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FILED  
APR 20 2006

DEPARTMENT OF REAL ESTATE

By *Jan Arnold*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	No. H-3138 SAC
	)	
KENNETH MARK BARLEY,	)	
	)	
	)	
	)	
Respondent.	)	

ORDER DENYING REINSTATEMENT OF LICENSE

On June 28, 1996, a Decision was rendered herein revoking the real estate broker license of Respondent effective July 22, 1996, 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 July 22, 1996, and Respondent has operated as a restricted licensee since that time.

On July 16, 2004, 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

1 petitioner (Feinstein v. State Bar (1952) 39 Cal. 2d 541). A  
2 petitioner is required to show greater proof of honesty and  
3 integrity than an applicant for first time licensure. The proof  
4 must be sufficient to overcome the prior adverse judgment on the  
5 applicant's character (Tardiff v. State Bar (1980) 27 Cal. 3d  
6 395).

7 I have considered Respondent's petition and the  
8 evidence and arguments in support thereof. Respondent has failed  
9 to demonstrate to my satisfaction that Respondent has undergone  
10 sufficient rehabilitation to warrant the reinstatement of  
11 Respondent's real estate broker license.

12 The Department has developed criteria in Section 2911  
13 of Title 10, California Code of Regulations ("Regulations") to  
14 assist in evaluating the rehabilitation of an applicant for  
15 reinstatement of a license. Among the criteria relevant in this  
16 proceeding are:

17 Section 2911(b). Restitution to any person who has  
18 suffered monetary losses through "substantially related" acts or  
19 omissions of the applicant. The Accusation filed against  
20 Respondent on June 28, 1995 in Case No. H-3138 SAC alleged cause  
21 for discipline arising out of an agreement on or about July 28,  
22 1992 wherein Respondent borrowed \$65,000 from Jackie Dominguez.  
23 The Decision entered herein on June 28, 1996 revoked Respondent's  
24 license as a real estate broker pursuant to Section 10177(g) of  
25 the Code. Jackie Dominguez suffered a \$65,000 monetary loss in  
26 the transaction that resulted in the revocation of Respondent's  
27 broker license pursuant to the provisions of Section 10177(g) of

1 the Code. In response to item 5 ("Restitution - Has restitution  
2 been made to any person who has suffered monetary losses through  
3 your acts or omissions which formed the basis of the formal  
4 hearing or decision imposing discipline?") of the Petition filed  
5 July 16, 2004, Respondent answered "No". This response is not  
6 modified in the Petition Application Supplement filed December 7,  
7 2005. Respondent has failed to make restitution to Jackie  
8 Dominguez.

9           Section 2911(i). Completion of, or sustained enrollment  
10 in, formal educational or vocational training courses for  
11 economic self-improvement. In response to item 10A ("Since  
12 discipline, list any real estate related courses completed  
13 including continuing education courses, number of hours  
14 completed, and the dates the courses were completed.") of the  
15 Petition filed July 16, 2004, Respondent provided no information.  
16 This response is not modified in the Petition Application  
17 Supplement filed December 7, 2005. Respondent has failed to  
18 provide evidence demonstrating participation in formal  
19 educational or vocational training courses for economic self-  
20 improvement.

21           Section 2911(k). Correction of business practices  
22 resulting in injury to others or with the potential to cause such  
23 injury. Respondent's negligence resulted in the revocation of  
24 his broker license. In response to Item 4 ("Civil Court - Have  
25 you ever been a defendant in any civil court litigation,  
26 including small claims court?") of the Petition filed July 16,  
27 2004, Respondent answered "No". This response is not modified in

1 the Petition Application Supplement filed December 7, 2005. In  
2 fact, however:

3 (a) On November 5, 1993, in the Municipal Court of  
4 the State of California, County of Contra Costa, Case No. C57280,  
5 a civil judgment for \$4,984 was entered in favor of Sears Roebuck  
6 and Co. and against Respondent.

7 (b) On July 11, 1994, in the Municipal Court of the  
8 State of California, County of Contra Costa, Case No. WSC102401,  
9 a civil judgment for \$5,000 was entered in favor of Jackie  
10 Dominguez and against Respondent.

11 (c) On July 11, 1994, in the Municipal Court of the  
12 State of California, County of Contra Costa, Case No. WSC101642,  
13 a civil judgment for \$5,000 was entered in favor of Jackie  
14 Dominguez and against Respondent.

15 (d) On October 31, 1994, in the United States  
16 Bankruptcy Court, Northern District of California, Adversary No.  
17 94-4681, a civil action ("Complaint Objecting To  
18 Dischargeability of Debt") was filed by Jackie Dominguez as  
19 Plaintiff against Respondent as Debtor and Defendant. Judgment  
20 was entered in favor of Respondent on March 20, 1995.

21 (e) On July 28, 1995, in the Municipal Court of the  
22 State of California, County of Contra Costa, Case No. CIVWS61856,  
23 a judgment in unlawful detainer was entered in favor of GMAC  
24 Mortgage Corp and against Respondent.

25 (f) On February 17, 1999, in Contra Costa County  
26 Municipal Court Case No. CIVWAS68593, a civil judgment in the sum

27 ///

1 of \$1,136.00 was entered in favor of CBSJ Financial and against  
2 Respondent.

3           Despite questions specifically requiring disclosure of  
4 these matters, Respondent failed to disclose these civil  
5 judgments against him in the Form RE 506 "Petition" filed with  
6 the Department July 16, 2004 or the Form RE 506A "Petition  
7 Application Supplement" filed with the Department on December 7,  
8 2005. Respondent's petition and supporting documents demonstrate  
9 that Respondent remains negligent in business matters. Thus,  
10 Respondent has not demonstrated that he has changed the business  
11 practices that resulted in disciplinary action. Respondent has  
12 not established that he has complied with Section 2911(k).

13           Section 2911(n). Change in attitude from that which  
14 existed at the time of the conduct in question as evidenced by  
15 any or all of the following: (1) Testimony of applicant. (2))  
16 Evidence from family members, friends or other persons familiar  
17 with applicant's previous conduct and with his subsequent  
18 attitudes and behavioral patterns. (3) Evidence from probation or  
19 parole officers or law enforcement officials competent to testify  
20 as to applicant's social adjustments. (4) Evidence from  
21 psychiatrists or other persons competent to testify with regard  
22 to neuropsychiatric or emotional disturbances. (5) Absence of  
23 subsequent felony or misdemeanor convictions that are reflective  
24 of an inability to conform to societal rules when considered in  
25 light of the conduct in question.

26           Respondent has not submitted evidence justifying the  
27 conclusion that there has been a favorable change in his

1 attitude. Respondent's concealment of facts and lack of candor  
2 demonstrate that Respondent has not changed his attitude from  
3 that which existed at the time he engaged in the conduct that led  
4 to the revocation of his real estate broker license.

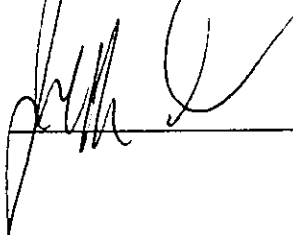
5 Since Respondent has not established that Respondent  
6 has complied with Sections 2911(b), (i), (k) and (n) of Title 10,  
7 California Code of Regulations, I am not satisfied that  
8 Respondent is sufficiently rehabilitated to receive a real estate  
9 broker license.

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

13 This Order shall become effective at 12 o'clock noon  
14 on MAY 11 2006.

15 DATED: 4-5, 2006.

16 JEFF DAVI  
17 Real Estate Commissioner

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FILED  
JUL - 1 1996  
DEPARTMENT OF REAL ESTATE

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

By Kathleen Contreras

\* \* \*

In the Matter of the Accusation of )  
KENNETH MARK BARLEY, )  
Respondent. )

NO. H-3138 SAC  
OAH NO. N-9507072

DECISION

The Proposed Decision dated May 3, 1996, 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 July 22, 1996.

IT IS SO ORDERED 6/28, 1996.

JIM ANTT, JR.  
Real Estate Commissioner



BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation )  
Against: )  
 )  
KENNETH MARK BARLEY, )  
 )  
 )  
Respondent. )  
\_\_\_\_\_ )

Case No. H-3138 SAC  
OAH No. N-9507072

PROPOSED DECISION  
PURSUANT TO STIPULATION

This matter came on regularly for hearing before Catherine B. Frink, Administrative Law Judge, Office of Administrative Hearings, in Sacramento, California, on April 17, 1996.

Complainant was represented by David B. Seals, Counsel.

Respondent Kenneth Mark Barley (hereinafter "respondent") appeared and was represented by Gagen, McCoy, McMahon & Armstrong, by Stephen W. Thomas, Esq.

During the course of the proceedings, counsel for the parties entered into settlement discussions and appeared before Administrative Law Judge Jaime René Román. Following these discussions, counsel for the parties entered a stipulation, and following personal waiver of respondent's rights pursuant to the Administrative Procedure Act, the stipulation was accepted by Administrative Law Judge Román and further proceedings ordered stayed pending adoption of this Proposed Decision Pursuant to Stipulation by the Real Estate Commissioner. Pursuant to stipulation of counsel, the Administrative Law Judge finds as follows:



FINDINGS OF FACT

Jurisdictional Findings

I

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

II

On May 1, 1987, respondent was licensed by the Department of Real Estate (No. 00845768) as a real estate broker. Said license is in full force and effect.

III

All jurisdictional requirements have been met.

Factual Findings

IV

It is stipulated by and between counsel for the parties that cause exists to discipline the license of respondent for negligence pursuant to Business and Professions Code section 10177(g).

DETERMINATION OF ISSUES

It is stipulated by and between counsel for the parties that cause exists to revoke or suspend the respondent's license for negligence pursuant to Business and Professions Code section 10177(g) as set forth in Finding No. IV.

ORDER

It is stipulated by and between counsel for the parties that the real estate broker's license and license rights issued to respondent Kenneth Mark Barley (License No. 00845768) under the Real Estate Law are revoked; provided, however, respondent shall be entitled to apply for and shall be issued a restricted real estate salesperson license pursuant to sections 10156.5, 10156.6 and 10156.7 of the Business and Professions Code if he makes application therefor and pays to the Department of Real Estate the appropriate fee for said license within 90 days from the effective date of the Decision herein. The restricted license issued to

respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of the Business and Professions Code:

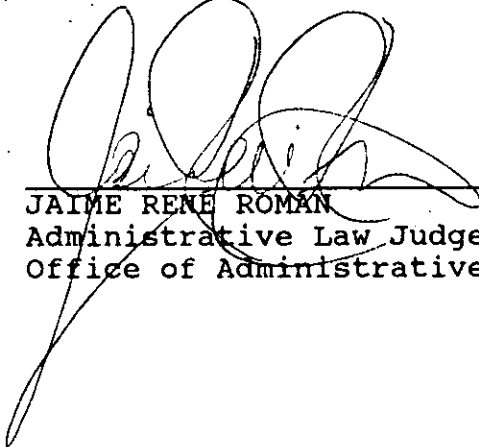
1. The restricted license issued to respondent shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may, by appropriate order, suspend the right to exercise any privileges granted under the restricted license in the event of:
  - A. The conviction of respondent (including a plea of nolo contendere) to a crime which bears a significant relation to respondent's fitness or capacity as a real estate licensee, or
  - B. The receipt of evidence that respondent has violated provisions of the Real Estate Law, Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions attaching to the restricted license until one year has elapsed from the date of issuance of a restricted license to respondent.
3. Respondent shall, at his expense, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department of Real Estate. If he fails to satisfy this condition, the Real Estate Commissioner shall order suspension of his license until he passes the examination.
4. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If he fails to satisfy this condition, the Real Estate Commissioner may order suspension of his license until he presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the

Administrative Procedure Act to present such evidence.

5. Respondent shall submit with any application for license or employment under any employing real estate broker, or any application for transfer to a new employing broker, a statement, signed by the prospective employing real estate broker, on a form approved by the Department of Real Estate which shall certify:
- A. That the employing broker has read the Decision of the Real Estate Commissioner which granted respondent a restricted license, and
- B. That the employing broker will exercise close supervision over the performance of respondent relating to activities for which a real estate license is required.
6. Respondent shall, at his own expense, report in writing to the Department of Real Estate such information concerning his activities for which a real estate license is required as the Real Estate Commissioner shall deem to be appropriate to protect the public interest.
7. The restricted license issued to respondent may be revoked or suspended for a violation by him of any of the conditions attaching to the restricted license.

Dated: \_\_\_\_\_

5-3-76

  
\_\_\_\_\_  
JAIME RENE ROMAN  
Administrative Law Judge  
Office of Administrative Hearings

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

By Kathleen Contreras

*In the Matter of the Accusation of*  
  
KENNETH MARK BARLEY,

}

Case No. H-3138 SAC  
OAH No. N-9507072

Respondent

CONTINUED  
**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, 501 J Street, Suite 220,  
Second Floor Hearing Rooms, Sacramento, California 95814

on April 17, 1996 and April 18, 1996 Between the Hours of 9:00 AM and 2:00 PM  
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.

Dated: December 13, 1995

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

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED  
JUL 25 1995  
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

KENNETH MARK BARLEY,

By Kathleen Contreras

Case No. H-3138 SAC

OAH No. N-9507072

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, 501 J Street, Suite 220,

Second Floor Hearing Rooms, Sacramento, California 95814

on Thursday -- November 30, 1995, at the hour of 9:00 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.

Dated: July 25, 1995

DEPARTMENT OF REAL ESTATE

By David B. Seals

DAVID B. SEALS

Counsel

1 DAVID B. SEALS, Counsel  
2 Department of Real Estate  
3 P. O. Box 187000  
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789

FILED  
JUN 28 1995  
DEPARTMENT OF REAL ESTATE

6 By *Kathleen Contreras*

7  
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 KENNETH MARK BARLEY, ) NO. H-3138 SAC  
13 \_\_\_\_\_ Respondent. ) ACCUSATION

14 The Complainant, Charles W. Koenig, a Deputy Real Estate  
15 Commissioner of the State of California for cause of Accusation  
16 against KENNETH MARK BARLEY (hereinafter "Respondent") is informed  
17 and alleges as follows:

18 I.

19 The Complainant, Charles W. Koenig, a Deputy Real Estate  
20 Commissioner of the State of California, makes this Accusation in  
21 his official capacity.

22 II.

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

1 III.

2 On or about July 28, 1992, Respondent entered into an  
3 agreement with Jackie Dominguez (hereafter "Dominguez") purporting  
4 to borrow \$65,000 from her in exchange for a promissory note  
5 secured by a Deed of Trust in second position on Respondent's real  
6 property located at 449 Center Street in Walnut Creek (hereafter  
7 the "Property").

8 IV.

9 Respondent caused a copy of a deed of trust on the  
10 Property in favor of Dominguez to be delivered to her. The copy  
11 had a stamp in the upper right-hand corner purporting to show that  
12 the deed of trust had been recorded in the official records of  
13 Contra Costa County on July 21, 1992. The stamp was forged and  
14 the deed of trust had not, in fact, been recorded.

15 V.

16 In or about February of 1993, Dominguez was contacted by  
17 Paul Candau who advised her that she did not have a recorded  
18 interest in the Property.

19 VI.

20 After Dominguez informed Respondent of her conversation  
21 with Paul Candau, Respondent executed and recorded a deed of trust  
22 on the Property in favor of Dominguez for \$91,000 in fourth  
23 position behind a \$295,000 first, \$50,000 second, and \$45,000  
24 third.

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VII.

1  
2 In or about November, 1993, Respondent convinced  
3 Dominguez to reconvey her interest in the Property in exchange for  
4 ten (10) \$5,000 unsecured demand notes.

VIII.

5  
6 Dominguez has received no payments on the original debt  
7 or any of the demand notes.

8 IX.

9 In truth and fact, Respondent did not intend to record  
10 the original deed of trust on the Property in favor of Dominguez  
11 and never intended to repay Dominguez any of the indebtedness.

12 X.

13 The acts and/or omissions of Respondent alleged above  
14 are grounds for the revocation or suspension of Respondent's  
15 license under Section 10177(j) of the Code.

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

23   
24 CHARLES W. KOENIG  
25 Deputy Real Estate Commissioner

26 Dated at Sacramento, California,  
27 this 23<sup>rd</sup> day of June, 1995.