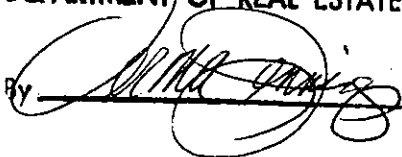


SACD.
Hay

FILED
JUL 27 2010
DEPARTMENT OF REAL ESTATE

By: 

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

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

| | | |
|------------------------------------|---|---------------|
| In the Matter of the Accusation of |) | No. H-6823 SF |
| |) | |
| EDDIE DON RAINER, |) | |
| |) | |
| Respondent. |) | |
| |) | |

ORDER DENYING RECONSIDERATION

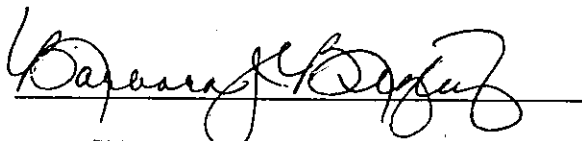
On May 18, 2010, an Order Denying Reinstatement of License was rendered to become effective July 16, 2010. Said Order was stayed by separate order to July 26, 2010.

On July 16, 2010, Respondent petitioned for reconsideration of the Order of May 18, 2010.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Order of May 18, 2010, and reconsideration is hereby denied.

IT IS SO ORDERED 7-23-2010

JEFF DAVI
Real Estate Commissioner



BY: Barbara J. Bigby
Chief Deputy Commissioner

facts

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

FILED

JUL 16 2010

DEPARTMENT OF REAL ESTATE

BY: *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

| | | |
|------------------------------------|---|---------------|
| In the Matter of the Accusation of |) | No. H-6823 SF |
| |) | |
| EDDIE DON RAINER, |) | |
| |) | |
| Respondent. |) | |

ORDER STAYING EFFECTIVE DATE

On May 18, 2010, an Order Denying Reinstatement of License ("Order") was rendered in the above-entitled matter to become effective July 16, 2010.

IT IS HEREBY ORDERED that the effective date of the Order of May 18, 2010, is stayed for a period of 10 days to consider Respondent's petition for reconsideration.

The Order of May 18, 2010, shall become effective at 12 o'clock noon on July 26, 2010.

DATED: July 16, 2010.

JEFF DAVI
Real Estate Commissioner

By: *William E. Moran*
WILLIAM E. MORAN
Assistant Commissioner, Enforcement

FILED

JUN 26 2010

DEPARTMENT OF REAL ESTATE



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

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of
EDDIE DON RAINER
Respondent.

No. H-6823 SF

ORDER DENYING REINSTATEMENT OF LICENSE

On March 8, 1994, a Decision was rendered revoking the real estate broker license of Respondent but granting Respondent the right to apply for a restricted broker license. A restricted broker license was issued to Respondent on June 16, 1994. It had been determined that there was cause to revoke Respondent's license for numerous violations of the Real Estate Law.

On November 14, 2007, Respondent petitioned for reinstatement of said real estate broker license. The Attorney General of the State of California has been given notice of the filing of said petition.

I have considered the petition of Respondent and the evidence submitted in support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has undergone sufficient rehabilitation to warrant the reinstatement of Respondent's real estate broker license at this time.

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

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

8 Regulation 2911(l) Significant or conscientious involvement in community,
9 church or privately-sponsored programs designed to provide social benefits or to ameliorate
10 social problems.

11 Respondent has not provided evidence of qualifying community service activities.

12 Regulation 2911(n) Change in attitude from that which existed at the time of the
13 conduct in question as evidenced by any or all of the following:

14 (1) Testimony of applicant.

15 Respondent did not furnish the Department with all requested information.

16 Respondent refuses to acknowledge responsibility for any past errors or mistakes.

17 Given the violations found and the fact that Respondent has not established that
18 Respondent has complied with Regulations 2911 (l) and (n)(1), I am not satisfied that
19 Respondent is sufficiently rehabilitated to receive a real estate license.

20 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for
21 reinstatement of Respondent's real estate license is denied.

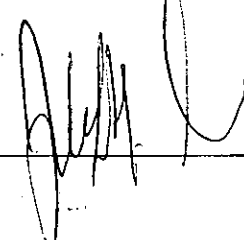
22 This Order shall become effective at 12 o'clock noon on

JUL 16 2010

23 IT IS SO ORDERED

24 JEFF DAVI
25 Real Estate Commissioner

26
27



FILED

JUN 26 2010

DEPARTMENT OF REAL ESTATE

A. Ziri
By _____

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of
EDDIE DON RAINER
Respondent.

No. H-6823 SF

ORDER DENYING REINSTATEMENT OF LICENSE

On March 8, 1994, a Decision was rendered revoking the real estate broker license of Respondent but granting Respondent the right to apply for a restricted broker license. A restricted broker license was issued to Respondent on June 16, 1994. It had been determined that there was cause to revoke Respondent's license for numerous violations of the Real Estate Law.

On November 14, 2007, Respondent petitioned for reinstatement of said real estate broker license. The Attorney General of the State of California has been given notice of the filing of said petition.

I have considered the petition of Respondent and the evidence submitted in support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has undergone sufficient rehabilitation to warrant the reinstatement of Respondent's real estate broker license at this time.

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

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

8 Regulation 2911(l) Significant or conscientious involvement in community,
9 church or privately-sponsored programs designed to provide social benefits or to ameliorate
10 social problems.

11 Respondent has not provided evidence of qualifying community service activities.

12 Regulation 2911(n) Change in attitude from that which existed at the time of the
13 conduct in question as evidenced by any or all of the following:

14 (1) Testimony of applicant.

15 Respondent did not furnish the Department with all requested information.

16 Respondent refuses to acknowledge responsibility for any past errors or mistakes.

17 Given the violations found and the fact that Respondent has not established that
18 Respondent has complied with Regulations 2911 (l) and (n)(1), I am not satisfied that
19 Respondent is sufficiently rehabilitated to receive a real estate license.

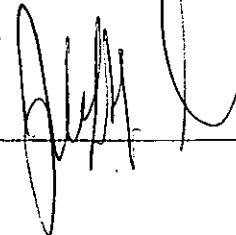
20 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for
21 reinstatement of Respondent's real estate license is denied.

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

JUL 16 2010

23 IT IS SO ORDERED _____

24 JEFF DAVI
25 Real Estate Commissioner

26 
27 _____

COPY

FILED
MAR 11 1994

BEFORE THE DEPARTMENT OF REAL ESTATE
DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By Victoria Dillon
Victoria Dillon

* * *

In the Matter of the Accusation of)
EDDIE DON RAINER,)
NOEL WESLEY ALLEN and)
ROBERT MICHAEL BUTTICCI,)
Respondent(s).)

No. H-6823 SF
OAH N 42556

DECISION

The Proposed Decision dated February 18, 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 March 31, 1994.

IT IS SO ORDERED March 8, 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)
Against:) No. H-6823 SF
)
EDDIE DON RAINER,) OAH No. N-42556
NOEL WESLEY ALLEN, and)
ROBERT MICHAEL BUTTICCI,)
)
Respondents.)
_____)

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 January 21, 1994.

John Van Driel, Counsel, represented complainant.

Respondent Eddie Don Rainer was present and was represented by John Diaz Coker, Attorney at Law, 525 Marina Boulevard, Pittsburg, California 94565.

Respondent Robert Michael Butticci was present and was represented by Robert A. Buchman, Attorney at Law, 1331 North California Boulevard, Sixth Floor, Walnut Creek, California 94596.

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

FINDINGS OF FACT

I

Complainant Edward V. Chiolo made the Accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California.

II

Respondents Eddie Don Rainer, Noel Wesley Allen and Robert Michael Butticci are licensed or have licensing rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code).

Respondent Rainer is licensed as a real estate broker. His license is scheduled to expire on January 6, 1997. Respondent Butticci is also licensed as a real estate broker. His license is scheduled to expire on July 13, 1995.

Respondent Allen was first licensed as a real estate salesperson on December 13, 1985. From November 1, 1988 through January 7, 1991 Allen worked as a salesperson under Rainer's broker license. From January 8, 1991 through August 18, 1991 Allen was not affiliated with a real estate broker on the Department's records. From August 19, 1991 through October 3, 1991 Allen was licensed under Butticci's broker license. Allen's license expired on December 12, 1993.

III

In late 1988 Allen approached Rainer, who was then working part-time in residential real estate sales at Liberty Homes Realty, with a proposal that Rainer enter the property management business with Allen. In November 1988 Rainer became Allen's broker of record. Allen was at that time operating Property Management of Pittsburg (PMP), a property management company which he had purchased from Bruce Croskey with clients already in place. Rainer did not know this, however, and thought the property management business was not to begin until after Allen "got everything set up with his lawyer." Rainer first learned Allen was actually managing properties in early 1990, during the course of the audit described in Finding IV, below. When Rainer then confronted Allen, Allen told him the clients for whom he was managing property were ones who had been with him for years. Allen agreed he would set up a trust account in Rainer's name and told Rainer he had made up the shortage which had been uncovered in the audit.

IV

In January and February 1990 an investigative audit was made by the Department of the books and records of PMP for the period October 1, 1989 through December 31, 1989. In this audit it was determined:

a. Allen maintained two checking accounts with Central Bank in Pittsburg, one in the name of PMP and one in his own name. Allen was the sole signatory on both accounts.

b. Allen deposited trust funds within the meaning of Business and Professions Code section 10145 into the PMP account. As of December 31, 1989 the combined balance of the PMP and Noel Allen accounts was \$4,086.81. The combined trust fund accountability for PMP was \$5,966.96. There was, therefore, a combined trust fund shortage of \$1,880.15.

V

While it is true that during the audit period Rainer was Allen's broker of record and that he failed to maintain control records for trust accounts and to reconcile separate beneficiary or transaction records with the control records, this is because Rainer had no idea Allen was already conducting the property management business and receiving trust funds. Although the evidence presented demonstrated Rainer did periodically receive payments of \$150 from Allen, it is found these payments of "broker fees" were received by Rainer with the understanding Allen was making the payments to show he was serious about getting the property management business started.

VI

While it is true that during the audit period "Property Management of Pittsburg" was not licensed by the Department either as a real estate corporation or as a fictitious business name of Rainer's real estate license, it was not established that during this period Rainer was in any way involved with, or had knowledge of, the operation of PMP.

VII

During the audit period, Rainer operated his real estate brokerage business from 4000 Railroad Avenue, Pittsburg. Because Rainer had no knowledge during this period that Allen was operating PMP from his own office at 3804 Railroad Avenue, it cannot be found that this latter location was an unlicensed branch office of Rainer's.

VIII

It was not established that during the audit period Rainer failed to review, initial and date written property management agreements with Jerry Stearns and Wai Tip Yen. No evidence of the existence of such agreements was offered.

IX

As a result of this audit, Rainer became aware in early 1990 that Allen was already operating PMP, performing acts for which a real estate license is required. Rainer maintains that he began to call Allen "daily" to try to get him to formally start up the business and that in October 1990 he moved his office from 4000 Railroad Avenue to 535 Black Diamond Street, a building Allen had purchased for PMP's offices. He made this move, he avers, so he could both continue his real estate business and "stay on top of" Allen. Rainer maintains he finally became disenchanted with Allen after Allen changed the locks on the building and told Rainer there had been a burglary and

everything had been stolen. Rainer's real estate broker license expired on January 7, 1991. On or about January 9, 1991 Rainer telephoned Allen and told him their business relationship was over since his (Rainer's) license had expired and he did not plan to renew it. Rainer has had no further contact with Allen since that time.

X

In April and June 1991 a second audit was made by the Department of PMP's property management records. This audit covered the period January 2, 1991 through June 19, 1991. It is noted that Allen was operating under Rainer's license only for the first six days of this audit period. For the remainder of the audit period, Allen was not affiliated with any real estate broker. In this audit it was determined:

a. As of April 29, 1991 Allen maintained a trust account for PMP at Bank of the West in Pittsburg. Allen was the sole signatory on that account.

b. Allen deposited trust funds within the meaning of Business and Professions Code section 10145 into this account. As of March 31, 1991 the adjusted balance of the account was \$2,500.84 and the trust fund accountability was \$2,171.40, resulting in a trust fund overage of \$329.44.

c. Rainer failed to maintain a control record for the PMP account and to reconcile separate beneficiary or transaction records with the control record.

d. At no time during the audit period was PMP either licensed by the Department as a real estate corporation or listed as a fictitious business name of Rainer's real estate broker license.

XI

After Rainer's broker license expired on January 7, 1991, Allen continued to operate PMP as a property management business for others in expectation of compensation. During this time Allen was not under the license or supervision of any active real estate broker. Rainer did not participate in the operation of PMP in any form after January 7, 1991.

XII

During the period from early 1990, when he learned Allen was actually performing property management services under the name PMP, until the expiration of his license on January 7, 1991, Rainer must be held responsible, as Allen's broker of record, for the activities of Allen and PMP. Although Rainer

knew during this period Allen was performing property management services and was receiving trust funds, he took no positive steps to either stop or to properly monitor Allen's activities and to ensure that trust funds were being handled in accordance with the law. While he may have been duped or conned by Allen to some extent, Rainer was nevertheless negligent in failing to adequately supervise Allen's licensed activities.

XIII

Butticci has been a full-time real estate broker since 1973. He has operated R.M.B. Realty in Contra Costa County since 1982, engaging in residential sales and mortgage brokerage.

In June 1991 Allen was introduced to Butticci by one of Butticci's sales agents, Nancy Clarke, for whom Allen was managing property. Allen told Butticci he had just been audited by the Department and had been advised the license of his broker had expired. Allen asked Butticci to become the broker of record for his property management business. Butticci initially declined this request. When Allen made a new plea a few days later, telling him it would be a brief arrangement until Allen could obtain his own broker license, Butticci told him he would consider it but first wanted to review Allen's books and records.

Allen brought to Butticci computer print-outs showing receipts and disbursements, cross-referenced to beneficiary records. He advised Butticci he had obtained approval from the Department of his record keeping. Butticci spoke to Clarke and to one of his own clients, Ed Engel, who was also a property management client of Allen's. Both reported they had no complaints with Allen's property management work for them. Butticci then agreed to become Allen's broker under specific terms. First, Butticci told Allen he was to operate as a branch office of R.M.B. Realty rather than as PMP. On June 11, 1991 Butticci submitted to the Department a branch office application. Second, Butticci instructed Allen to open a new trust account at the Bank of America showing Butticci as the trustee. Third, Butticci instructed Allen to send each of his property management clients new property management agreements with a cover letter stating he had changed brokers. After Allen agreed to all of these conditions, in late June 1991 Butticci signed a salesperson change application for Allen, instructing him to sign and forward it to the Department. Allen apparently delayed doing so since Butticci did not become listed on the Department's records as Allen's broker until August 19, 1991.

In late July Butticci told Allen he would be coming to his office in a few days to review and initial his records. Allen suggested Butticci wait until after the tenth of the month, when transactions and postings have been completed. Butticci visited Allen's office on August 15, 1991 and reviewed and initialed the transactions. When he returned to do the same in mid-September, Allen said they were behind and the records were

not ready for review. Butticci told Allen to send him copies of all collections and disbursements and that he would audit the trust account at the end of September.

On September 30, 1991 Butticci received a complaint from Mary Hart, one of Allen's property management clients, that checks she had received for rent collection had bounced. When Butticci confronted Allen, Allen admitted he had never opened the new trust account listing Butticci as trustee. On that same date, Butticci notified the Department he was terminating Allen as his employee and cancelling his branch office at 535 Black Diamond Street.

XIV

From January to March 1992 the Department made a third audit of the property management records of PMP. This audit covered the period July 1, 1991 through October 31, 1991. In this audit it was determined:

a. As of October 31, 1991 Allen continued to maintain the PMP trust account with Bank of the West and he remained the sole signatory on the account.

b. Allen deposited trust funds within the meaning of Business and Professions Code section 10145 to this account. As of October 31, 1991 the balance in the account was zero and the trust fund accountability was \$14,115.90, resulting in a trust fund shortage of \$14,115.90.

c. Allen failed to maintain a control record for the PMP account and failed to maintain or provide separate beneficiary or transaction records. Nor were such records reconciled with the control record.

XV

During this audit period, Allen managed property for Mary Hart. In August and September 1991 Allen issued checks to Hart which were returned due to insufficient funds. As of July 20, 1992 Allen had not repaid Hart any of the approximately \$2,500 due her from these bounced checks.

XVI

It was not established that Butticci failed to exercise reasonable supervision and control of Allen's activities during the period he was listed as Allen's broker of record. The evidence presented showed that Butticci took reasonable steps at the outset of his relationship with Allen to ensure that Allen's activities would be adequately monitored. He continued to act responsibly by reviewing Allen's books and records in August 1991

and attempting to do so again in September. When Butticci learned in late September that Allen had lied to him about the trust account he was supposed to open and had bounced checks to clients he immediately terminated Allen. Butticci acted at all times in a reasonable and responsible manner in his supervision of Allen's activities.

DETERMINATION OF ISSUES

I

Re: January-February 1990 audit: Inasmuch as it has been found respondent Rainer neither participated in nor was aware of Allen's property management activities during this audit period, no cause for disciplinary action against respondent Rainer was established pursuant to Business and Professions Code section 10176(e) or section 10177(d) for violation of Business and Professions Code sections 10145 or 10163 or Title 10, California Code of Regulations sections 2830, 2831, 2831.2, 2731 or 2725.

II

Re: April-June 1991 audit: Inasmuch as it has been found respondent Rainer did not participate in the operation of PMP in any form after the expiration of his license on January 7, 1991, no cause for disciplinary action against him was established pursuant to Business and Professions Code section 10177(d) for violation of Business and Professions Code section 10130.

III

Re: April-June 1991 audit: Cause for disciplinary action against respondent Allen exists pursuant to Business and Professions Code section 10177(d) in that he violated Business and Professions Code section 10130 by acting as a real estate broker without having such a license during the period January 8, 1991 through June 19, 1991.

IV

Re: January-March 1992 audit: Inasmuch as it has been found respondent Rainer did not participate in the operation of PMP in any form after the expiration of his license on January 7, 1991, no cause for disciplinary action against him was established pursuant to Business and Professions Code section 10177(d) for violation of Business and Professions Code section 10130.

V

Re: January-March 1992 audit: Cause for disciplinary action against respondent Allen exists pursuant to Business and Professions Code section 10177(d) in that he violated Business and Professions Code section 10130 by acting as a real estate broker without having such a license during the period October 4 through October 31, 1991.

VI

Finding XV: Cause for disciplinary action against respondent Allen exists pursuant to Business and Professions Code sections 10176(i) and 10177(j) in that he has engaged in fraud and dishonest dealing.

VII

Finding XII: Cause for disciplinary action against respondent Rainer exists pursuant to Business and Professions Code sections 10177(g) and (h) in that he negligently failed to exercise reasonable supervision over the activities of Allen.

VIII

Finding XVI: No cause for disciplinary action against respondent Butticci was established pursuant to Business and Professions Code section 10177(h) for failing to exercise reasonable supervision over the activities of Allen.

ORDER

I

All licenses and license rights of respondent Noel Wesley Allen under the Real Estate Law are revoked pursuant to Determinations III, V and VI, separately and for each of them.

II

The Accusation against respondent Robert Michael Butticci is dismissed.

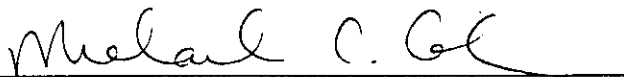
III

All licenses and licensing rights of respondent Eddie Don Rainer under the Real Estate Law are revoked pursuant to Determination VII; 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, within twelve (12) 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.
4. 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 one (1) year has elapsed from the effective date of this Decision.

Dated: February 18, 1994


MICHAEL C. COHN
Administrative Law Judge
Office of Administrative Hearings

COPY

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
SEP 14 1993

Mag Soc

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

EDDIE DON RAINER,
NOEL WESLEY ALLEN and
ROBERT MICHAEL BUTTICCI,

}

By Victoria Dillon
Case No. H-6823 SF Victoria Dillon
OAH No. N 42556

Respondent s

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 _____

OFFICE OF ADMINISTRATIVE HEARINGS

455 Golden Gate Avenue, Room 2248, San Francisco, CA 94102

on Friday, January 21, 1994 (1/2 Day Hearing), at the hour of 9:00 a.m.,
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: September 14, 1993

By John Van Driel
JOHN VAN DRIEL, Counsel *nd*

COPY

FILED

*Flag
tac*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA DEPARTMENT OF REAL ESTATE
MAR 30 1993

By *Victoria Dillon*
Victoria Dillon

Case No. H-6823 SF

OAH No. N 42556

In the Matter of the Accusation of

EDDIE DON RAINER,
NOEL WESLEY ALLEN and
ROBERT MICHAEL BUTTICCI,

}

Respondents

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 _____

OFFICE OF ADMINISTRATIVE HEARINGS

455 Golden Gate Ave., Room 2248, San Francisco, CA 94102

on July 9, 1993 (1/2 day hearing), at the hour of 1:30 p.m.,
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: March 30, 1993

By *John Van Driel*
JOHN VAN DRIEL, Counsel

W

*Flag
Sat*

1 JOHN VAN DRIEL, Counsel
2 Department of Real Estate
3 185 Berry Street, Room 3400
4 San Francisco, CA 94107-1770
5 Telephone: (415) 904-5917

FILED
NOV 24 1992

DEPARTMENT OF REAL ESTATE

By *Victoria Dillon*
Victoria Dillon

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11 In the Matter of the Accusation of) No. H-6823 SF
12)
13 EDDIE DON RAINER,) ACCUSATION
14 NOEL WESLEY ALLEN, and)
15 ROBERT MICHAEL BUTTICCI,)
Respondents.)

16 The Complainant, Edward V. Chiolo, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against EDDIE DON RAINER, NOEL WESLEY ALLEN and ROBERT MICHAEL
19 BUTTICCI (hereafter Respondents), is informed and alleges as
20 follows:

I

22 Respondents EDDIE DON RAINER (RAINER), NOEL WESLEY ALLEN
23 (ALLEN) and ROBERT MICHAEL BUTTICCI (BUTTICCI) are presently
24 licensed and/or have license rights under the Real Estate Law,
25 Part 1 of Division 4 of the Business and Professions Code
26 (hereafter the Code).

27 ///

1 II

2 The Complainant, Edward V. Chiolo, a Deputy Real Estate
3 Commissioner of the State of California, makes this Accusation
4 against Respondents in his official capacity and not otherwise.

5 III

6 On or about January 8, 1987 Rainer was licensed by the
7 Department as a real estate broker. His license expired on
8 January 8, 1991.

9 IV

10 Allen was licensed by the Department as a real estate
11 salesperson on or about December 13, 1985, and renewed his license
12 on or about December 13, 1989. From June 1, 1988 through January
13 7, 1991, Allen worked as a salesperson under Rainer's broker
14 license. From January 8, 1991 through August 18, 1991, Allen was
15 not affiliated with a real estate broker on the Department's
16 records. From August 19, 1991 through October 3, 1991, Allen was
17 licensed under the real estate broker license of Butticci. Since
18 October 4, 1991, Allen has not been affiliated with a real estate
19 broker on the Department's records. At all times mentioned
20 herein, Allen was the owner of the property management business
21 known as Property Management of Pittsburg (PMP).

22 V

23 Butticci was first licensed as a real estate broker in
24 1972 and last renewed his license on July 14, 1991. He was
25 Allen's broker of record from August 19, 1991 through October 3,
26 1991.

27 ///

VI

1
2 At all times herein mentioned, Respondents engaged in
3 the business of and acted in the capacity of real estate licensees
4 within the State of California, including the operation and
5 conduct of a property management business with the public for or
6 in expectation of compensation.

VII

7
8 In January and February 1990, an investigative audit
9 (first audit) was made by the Department of the records of Rainer
10 and Allen doing business as PMP as those records related to their
11 property management activities. The following facts were
12 ascertained by the first audit for the period of October 1, 1989
13 through December 31, 1989:

14 a. Allen maintained two checking accounts with Central
15 Bank, Pittsburg, California, designated as accounts #0839002521
16 (PMP account) and #0836144635 (Noel Allen account) (collectively
17 referred to as "the accounts"). The sole signer on the accounts
18 was Allen. The accounts were not designated by Central Bank as
19 trust accounts.

20 b. Allen deposited "trust funds", as that term is
21 defined in Section 10145 of the Code, to the accounts during the
22 audit period.

23 c. As of 12/31/89 the combined adjusted bank balance of
24 both accounts was \$4,086.81; the combined trust fund
25 accountability was \$5,966.96; resulting in a combined trust fund
26 shortage of \$1,880.15.

27 ///

1 d. Rainer failed to maintain control records for the
2 accounts and to reconcile separate beneficiary or transaction
3 records with the control records as required by Section 2831.2 of
4 Title 10, California Code of Regulations (Regulations).

5 e. During the audit period Rainer and Allen operated
6 their business as PMP. At that time, the name "Property
7 Management of Pittsburg" was neither licensed by the Department as
8 a real estate corporation nor listed as a fictitious business name
9 of Rainer's real estate broker license, as required by Section
10 2731 of the Regulations.

11 f. During the audit period, Rainer operated his real
12 estate brokerage business from two separate locations, 3804 and
13 4000 Railroad Ave., Pittsburg, CA. At that time he did not apply
14 for and obtain an additional license from the Department for his
15 branch office.

16 g. Rainer did not review, initial and date written
17 property management agreements with Jerry Stearns and Wai Tip Yen,
18 as required by Section 2725(a) of the Regulations.

19 VIII

20 In April and June 1991, a follow-up investigative audit
21 (second audit) was made by the Department of PMP's property
22 management records. The following facts were ascertained by the
23 second audit for the period of January 2, 1991 through June 19,
24 1991, (Rainer's broker license expired on January 7, 1991, and for
25 the remainder of the second audit period Allen was not affiliated
26 with another broker):

27 ///

1 a. As of April 29, 1991, Allen maintained a trust
2 checking account with Bank of the West, Pittsburg, California,
3 designated as account #183-003987 (PMP trust account). The sole
4 signer on the PMP trust account was Allen.

5 b. Allen deposited "trust funds" to the PMP trust
6 account during the audit period.

7 c. As of 3/31/91 the adjusted bank balance of the PMP
8 trust account was \$2,500.84; the trust fund accountability was
9 \$2,171.40; resulting in a trust fund overage of \$329.44.

10 d. Rainer failed to maintain a control record for the
11 PMP trust account and to reconcile separate beneficiary or
12 transaction records with the control record as required by Section
13 2831.2 of the Regulations.

14 e. During the second audit period Rainer and Allen
15 continued to operate their business as PMP while the name
16 "Property Management of Pittsburg" was neither licensed by the
17 Department as a real estate corporation nor listed as a fictitious
18 business name of Rainer's real estate broker license.

19 IX

20 After Rainer's broker license expired on January 8,
21 1991, both Rainer and Allen continued to operate PMP as a property
22 management business for others in expectation of compensation.
23 During that time Allen was not under the license and/or
24 supervision of an active real estate broker.

25 X

26 In performing the services set forth in Paragraph IX,
27 Rainer and Allen engaged in the business and acted in the capacity

1 of a real estate broker and salesperson, respectively, within the
2 meaning of Code Section 10131(b). At the time they engaged in
3 those acts, neither of them possessed the appropriate real estate
4 license issued by the Department.

5 XI

6 From January through March 1992, a second follow-up
7 investigative audit (third audit) was made by the Department of
8 the property management records of Respondents doing business as
9 PMP. The following facts were ascertained by the third audit for
10 the period of July 1, 1991 through October 31, 1991:

11 a. As of October 31, 1991, Respondents continued to
12 maintain the PMP trust account with Bank of the West. The sole
13 signer on the PMP trust account was still Allen.

14 b. Allen deposited "trust funds" to the PMP trust
15 account during the audit period.

16 c. As of 10/31/91 the adjusted bank balance of the PMP
17 trust account was \$0.00; the trust fund accountability was
18 \$17,849.54; resulting in a trust fund shortage of \$17,849.54.

19 d. Respondents failed to maintain a control record for
20 the PMP trust account. They also failed to maintain and/or provide
21 separate beneficiary or transaction records as required by
22 Sections 2831 and 2831.1 of the Regulations. The separate
23 beneficiary records were not reconciled with the control record,
24 as required by Section 2831.2 of the Regulations.

25 e. During the third audit period, Respondents managed
26 real property for Marie Hart. In August and September 1991, Allen
27 issued checks to Hart from the PMP trust account as rent or other

1 credits to the owner of the property. Approximately \$2,500 of
2 those checks were returned to Hart for "insufficient funds". As
3 of at least July 20, 1992 Allen
4 had not paid Hart the trust funds due to her.

5 XII

6 During the periods of time mentioned above in which
7 Rainer was licensed as a real estate broker and was responsible
8 for the activities of Allen, Rainer failed to exercise reasonable
9 supervision and control of Allen's activities for which a real
10 estate license is required. Rainer himself was negligent or
11 incompetent in performing acts for which a real estate license is
12 required, in that he knew or should have known all the facts
13 alleged above which occurred during the period(s) of his
14 responsibility, and that he could have and should have taken steps
15 to assure his own and Allen's full compliance with the Real Estate
16 Law.

17 XIII

18 During the periods of time mentioned above in which
19 Butticci was licensed as a real estate broker and was responsible
20 for the activities of Allen, Butticci failed to exercise
21 reasonable supervision and control of Allen's activities for which
22 a real estate license is required.

23 ///

24 ///

25 ///

26

27

XIV

The acts and/or omissions of Respondents as alleged above violate Sections of the Business and Professions Code (BPC) and the Regulations (Reg.) and are grounds for discipline as follows:

| <u>Paragraph</u> | <u>Respondent</u> | <u>Violation</u> | <u>Grounds for Discipline</u> |
|-----------------------|------------------------|------------------------|--|
| <i>(first audit)</i> | | | |
| VIIa | Rainer | Reg.2830 BPC 10145 | BPC 10177(d) |
| VIIb | Rainer | | BPC 10176(e) |
| VIIc | Rainer | Reg.2830 BPC 10145 | BPC 10177(d) |
| VIIId | Rainer | Reg.2831 Reg.2831.2 | BPC 10177(d) |
| VIIe | Rainer | Reg.2731 | BPC 10177(d) |
| VIIIf | Rainer | BPC 10163 | BPC 10177(d) |
| VIIg | Rainer | Reg.2725 | BPC 10177(d) |
| <i>(second audit)</i> | | | |
| VIII, IX, and X | Rainer and Allen | BPC 10130 | BPC 10177(d) |
| <i>(third audit)</i> | | | |
| XI | Rainer | BPC 10130 | BPC 10177(d) |
| XI | Allen | BPC 10130 | BPC 10177(d) BPC 10176(i) / BPC 10177(j) |
| *** | | | |
| XII | Rainer | | BPC 10177(g) / (h) |
| XIII | Butticci | | BPC 10177(h) |
| /// | | | |

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

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

PRIOR DISCIPLINARY ACTION

In case No. H-3382 SF Rainer's real estate salesperson license was revoked with a right to a restricted salesperson license for violations of BPC § 10177(a) and (f). The decision was effective on November 14, 1972.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of the Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondents 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 applicable provisions of law.

Edward V. Chiolo

EDWARD V. CHIOLO
Deputy Real Estate Commissioner

Dated at San Francisco, California
this 19th day of NOVEMBER, 1992.