

1 of my determination not to adopt the Proposed Decision of the
2 Administrative Law Judge along with a copy of said Proposed
3 Decision. Respondent was notified that the case would be decided
4 by me upon the record, the transcript of proceedings held on
5 July 13, 1994, and upon any written argument offered by
6 Respondent.

7 I have given careful consideration to the record in this
8 case including the transcript of proceedings of July 13, 1994, and
9 the argument submitted of Complainant and Respondent.

10 FINDINGS OF FACT

11 I

12 Les R. Bettencourt made the Statement of Issues in his
13 official capacity as a Deputy Real Estate Commissioner of the
14 State of California.

15 II

16 On or about November 15, 1993, Respondent Isaac Oliveira
17 Rodrigues submitted an application for a real estate salesperson
18 license.

19 III

20 On June 22, 1990, in the United States District Court,
21 Northern District of California, Respondent was convicted, upon
22 his plea of guilty, of a violation of Title 18 USC § 1341 (mail
23 fraud) and a violation of Title 26 USC § 7206(1) (making and
24 subscribing to false tax returns), felonies and crimes which bear
25 a substantial relationship to the qualifications, functions and
26 duties of a real estate licensee. Imposition of sentence was
27 suspended and he was placed on five years probation on each count,

1 to run concurrently. As a condition of probation, he was ordered
2 to pay restitution to California State Automobile Association in
3 the amount of \$10,805.50; to State Farm Insurance in the amount of
4 \$105,000.00; and to Farmers Insurance Group of Companies in the
5 amount of \$45,391.17. He was also ordered to pay \$42,253.67 in
6 outstanding taxes, plus penalties.

7 IV

8 The parties stipulated that the allegations set forth in
9 Paragraph IV of the Statement of Issues are true, to wit:
10 Respondent was licensed to practice law by the State Bar of
11 California from approximately January 1982 through approximately
12 September 1990. On April 20, 1990, Respondent's license to
13 practice law in California was suspended by the California Supreme
14 Court in Case No. S014464 pending final disposition of the case.
15 As a result of the conviction set out above and the pending State
16 Bar case, Respondent resigned from the State Bar in approximately
17 September 1990, with charges pending.

18 V

19 No other evidence was offered regarding Respondent's
20 suspension from the practice of law.

21 VI

22 Since resigning from the State Bar, Respondent has
23 worked as a law clerk and done odd jobs. He has paid about
24 \$16,000.00 restitution to date. Since October 1993, he has been
25 in training without pay at Olympic Funding, a mortgage broker.
26 His superiors at that firm testified on his behalf and spoke very
27 highly of him. He is on the board of directors of a Mexican-

1 American organization that intends to provide training for
2 battered women.

3 VII

4 Although it has been four and one half years since
5 Respondent's convictions, he has been convicted of two felonies
6 which involve dishonesty and his attorney license is still under
7 suspension by the State Bar of California. In addition, he is
8 still on probation for the two felony convictions and has only
9 paid approximately \$16,000 toward a restitution order of
10 approximately \$160,000. Considering the serious nature of
11 Respondent's crimes, especially while acting as a licensed
12 attorney, and the amount of restitution that remains unpaid,
13 insufficient time has elapsed for Respondent to demonstrate the
14 level of rehabilitation at this time which would justify the
15 issuance of a restricted salesperson license.

16 DETERMINATION OF ISSUES

17 I

18 By reason of the facts set forth in Finding III, cause
19 exists to deny Respondent's application under Sections 480(a) and
20 10177(b) of the Business and Professions Code. All further
21 statutory references are to that Code.

22 II

23 By reason of Findings IV and V, separate cause does not
24 exist to deny Respondent's application under Section 10177(f).

25 III

26 The matters set out in Findings VI and VII were
27 considered in making the following ORDER.

ORDER

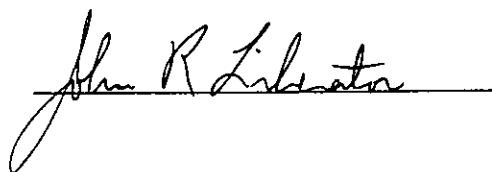
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Respondent's application for a real estate salesperson
license is denied.

This Decision shall become effective at 12 o'clock noon
on December 27, 1994.

IT IS SO ORDERED December 2, 1994.

JOHN R. LIBERATOR
Interim Commissioner



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FILED
DEC 12 1994

DEPARTMENT OF REAL ESTATE

By *Victoria Dillon*
Victoria Dillon

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of)	NO. H-7074 SF
ISAAC OLIVEIRA RODRIGUES,)	OAH N 9405098
Respondent.)	
_____)	

ORDER STAYING EFFECTIVE DATE

On December 2, 1994, a Decision was rendered in the above-entitled matter to become effective December 27, 1994.

IT IS HEREBY ORDERED that the effective date of the Decision of December 2, 1994, is stayed for a period of thirty (30) days.

The Decision of December 2, 1994, shall become effective at 12 o'clock noon on January 26, 1995.

DATED: December 12, 1994.

JOHN R. LIBERATOR
Interim Commissioner

Les R. Bettencourt
By: LES R. BETTENCOURT
Deputy Real Estate Commissioner

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FILED
JAN 25 1995
DEPARTMENT OF REAL ESTATE

By Timothy J. Kido

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of)	No. H-7074 SF
)	
ISAAC OLIVEIRA RODRIGUES,)	OAH N-9405098
)	
Respondent.)	
)	

DECISION AFTER RECONSIDERATION

TO: ISAAC OLIVEIRA RODRIGUES, Respondent:

On December 2, 1994, a Decision After Rejection was rendered herein by the Real Estate Commissioner which denied the real estate salesperson license application of Respondent ISAAC OLIVEIRA RODRIGUES. Said Decision was to become effective on December 27, 1994.

On December 12, 1994, Respondent petitioned for reconsideration of said Decision. I have considered the petition of Respondent and have concluded that good cause has not been presented for reconsideration of the Decision After Rejection of December 2, 1994.

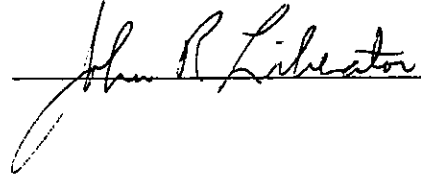
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The Decision After Rejection of December 2, 1994, shall
become effective at 12 o'clock noon on February 15
1995.

IT IS SO ORDERED January 24, 1995.

JOHN R. LIBERATOR
Interim Real Estate Commissioner



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FILED
SEP 01 1994

DEPARTMENT OF REAL ESTATE

By *Victoria Dillon*
Victoria Dillon

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of)
ISAAC OLIVEIRA RODRIGUES,)
Respondent.)
_____)

NO. H-7074 SF
OAH No. N9405098

NOTICE

TO: ISAAC OLIVEIRA RODRIGUES, Respondent

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated August 9, 1994, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated August 9, 1994, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on July 13, 1994, and any written argument hereafter submitted on behalf of respondent and complainant.

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Written argument of respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of July 13, 1994, at the San Francisco office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

Written argument of complainant to be considered by me must be submitted within 15 days after receipt of the argument of respondent at the San Francisco office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

DATED: August 30, 1994

JOHN R. LIBERATOR
Interim Commissioner

John R. Liberator

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of) No. H-7074 SF
))
 ISAAC OLIVEIRA RODRIGUES,) OAH No. N 9405098
))
) Respondent.)
_____)

PROPOSED DECISION

This matter was heard at San Francisco, California, on July 13, 1994, by Jerry Mitchell, Administrative Law Judge of the Office of Administrative Hearings, State of California. The Department of Real Estate was represented by John Van Driel, Counsel. The respondent was present and represented himself.

FINDINGS OF FACT

I

The Statement of Issues herein was made by Les R. Bettencourt in his official capacity as a Deputy Real Estate Commissioner of the State of California.

II

On or about November 15, 1993, respondent Isaac Oliveira Rodrigues submitted an application for a real estate salesperson license.

III

On June 22, 1990, in the United States District Court, Northern District of California, respondent was convicted, upon his plea of guilty, of a violation of Title 18 USC section 1341 (Mail Fraud) and a violation of Title 26 USC section 7206(1) (Making and Subscribing to False Tax Returns), felonies and crimes which bear a substantial relationship to the qualifications, functions and duties of a real estate licensee. Imposition of sentence was suspended and he was placed on five years probation on each count, to run concurrently. As a condition of probation, he was ordered to pay restitution to California State Automobile Association in the amount of \$10,805.50; to State Farm Insurance in the amount of \$105,000.00;

and to Farmers Insurance Group of Companies in the amount of \$45,391.17. He was also ordered to pay \$42,253.67 in outstanding taxes, plus penalties.

IV

The parties stipulated that the allegations set forth in Paragraph IV of the Statement of Issues are true, to wit: respondent was licensed to practice law by the State Bar of California from approximately January 1982 through approximately September 1990. On April 20, 1990, respondent's license to practice law in California was suspended by the California Supreme Court in Case No. S014464 pending final disposition of the case. As a result of the conviction set out above and the pending State Bar case, respondent resigned from the State Bar in approximately September 1990, with charges pending.

V

No other evidence was offered regarding respondent's suspension from the practice of law.

VI

Since resigning from the State Bar, respondent has worked as a law clerk and done odd jobs. He has paid about \$16,000.00 restitution to date. Since October 1993 he has been in training without pay at Olympic Funding, a mortgage broker. His superiors at that firm testified on his behalf and spoke very highly of him. He is on the board of directors of a Mexican-American organization that intends to provide training for battered women.

DETERMINATION OF ISSUES

I

By reason of the facts set forth in Finding III, cause exists to deny respondent's application under Sections 480(a) and 10177(b) of the Business and Professions Code. All further statutory references are to that code.

II

By reason of Finding V, separate cause does not exist to deny respondent's application under Section 10177(f). To establish such cause, it must be shown that the suspension was taken only after giving fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act.

ORDER

Respondent's application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code. The restricted license 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 said Code:

1. The license 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 this restricted license in the event of:
 - (a) The conviction of respondent (including a plea of nolo contendere) of a crime which is substantially related to respondent's fitness or capacity as a real estate licensee; or
 - (b) The receipt of evidence 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.
2. Respondent shall not be eligible to apply for the issuance of an unrestricted license nor the removal of any conditions, limitations or restrictions attaching to the restricted license until one year has elapsed from the date of issuance of the restricted license to respondent.
3. With the application for license, or with the application for transfer to a new employing broker, respondent shall submit a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify as follows:
 - (a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and
 - (b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise

NOT ADAPTED

exercise close supervision over the licensee's performance of acts for which a real estate license is required.

4. Respondent shall, within six months from the effective date of the restricted license, 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 the restricted license until respondent passes the examination.

NOT ADOPTED

DATED:

AUGUST 9, 1994

Jerry Mitchell
JERRY MITCHELL

Administrative Law Judge

Office of Administrative Hearings

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

FILED
MAY 24 1994

DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

ISAAC OLIVEIRA RODRIGUES,

}

By *Victoria Dillon*

Case No. H-7074 SE Victoria Dillon

OAH No. N 9405098

Respondent

NOTICE OF HEARING ON APPLICATION

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 Wednesday, July 13, 1994, (2 hrs. hearing), at the hour of 3:00 p.m.,
or as soon thereafter as the matter can be heard, upon the Statement of Issues 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.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you are not present nor represented at the hearing, the Department may act upon your application without taking evidence.

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: May 24, 1994

By *John Van Driel*
JOHN VAN DRIEL, Counsel

nd

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1 JOHN VAN DRIEL, Counsel
2 Department of Real Estate
185 Berry Street, Room 3400
3 San Francisco, CA 94107-1770

4 Telephone: (415) 904-5917
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FILED
MAY 10 1994

DEPARTMENT OF REAL ESTATE

By *Victoria Dillon*
Victoria Dillon

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 ISAAC OLIVEIRA RODRIGUES,)
13 Respondent.)
14 _____)

No. H- 7074 SF
STATEMENT OF ISSUES

15 The Complainant, LES R. BETTENCOURT, a Deputy Real
16 Estate Commissioner of the State of California, for Statement of
17 Issues against ISAAC OLIVEIRA RODRIGUES (hereinafter Respondent)
18 alleges as follows:

19 I

20 Respondent made application to the Department of Real
21 Estate of the State of California (the Department) for a real
22 estate salesperson license on or about November 15, 1993.

23 II

24 Complainant, LES R. BETTENCOURT, a Deputy Real Estate
25 Commissioner of the State of California, makes this Statement of
26 Issues in his official capacity.

27 ///

1 III

2 On or about June 22, 1990, in the United States District
3 Court, Northern District of California, Respondent was convicted
4 of a violation of Title 18 USC § 1341 (mail fraud) and Title 26
5 USC § 7206(1) (making and subscribing to false tax returns)
6 felonies and crimes which bear a substantial relationship under
7 Section 2910, Title 10, California Code of Regulations to the
8 qualifications, functions or duties of a real estate licensee.

9 IV

10 Respondent was licensed to practice law in California by
11 the State Bar of California from approximately January 1982
12 through approximately September 1990. On April 20, 1990,
13 Respondent's license to practice law in California was suspended
14 by the California Supreme Court in Case No. SO14464 pending final
15 disposition of the case. As a result of the conviction set out
16 above and the pending State Bar case, Respondent resigned from the
17 State Bar in approximately September, 1990, with charges pending.

18 V

19 Respondent applied for the issuance of a real estate
20 broker license in approximately May, 1990. In case no. H-6392 SF,
21 his application was denied. The denial was based on violations of
22 Business and Professions Code Sections 480(a) and (c) and 10177(a)
23 and (b), which was the conviction set out in Paragraph III and
24 Respondent's failure to disclose the suspension of his State Bar
25 license.

26 ///

27 ///

VI

Respondent applied for a real estate broker license a second time in approximately May, 1992. In case no. H-6861 SF, his second application was also denied, based on violations of Business and Professions Code Sections 480(a) and 10177(b), the conviction set out in Paragraph III.

VII

The crime of which Respondent was convicted, as alleged in Paragraph III, constitutes cause for denial of Respondent's application for a real estate license under Sections 480(a) and 10177(b) of the California Business and Professions Code (Code).

VIII

The suspension of Respondent's attorney license by the California Supreme Court, as alleged in Paragraph IV constitutes cause for denial of Respondent's application for a real estate license under Section 10177(f) of the Code.

WHEREFORE, the Complainant prays that the above-entitled matter be set for hearing and, upon proof of the charges contained herein, that the Commissioner refuse to authorize the issuance of, and deny the issuance of, a real estate salesperson license to Respondent, and for such other and further relief as may be proper in the premises.

Les R. Bettencourt
LES R. BETTENCOURT
Deputy Real Estate Commissioner

Dated at San Francisco, California,
this 10th day of May, 1994.