

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

LISA R. YBARRA,

and

MARK F. BAKER,

Respondents.

Case No. H-3561 SAC

OAH No. N2001020284

PROPOSED DECISION

Administrative Law Judge John D. Wagner, State of California, Office of Administrative Hearings, heard this matter in Sacramento, California, on April 2, 2001.

Complainant was represented by David B. Seals, Counsel, Department of Real Estate.

Respondent Mark F. Baker was present and represented by Derk Wayne Schutmaat, Attorney at Law.

Respondent Lisa R. Ybarra was present and represented herself.

Evidence was received, a stipulation of facts was entered into, and the record remained open for the receipt of written closing briefs. Said briefs were received and marked Exhibits 5 and B. The matter was submitted on April 19, 2001.

FACTUAL FINDINGS

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

2. Respondents are licensed and have license rights under the Real Estate Law, Part 1, Division 4, of the Business and Professions Code, as follows:

- A. Respondent Mark F. Baker, as a real estate broker.
- B. Respondent Lisa R. Ybarra, as a real estate salesperson.

3. Respondent Ybarra was originally licensed as of August 22, 1994. Beginning on December 18, 1995, her employing broker was Alfred Forbes, Jr. Mr. Forbes had an office in El Dorado County that did business under the name Emerald Hills Realty. Respondent Ybarra was the only salesperson in that office. By August of 1997, respondent Ybarra wanted to change brokers but continue working in the El Dorado County office with the dba Emerald Hills Realty.

Respondent Baker was originally issued a salesperson's license on April 4, 1994. He was employed by Neighbor's Financial Corp., Sacramento, California. On July 26, 1997, respondent Baker was licensed as a broker. He continued to work full-time for Neighbor's Financial Corp. as a mortgage broker and he is still so employed.

On August 27, 1997, respondent Baker became the employing broker for respondent Ybarra. Under the Broker-Associate Licensee Contract between the respondents, respondent Ybarra would remain in the El Dorado County office and respondent Baker would do business as Emerald Hills Realty, a sole proprietorship, from that office. Respondents agreed to share commissions, "85% to sales person and 15% to broker from net." The contract between the respondents continued until at least February 26, 2001. Respondent Baker's license has never borne the fictitious name Emerald Hills Realty.

4. Although the above agreement indicated that Emerald Hills Realty was a sole proprietorship of respondent Baker, both respondents believed that respondent Ybarra was doing business as Emerald Hills Realty. Respondent Ybarra had made financial arrangements with her former broker to continue selling residential property with a new broker, respondent Baker, using the fictitious name of Emerald Hills Realty.

5. As set forth above, respondent Baker employed respondent Ybarra and engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker in the State of California within the meaning of section 10131(a) of the Business and Professions Code by 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 or a business opportunity, for or in expectation of compensation.

6. Beginning on or about April 20, 1999, and at various times thereafter through June 15, 1999, respondent Ybarra, in her capacity with respondent Baker, solicited and negotiated on behalf of JoAnna Fohl and Chris Cooper regarding the purchase of real property located at 7040 Patience Court, Sacramento. Respondent Ybarra received a commission from respondent Baker for performing such acts.

7. During the period of time respondent Baker employed respondent Ybarra, they were doing business as Emerald Hills Realty, but respondent Baker did not hold a license barring that fictitious name.

8. The activities performed by respondent Ybarra, as set forth above, were activities for which a real estate salesperson license is required and she was compensated by respondent Baker for performing these acts. However, respondent Ybarra was not licensed by the Department as a real estate salesperson or broker from November 20, 1998 through August 26, 1999.

9. On August 5, 1998, the Department of Real Estate received an application from respondent Ybarra for the renewal of her real estate salesperson license, which expired on August 21, 1998. Beginning on August 1, 1998, all real estate renewal applicants were required to submit proof that they are legally present in the United States in order to obtain a license. On September 17, 1998, the Department notified respondent Ybarra of this requirement and that her application for renewal did not include such proof. On September 17, 1998, the Department also notified respondent Ybarra that her license would be extended through November 19, 1998, to allow her time to obtain the required documentary proof.

10. After receiving the Department's notification of September 17, 1998, respondent Ybarra called the Department and discussed the requirement for additional documentation. The submission of respondent Ybarra's birth certificate was discussed. Because respondent Ybarra was born in the state of Indiana and that state required an individual to be physically present in order to obtain a copy of their birth certificate, respondent Ybarra did not obtain a copy of her birth certificate until approximately July 1999.

After November 19, 1998, respondent Ybarra's license expired. However, she continued to believe that she had an extension to allow her time to acquire a birth certificate in Indiana. She told respondent Baker that she continued to have an extension. In fact, respondent Ybarra's 90 day license extension ended on November 19, 1998. She should have known this. Further, respondent Baker should have made himself aware of the expired status of respondent Ybarra's license after November 19, 1998.

LEGAL CONCLUSIONS

1. A. Section 10137 of the Business and Professions Code ("Code") makes it unlawful for a licensed real estate broker to employ or compensate any person for performing any acts requiring a salesperson license if that person is not licensed as a salesperson.
- B. Section 2731, Title 10, of the California Code of Regulations requires that a licensee not use a fictitious name in the conduct of any licensed activity under the Real Estate Law, unless the licensee is the holder of a license barring the fictitious name.
2. Cause for discipline of respondent Baker's broker license was established pursuant to section 10177(d) of the Code, as follows:

- A. For violation of section 10137 of the Code, by reason of Finding 6.
 - B. For violation of section 2731, Title 10, of the California Code of Regulations, by reason of Finding 7.
3. A. Section 10130 of the Code makes it unlawful for any person to act in the capacity of a real estate salesperson in this state without a real estate license from the Department.
- B. Section 10177(f) of the Code makes conduct that would warrant a denial of an application for a real estate license grounds for the suspension or revocation of a real estate license.
4. Grounds for discipline of respondent Ybarra's salesperson license was established pursuant to section 10177(d) of the Code, as follows:
- A. For violation of section 10130 of the Code, by reason of Finding 8.
 - B. For violation of section 10177(f) of the Code, by reason Finding 8. Acting as a salesperson without a valid salesperson license is conduct that would warrant the denial of an application for a real estate license.
5. Respondents' licensees should be revoked. However, in view of the fact that no actual harm to the public was proved and they did not understand their responsibilities under the Real Estate Law, respondents should be allowed to apply for restricted licenses with the conditions contained in the following order.

ORDER

Wherefore, the following order is hereby made:

A. All licenses and licensing rights of respondent Mark F. Baker under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. 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 that Code:

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

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

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

4. Respondent shall, within nine (9) 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 respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

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

B. All licenses and licensing rights of respondent Lisa R. Ybarra under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. 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 that Code:

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

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

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

4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

5. Respondent shall, within nine (9) months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that 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 respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

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

Dated: April 30, 2001


JOHN D. WAGNER
Administrative Law Judge
Office of Administrative Hearings

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

FILED
MAR 01 2001

DEPARTMENT OF REAL ESTATE

By Shelly Ely

In the Matter of the Accusation of

LISA R. YBARRA & MARK F. BAKER

} Case No. H-3561 SAC

} OAH No. N2001020284

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, 560 J STREET, SUITE 340/360, SACRAMENTO, CALIFORNIA 95814 on MONDAY--APRIL 2, 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.

DEPARTMENT OF REAL ESTATE

Dated: MARCH 1, 2001

By

David B. Seals

DAVID B. SEALS

Counsel

1 DAVID B. SEALS, Counsel (SBN 69378)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789
6 -or- (916) 227-0792 (Direct)

FILED
JAN 25 2001

DEPARTMENT OF REAL ESTATE

By *Kathleen Contreras*

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

11 * * *

12 In the Matter of the Accusation of)
13 LISA R. YBARRA, and)
14 MARK F. BAKER,)
15 Respondents.)

NO. H-3561 SAC
ACCUSATION

17 The Complainant, Charles W. Koenig, a Deputy Real
18 Estate Commissioner of the State of California for cause of
19 Accusation against LISA R. YBARRA and MARK F. BAKER, is informed
20 and alleges as follows:

21 I

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

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

1 II

2 Respondents are licensed and/or have license
3 rights under the Real Estate Law, Part 1 of Division 4 of the
4 California Business and Professions Code (hereinafter "Code") as
5 follows:

6 (a) MARK F. BAKER (hereinafter "Respondent
7 BAKER"), as a real estate broker.

8 (b) LISA R. YBARRA (hereinafter "Respondent
9 YBARRA") as a real estate salesperson.

10 However, Respondent YBARRA was unlicensed
11 from November 20, 1998 through August 26,
12 1999.

13 III

14 At all times herein mentioned Respondent BAKER employed
15 Respondent YBARRA and engaged in the business of, acted in the
16 capacity of, advertised, or assumed to act as a real estate
17 broker in the State of California within the meaning of Section
18 10131(a) of the Code by selling or offering to sell, buying or
19 offers to buy, soliciting prospective sellers or purchasers of,
20 soliciting or obtaining listings of, or negotiating the purchase,
21 sale or exchange of real property or a business opportunity, for
22 or in expectation of compensation.

23 IV

24 Beginning on or about April 20, 1999 and at various
25 times thereafter through June 15, 1999, Respondent YBARRA, in her
26 capacity with Respondent BAKER, solicited and negotiated on
27 behalf of JoAnna Fohl and Chris Cooper regarding the purchase of

1 the real property located at 7040 Patience Court, Sacramento.
2 Respondent YBARRA received a commission from Respondent BAKER for
3 performing such acts.

4 V

5 During the time period referred to above in Paragraph
6 IV Respondents BAKER and YBARRA were doing business as Emerald
7 Hills Realty but Respondent BAKER did not hold a license bearing
8 that fictitious name in violation of Section 2731, Title 10,
9 California Code of Regulations (hereinafter the "Regulations").

10 VI

11 The activities performed by Respondent YBARRA in
12 Paragraph IV were activities for which a real estate license is
13 required and she was compensated by Respondent BAKER for
14 performing these acts. However, Respondent YBARRA was not
15 licensed by the Department as a real estate salesperson or broker
16 at any time during the period discussed in Paragraph IV.

17 VII

18 The acts and/or omissions of Respondents described
19 above are grounds for the revocation or suspension of
20 Respondents' licenses under the following sections of the
21 Business and Professions Code and the Regulations:

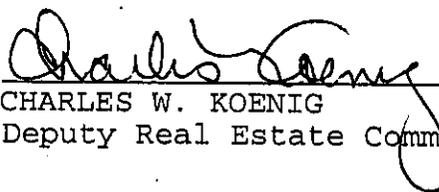
22 (a) As to Respondent BAKER under Section 10137 of
23 the Code and Section 2731 of the Regulations
24 in conjunction with Section 10177(d) of the
25 Code.

26 (b) As to Respondent YBARRA only, under Section
27 10177(f) of the Code and Section 10130 of the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Code in conjunction with Section 10177(d) of
the Code.

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


CHARLES W. KOENIG
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 29th day of December, 2000.