.

14 8.

15 In reliance upon said representations described in  
16 Paragraph 7, above, on or about August 28, 1990, Saucedo gave  
17 Respondent Moreno \$2,000.00 in cash to be applied towards the  
18 purchase price upon acceptance of the offer on the Richmond  
19 Property.

20 9.

21 On or about August 28, 1990, said offer to purchase the  
22 Richmond Property was accepted by Beasley.

23 10.

24 Thereafter, in connection with said offer to purchase  
25 the Richmond Property and in order to induce Saucedo to continue  
26 in said transaction, Respondent Moreno represented or caused the  
27 representation to be made to Saucedo that in connection with

1 Saucedo's purchase of the Richmond Property, Saucedo would be  
2 required to provide additional funds.

3 11.

4 In reliance upon said representations made by Respondent  
5 Moreno, Saucedo provided on the dates indicated, additional funds  
6 as follows:

- 7 a. Between October 1990 and December 1990, Saucedo  
8 gave Respondent Moreno \$2,000.00 in cash;  
9 b. On or about October 25, 1990, Saucedo gave  
10 Respondent Moreno \$1,000.00 in cash;  
11 c. On or about December 14, 1990, Saucedo gave  
12 Respondent Moreno \$400.00 in cash; and,  
13 d. On or about December 22, 1990, Saucedo gave  
14 Respondent \$100.00 in cash.

15 12.

16 Respondent Moreno's representations described in  
17 Paragraphs 7 and 10, above, were false or misleading and were  
18 known by Respondent to be false or misleading when made or were  
19 made by Respondent with no reasonable grounds for believing said  
20 representations to be true. In truth and in fact, the following  
21 occurred:

- 22 a. Respondent Moreno did not give the initial deposit  
23 of \$2,000.00 to his broker to be held until the  
24 acceptance of the offer;  
25 b. Respondent Moreno did not place into escrow the  
26 initial deposit of \$2,000.00 upon acceptance of the  
27 offer;

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c. Beasley did not offer to provide Saucedo \$5,000.00 to be applied towards the down payment on the purchase of the Richmond Property; and

d. Respondent Moreno made said representations described in Paragraph 10, above, to obtain Saucedo's funds for Respondent Moreno's own use or benefit or for purposes not authorized by the rightful owners of said funds.

13.

The funds described in Paragraphs 8 and 11, above, are trust funds and Respondent Moreno failed to deliver said funds to his employing broker, or under the direction of his broker place said funds in the hands of the broker's principal or into a neutral escrow depository or into the broker's trust account. Respondent Moreno converted said trust funds to his own use or benefit or for purposes not authorized by the rightful owner of said trust funds.

14.

The facts alleged above are grounds for the suspension or revocation of all licenses and license rights of Respondent Moreno pursuant to Section 10145(c) of the Code in conjunction with Section 10177(d) of the Code and Sections 10176(a) and/or 10176(b) and/or 10176(c) and/or 10176(i) of the Code.

SECOND CAUSE OF ACCUSATION

15.

There is hereby incorporated in this Second, separate and distinct cause of Accusation, all of the allegations contained

1 in Paragraphs 1 through 13 of the First Cause of Accusation with  
2 the same force and effect as if herein fully set forth.

3 16.

4 In connection with the transaction described in the  
5 FIRST CAUSE OF ACCUSATION, above, Respondent Baniqued failed to  
6 exercise reasonable supervision and control over the activities  
7 for which a real estate license is required by Respondent Moreno,  
8 including but not limited to failing to keep or cause Respondent  
9 Moreno to keep trust fund records and failing to maintain trust  
10 funds pursuant to the instructions of the rightful owners of said  
11 funds, or immediately cause said trust funds received in the  
12 course of business to be place into the hands of their principal,  
13 into a neutral escrow depository, or deposit said trust funds  
14 described in the FIRST CAUSE OF ACCUSATION into a trust fund  
15 account.

16 17.

17 In connection with the transaction described in the  
18 FIRST CAUSE OF ACCUSATION, above, Saucedo applied for a loan to  
19 purchase the Richmond Property through Great Western Bank located  
20 at 7600 Dublin Boulevard, Dublin, California.

21 18.

22 In order to induce Great Western Bank to make said loan  
23 to Saucedo, Respondent Baniqued represented or caused the  
24 representation to be made to Great Western Bank that Respondent  
25 Baniqued was providing \$8,000.00 to Saucedo to replace trust funds  
26 mishandled by Respondent Moreno as described in the FIRST CAUSE OF  
27 ACCUSATION.

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19.

In reliance on said representation described in Paragraph 18, above, Great Western Bank funded said loan to Saucedo on or about February 26, 1991.

20.

Respondent Baniqued's representations described in Paragraph 18, above, were false or misleading and were known by Respondent Baniqued to be false or misleading when made or were made by Respondent Baniqued with no reasonable grounds for believing said representations to be true.

21.

In truth and in fact, Respondent Baniqued required Saucedo to sign a promissory note for \$10,610.00 and deed of trust in third position secured by the Richmond Property. Said deed of trust was recorded in the Office of the Contra Costa County Recorder's Office on or about March 8, 1991.

22.

Respondent Baniqued failed to disclose to Great Western Bank that funds Respondent Baniqued was providing to Saucedo was a loan to Saucedo to be secured by said promissory note and deed of trust on the Richmond Property as described in Paragraph 21, above.

23.

The facts alleged above are caused for the suspension or revocation of all licenses and license right of Respondent Baniqued under Sections 10176(a) and/or 10176(b) and/or 10176(i), and 10177(h) of the Code.

THIRD CAUSE OF ACCUSATION

24.

There is hereby incorporated in this Third, separate and distinct, Cause of Accusation, all of the allegations contained in Paragraphs 1 through 5 of the First Cause of Accusation with the same force and effect as if herein fully set forth.

25.

On or about December 7, 1990, Respondent Moreno while in the employ of Respondent Baniqued, prepared an offer to purchase real property located at 753 El Patio, El Sobrante, California, on behalf of Gustavo Valladares, also known as Gustavo Valladares Raya (hereinafter referred to as "Valladares").

26.

In connection with said offer to purchase described in Paragraph 25, Respondent Moreno, in order to induce Valladares to make said offer to purchase, represented or caused the representation to be made that Valladares was required to provide \$5,000.00 as a deposit to accompany said offer to purchase.

27.

In reliance upon said representations made by Respondent Moreno, on or about December 7, 1990, Valladares gave Respondent Moreno \$5,000.00 in cash to be applied towards the purchase of said property described in Paragraph 25, above.

28.

Thereafter, Respondent Moreno represented or caused the representation to be made to Valladares that Valladares did not qualify for the purchase of said property.

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29.

On or before January 18, 1991, Respondent Moreno, in order to induce Valladares to provide additional funds towards the purchase of real property, represented or caused the representation to be made to Valladares that Valladares could purchase real property located at 1525 - 26th Street, San Pablo, California. Thereafter, Respondent Moreno represented or caused the representation to be made to Valladares that he could purchase real property located at 3026 Center Avenue, Richmond, California.

30.

In order to induce Valladares to provide him additional funds towards the purchase of real property, Respondent Moreno represented or caused the representation to be made to Valladares that Valladares would be required to provide a cashier's check for \$2,000.00, made payable to First Alliance Mortgage.

31.

In reliance upon said representation described in Paragraph 30, above, on or about January 18, 1991, Valladares provided Respondent Moreno a cashier's check for \$2,000.00, made payable to First Alliance Mortgage.

32.

Respondent Moreno knew or should of known that said representations made above were false or misleading, or were made with no reasonable basis for believing said representations to be true. In truth and in fact, Respondent Moreno made said representations to Valladares to obtain Valladares funds for



1 Respondent Moreno's own use or benefit or for purposes not  
2 authorized by the rightful owners of said funds.


3 33.

4 The funds described in Paragraphs 27 and 31, above, are  
5 trust funds and Respondent Moreno failed to deliver said funds to  
6 his employing broker, or under the direction of his broker place  
7 said funds in the hands of the broker's principal or into a  
8 neutral escrow depository or into the broker's trust account.  
9 Respondent Moreno converted said trust funds to his own use or  
10 benefit or for purposes not authorized by the rightful owner of  
11 said trust funds.

12 34.

13 The facts alleged above are grounds for the revocation  
14 or suspension of all licenses and license rights of Respondent  
15 Moreno under Sections 10176(a) and/or 10176(b) and/or 10176(i) of  
16 the Code, and 10145(c) in conjunction with 10177(d) of the Code.

17 WHEREFORE, Complainant prays that a hearing be conducted  
18 on the allegations of this Accusation and that upon proof thereof  
19 a decision be rendered imposing disciplinary action against all  
20 licenses and license rights of Respondents Moreno and Baniqued,  
21 under the Real Estate Law (Part 1 of Division 4 of the Business  
22 and Professions Code), and for such other and further relief as  
23 may be proper under the provisions of law.

24   
25 CHARLES W. KOENIG  
26 Deputy Real Estate Commissioner

27 Dated at Sacramento, California,  
this 3<sup>rd</sup> day of August, 1993.