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MAY 10 2004

DEPARTMENT OF REAL ESTATE

Laurie A. Z...
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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-8066 SF
)	
LUIS MANUEL FRAUSTO-RAMIREZ,)	OAH No. N-2002040223
)	
Respondent.)	

**DECISION AFTER REMAND FROM THE
ALAMEDA COUNTY SUPERIOR COURT CASE NO. 3113596**

On May 29, 2003, the Commissioner rendered her Decision After Rejection in connection with the above-referenced matter.

On or about August 19, 2003, Respondent petitioned for a Writ of Mandate to the Alameda County Superior Court.

On or about April 7, 2004, the Alameda County Superior Court filed a judgment granting Respondent a peremptory Writ of Mandate.

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

LUIS MANUEL FRAUSTO RAMIREZ,

Respondent.

No. H-8066 SF

OAH No. N 2002040223

PROPOSED DECISION

Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, heard this matter on November 13, 2002, in Oakland, California.

Department of Real Estate Counsel David A. Peters represented complainant Les R. Bettencourt, Deputy Real Estate Commissioner, State of California.

Attorney at Law Frank M. Buda represented respondent Luis Manuel Frausto Ramirez, who was present.

The matter was submitted on November 13, 2002.

FACTUAL FINDINGS

1. Respondent Luis Manuel Frausto Ramirez is presently licensed and/or has license rights under the Real Estate Law (Bus. & Prof. Code, div. 4, pt. 1) as a real estate salesperson. His salesperson license was originally issued March 10, 1989. Respondent's current license expiration date is August 27, 2005.

2. On February 12, 2001, in the United States District Court, Northern District of California, respondent was convicted on a plea of guilty of violating Title 31, United States Code section 5324(a)(2) (causing a financial institution to file a report with a material omission or misstatement). On June 14, 2001, respondent was placed on probation for 48 months, with the first six months to be served in home detention with electronic monitoring. He was also ordered to perform 300 hours of volunteer service, to participate in a drug/alcohol aftercare treatment program and to participate in mental health treatment as directed by his probation officer.

3. The facts and circumstances of respondent's conviction are as follows: In 1998, respondent was operating a money order business in Santa Rosa, Money Orders International. As the only Latino in this type of business, respondent had a large Latino clientele. He sold international money orders and money orders to people without bank accounts who needed to pay their bills. His clients paid him with cash. Respondent knew Marco Hernandez as the nephew of his friend Elias Hernandez, whom he held in high esteem. Elias Hernandez is a successful businessman who owns several jewelry stores in Sonoma and Mendocino counties. Respondent had refinanced Elias Hernandez' home.

In November 1998, Marco Hernandez called respondent about doing business with him. He said he had some wealthy people in Mexico who had sold a business there and were buying a business in Oakland. Hernandez needed respondent to issue money orders for the investors' cash. He told respondent that he would recommend him to others with real estate and notary public business. On December 3, 1998, Hernandez came by with \$50,000 cash, which he said belonged to the investors, and asked respondent to sell him money orders. Respondent was not alarmed, because people in Mexico do not trust banks and customarily deal in cash. Respondent issued three checks – for \$20,000, \$20,000 and \$10,000, dated November 25, 1998, November 26, 1998, and December 2, 1998, respectively. Hernandez had respondent make the checks out to R. J. International, which he said was the name of the business in Oakland. At Hernandez' direction, respondent also noted on each check as purchaser the name of a person Hernandez said was one of the Mexican investors. On January 22, 1999, Hernandez brought respondent another \$50,000 cash, and respondent issued another three checks dated that day for the same amounts as before. Respondent charged Hernandez a total of about \$80 for his services in issuing the six checks. He did not see or do business with Hernandez again.

On both occasions when Marco Hernandez gave him \$50,000, respondent deposited the cash in his bank account. When he filled out the bank paperwork required for large cash deposits, respondent identified the source of the funds as Money Orders International (as opposed to Marco Hernandez). Respondent maintains that he believed he was being truthful, and he never suspected that the cash came from illegal activities. He trusted Marco Hernandez because of his respect for Elias Hernandez. Only after he was arrested did respondent learn that Marco Hernandez was involved in illegal drug sales and trafficking. Had respondent known this, he never would have done business with Hernandez.

4. When he was arrested, respondent discontinued his money order business. As a result of his experience with Marco Hernandez, he is much more careful in all his business dealings and less trusting of others.

5. Respondent is in full compliance with the terms of his federal probation. He never used drugs and only occasionally drinks alcohol. All his random drug tests were negative, and respondent was not required to participate in any drug or alcohol treatment. He did attend some counseling sessions. Respondent has completed over half of his required 300 hours of volunteer service, working for St. Vincent de Paul and doing translation for the

Sonoma County Human Rights Commission. Respondent's probation officer will recommend early termination of probation once he has completed his volunteer service hours.

6. Since 1997, respondent has worked for Century 21 – Alliance in Santa Rosa. He previously worked for another company as a loan agent and real estate agent. Respondent is active in the Latino community, and he has helped many Latinos become homeowners. When clients have been unable to qualify for home loans, respondent has found properties whose sellers are willing to finance the sales. Respondent then works with his clients so they can establish a credit history and qualify for an institutional loan. He gets a lot of repeat business and referrals. Respondent's bilingual ability is valued in his office, and he helps other agents when they need a Spanish translator.

7. Patricia Provost is a long-time licensed real estate broker and the designated officer of the corporation that owns Century 21 – Alliance. She or one of the managers in the company monitors all of respondent's deals. In her testimony, Provost described respondent as hardworking, honest and fair in his real estate activities. She receives a lot of positive feedback about him. Provost knows about respondent's conviction, and she supports his continued licensure as a real estate salesperson.

8. Respondent is involved in many community activities. He attends church and Bible study, and he has worked with church youth groups. Respondent took a course in television production, and he has volunteered at his local public television station. He plays music and writes music, and he has produced a music video as part of a campaign for AIDS prevention. He is interested in working with other musicians to raise money for charity.

9. Respondent submitted a large number of character letters from friends, business associates, clients and family members, several of whom also came to the hearing to testify on his behalf. They praise respondent as honest, trustworthy, conscientious, generous, caring and compassionate.

LEGAL CONCLUSIONS

1. Respondent's conviction was for a crime involving moral turpitude that is substantially related to the qualifications, functions or duties of a real estate licensee. Cause to discipline his license exists under Business and Professions Code sections 490 and 10177(b).

2. Respondent's conviction is relatively recent, but the criminal acts occurred almost four years ago. Although the conviction raises some concerns about respondent's honesty and judgment, there is no evidence that he has conducted his activities as a real estate licensee in anything other than an honest, ethical and lawful manner. Respondent is in full compliance with the requirements of his probation, and he is a productive and respected member of his community. It would not be contrary to the public interest to allow him to keep his real estate license on a restricted basis.

ORDER

All licenses and licensing rights of respondent Luis Manuel Frausto Ramirez 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 he 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, including by a plea of nolo contendere, of a crime that 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 two 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 that 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 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 respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: December 13, 2002



NANCY L. RASMUSSEN

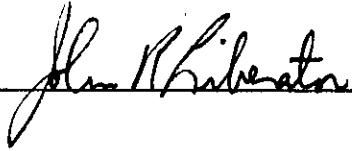
Administrative Law Judge

Office of Administrative Hearings

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IT IS HEREBY ORDERED July 21, 2003.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



FILED
JUN 18 2003

DEPARTMENT OF REAL ESTATE

By Laurie Egan

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-8066 SF
)	
LUIS MANUEL FRAUSTO-RAMIREZ,)	
)	
Respondent.)	

ORDER STAYING EFFECTIVE DATE

On May 29, 2003, a Decision After Rejection was rendered in the above-entitled matter to become effective June 23, 2003.

IT IS HEREBY ORDERED that the effective date of the Decision After Rejection of the Real Estate Commissioner of May 29, 2003, is stayed for a period of thirty (30) days.

The Decision After Rejection of the Real Estate Commissioner of May 29, 2003, shall become effective at 12 o'clock noon on July 23, 2003.

DATED: June 16, 2003 PAULA REDDISH ZINNEMANN
Real Estate Commissioner

John R. Liberator

FILED
JUN - 3 2003

DEPARTMENT OF REAL ESTATE

By Lauriel Zisi

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-8066 SF
)	
LUIS MANUEL FRAUSTO-RAMIREZ,)	OAH No. N-2002040223
)	
Respondent.)	

DECISION AFTER REJECTION

The matter came on for hearing before Nancy L. Rasmussen, Administrative Law Judge of the Office of Administrative Hearings, in Oakland, California, on November 13, 2002.

David A. Peters, Counsel, represented the Complainant. Respondent LUIS MANUEL FRAUSTO-RAMIREZ was represented by Frank M. Buda, Attorney at Law.

Evidence was received, the hearing was closed, and the matter was submitted.

On December 13, 2002, the Administrative Law Judge rendered a Proposed Decision, which I declined to adopt as my

1 Decision herein. Pursuant to Section 11517(c) of the Government
2 Code of the State of California, Respondent was served with
3 notice of my determination not to adopt the Proposed Decision of
4 the Administrative Law Judge along with a copy of said Proposed
5 Decision. Respondent was notified that the case would be
6 decided by me upon the record, the transcript of proceedings
7 held on November 13, 2002, and upon any written argument offered
8 by Respondent and Complainant.

9 Respondent has submitted written argument.

10 The following shall constitute the Decision of the
11 Real Estate Commissioner in this proceeding.

12 **FACTUAL FINDINGS**

13 1. Respondent LUIS MANUEL FRAUSTO-RAMIREZ is
14 presently licensed and/or has license rights under the Real
15 Estate Law (Business and Professions Code, div. 4, pt. 1) as a
16 real estate salesperson. His salesperson license was originally
17 issued March 10, 1989. Respondent's current license expiration
18 date is August 27, 2005.

19 2. On February 12, 2001, in the United States
20 District Court, Northern District of California, Respondent was
21 convicted on a plea of guilty of violating Title 31, United
22 States section 5324(a)(2) (Causing a Financial Institution to
23 File a Report with a Material Omission or Misstatement). On
24 June 14, 2001, Respondent was placed on probation for 48 months,
25 with the first six months to be served in home detention with
26 electronic monitoring. He was also ordered to perform 300 hours
27 of volunteer service, to participate in a drug/alcohol aftercare

1 treatment program and to participate in mental health treatment
2 as directed by his probation officer.

3 3. Respondent testified at the hearing to the
4 following facts and circumstances surrounding his criminal
5 convictions:

6 In 1998, Respondent was operating a money order
7 business in Santa Rosa, Money Orders International. As the only
8 Latino in this type of business, Respondent had a large Latino
9 clientele. He sold international money orders and money orders
10 to people without bank accounts who needed to pay their bills.
11 His clients paid him with cash. Respondent knew Marco Hernandez
12 as the nephew of his friend Elias Hernandez, whom he held in
13 high esteem. Elias Hernandez is a successful businessman who
14 own several jewelry stores in Sonoma and Mendocino counties.
15 Respondent had refinanced Elias Hernandez' home.

16 Respondent further testified that:

17 In November 1998, Marco Hernandez called Respondent
18 about doing business with him. He said he had some wealthy
19 people in Mexico who had sold a business there and were buying a
20 business in Oakland. Hernandez needed Respondent to issue money
21 orders for the investors' cash. He told Respondent that he
22 would recommend him to others with real estate and notary public
23 business. On December 3, 1998, Hernandez came by with \$50,000
24 cash, which he said belonged to the investors, and asked
25 Respondent to sell him money orders. Respondent was not
26 alarmed, because people in Mexico do not trust banks and
27 customarily deal in cash. Respondent issued three checks - for

1 \$20,000, \$20,000 and \$10,000, dated November 25, 1998,
2 November 26, 1998, and December 2, 1998, respectively.
3 Hernandez had Respondent make the checks out to R. J.
4 International, which he said was the name of the business in
5 Oakland. At Hernandez' direction, Respondent also noted on each
6 check as purchaser the name of a person Hernandez said was one
7 of the Mexican investors. On January 22, 1999, Hernandez
8 brought Respondent another \$50,000 cash, and Respondent issued
9 another three checks dated that day for the same amounts as
10 before. Respondent charged Hernandez a total of about \$80 for
11 his services in issuing the six checks. He did not see or do
12 business with Hernandez again.

13 On both occasions when Marco Hernandez gave him
14 \$50,000, Respondent deposited the cash in his bank account.
15 When he filled out the bank paperwork required for large cash
16 deposits, Respondent identified the source of the funds as Money
17 Orders International (as opposed to Marco Hernandez).
18 Respondent at hearing maintained that he believed he was being
19 truthful, and he never suspected that the cash came from illegal
20 activities. He claims he trusted Marco Hernandez because of his
21 respect for Elias Hernandez.

22 4. On March 31, 1999, in the United States District
23 Court, Northern District of California, and Indictment was filed
24 naming Respondent in counts Eleven through Sixteen alleging that
25 Respondent ". . . did knowingly and intentionally conceal and
26 disguise the nature, location, source, ownership and control of
27 property believed to be the proceeds of specified unlawful

1 activity; that is, the felonious distribution, buying, selling,
2 and otherwise dealing in controlled substances punishable under
3 a law of the United States, did knowingly conduct, counsel,
4 command, and induce, procure and cause to be conducted the
5 financial transactions, that is, the delivery of the following
6 bank drafts and checks affecting interstate or foreign commerce
7 involving properly represented by a law enforcement officer, to
8 be proceeds of specified unlawful activity."

9 On February 12, 2001, a Superseding Information was
10 filed against Respondent charging as follows:

11 "On or about December 3, 1998 and January 22,
12 1999, in the Northern District of California,
13 the defendant LUIS MANUEL FRAUSTO-RAMIREZ did
14 knowingly and intentionally cause and attempt
15 to cause a domestic financial institution, that
16 is Bank of America, to file a report required
17 under Title 31, United States Code, Section
18 5313(a), that contained a material omissions
19 and misstatement of fact, in violation of Title
20 31, United States Code, Sections 5324(a)(2) and
21 5324(c) and Title 18, United States Code,
22 Section 2."

23 On February 12, 2001, Respondent pled guilty to
24 structuring financial transaction in violations of Title 31
25 U.S.C. Section 5324(a)(2) and Title 18, U.S.C. Section 2. In
26 said plea agreement Respondent agreed to the following elements
27 of the offense:

28 "(1.) The elements of structuring in violation
29 of Title 31, United States Codes, Section
30 5324(a)(2) are that the defendant:

31 (1) knew that a financial institution was
32 legally obligated to report currency
33 transactions in excess of \$10,000;

1 (2) cause and attempt to cause a domestic
2 financial institution to file a report that
3 contains a material omission; and acted with
4 the intent to evade the reporting requirement.

5 2. I agree that I am guilty of the offenses to
6 which I plead guilty, and I agree that the
7 following facts are true:

8 During the period from on or about December 3,
9 1998 and continuing to on or about January 22,
10 1999, I accepted cash from co-defendant Marco
11 Hernandez in the aggregate amount of \$100,000.
12 I knowingly deposited the funds into Bank of
13 America with the intent to cause or attempt to
14 cause Bank of America to file a report that
15 misstated the owner of the funds. I did this
16 to assist Marco Hernandez and to avoid having a
17 currency transaction report filed in the name
18 of the true source of funds."

19 In pleading guilty to the crime Respondent has
20 admitted to all of the elements of the offense. Arneson v. Fox
21 (1981) 28 Cal.3d 440. Despite Respondent's admissions as part
22 of his plea bargain, at hearing he denied that he had any
23 wrongful intent notwithstanding his admission in open court to
24 his intent to cause the Bank of America to file a false currency
25 transaction report. In so doing, he knowingly misled the bank
26 as to the source of the funds being deposited. Even if he did
27 not know that the source of funds was "drug money", he did know
that he was being untruthful.

28 Respondent's attempt, at the hearing, to deny the
29 previously admitted elements of the crime of which he was
30 convicted demonstrates his lack of rehabilitation. Respondent
31 has failed to take responsibility for his misconduct by denying
32 what he admitted to the court in his plea agreement. This is a
33 reflection that he does not fully understand the wrongfulness of
34 his conduct by shading his version of what happened.

1 Respondent testified that as of the date of the
2 hearing, he was in full compliance with the terms of his federal
3 probation. Respondent testified at he hearing that he had
4 completed over half of his required 300 hours of volunteer
5 service, working for St. Vincent de Paul and doing translation
6 for the Sonoma County Human Rights Commission.

7 Since the hearing, Respondent has provided evidence
8 that upon the recommendation of his probation officer,
9 Respondent's probation was terminated on April 1, 2003, by the
10 United States District Court, Northern District of California.

11 Since 1997, Respondent has worked for Century 21 -
12 Alliance in Santa Rosa. He previously worked for another
13 company as a loan agent and real estate agent. Respondent is
14 active in the Latino community, and he has helped many Latinos
15 become homeowners.

16 Patricia Provost is a long-time licensed real estate
17 broker and the designated officer of the corporation that owns
18 Century 21 - Alliance. She or one of the managers in the
19 company monitors all of Respondent's deals. In her testimony,
20 Provost described Respondent as hardworking, honest and fair in
21 his real estate activities. She receives a lot of positive
22 feedback about him. Provost knows about Respondent's
23 conviction, but not the factual details surrounding it. She
24 supports his continued licensure as a real estate salesperson.

25 Respondent testified to his involvement in many
26 community activities including attending church and Bible study.
27 He testified that has worked with church youth groups.

1 Respondent testified that he took a course in television
2 production and has volunteered at his local public television
3 station. Respondent plays and writes music and has produced a
4 music video as part of a campaign for AIDS prevention. He
5 testified he is interested in working with other musicians to
6 raise money for charity.

7 Respondent submitted a large number of character
8 letters from friends, business associates, clients and family
9 members, several of whom also came to the hearing to testify on
10 his behalf.

11 However, the Department was unable to cross-examine
12 most of the letter writers or to establish their opinion of
13 Respondent since his criminal conviction. Little weight is
14 given to Respondent's uncontradicted recounting of his dealings
15 with the writers.

16 **SUBSTANTIAL RELATIONSHIP**

17 The crime of which Respondent was convicted is
18 substantially related to the qualifications, functions, or
19 duties of a real estate licensee and is a crime of moral
20 turpitude as found by the ALJ. The crime meets the Department's
21 Criteria of Substantial Relationship. Pursuant to Section 2910,
22 Title 10, California Code of Regulations (hereinafter
23 "Regulations") as follows:

24 Section 2910(a)(2) - Counterfeiting, forging or
25 altering of an instrument or uttering of a false statement.

26 Section 2910(a)(4) - The employment of bribery, fraud,
27 deceit, falsehood or misrepresentation to achieve an end.

1 2. Section 2912(c) - "Expungement of the conviction
2 or convictions which culminated in the administrative proceeding
3 to take disciplinary action."

4 Respondent's criminal conviction has not been
5 expunged.

6 3. Section 2912(d) - "Successful completion or early
7 discharged from probation or parole."

8 Although Respondent's probation has been terminated,
9 it is too soon to find that he is rehabilitated given the
10 seriousness of his federal conviction and the fact that he was
11 on probation until April 1, 2003. The California Supreme Court
12 has found that persons on probation or parole are required to
13 behave in an exemplary fashion. Therefore, the period after
14 probation or parole has been terminated is the most important in
15 evaluating rehabilitation [See In Re Gossage (2000) 23 Cal.4th
16 1080, 1099].

17 4. Section 2912(g) - "Correction of business
18 practices responsible in some degree for the crime or crimes of
19 which the licensee was convicted."

20 Respondent's only evidence of changed business
21 practices was his testimony at the hearing.

22 5. Section 2912(l) - Change in attitude from that
23 which existed at the time of the commission of the criminal
24 acts in question as evidence by any or all of the following: ..."

25 Respondent has not changed his attitude in that he
26 refuses to admit his culpability in connection with the crime

27 ///

1 for which he was convicted, thereby demonstrating a lack of
2 rehabilitation.

3 **LEGAL CONCLUSIONS**

4 There is clear and convincing evidence to a reasonable
5 certainty that Respondent's conviction was for a crime involving
6 moral turpitude that is substantially related to the
7 qualifications, functions, or duties of a real estate licensee.
8 Cause to discipline Respondent's license exists under Business
9 and Professions Code sections 490 and 10177(b).

10 Respondent's conviction is relatively recent. The
11 crime was one involving sophistication and fundamental
12 dishonesty. Respondent is not rehabilitated and protection of
13 the public requires that his real estate salesperson license be
14 revoked.

15 **ORDER**

16 All licenses and licensing rights of Respondent LUIS
17 MANUEL FRAUSTO-RAMIREZ under the Real Estate Law are revoked.

18 This Decision shall become effective at 12 o'clock
19 noon on JUNE 23, 2003.

20 IT IS SO ORDERED

21 May 29, 2003
22 PAULA REDDISH ZINNEMANN
23 Real Estate Commissioner
24 *Paula Reddish Zinnemann*
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FILED

JAN 16 2003

DEPARTMENT OF REAL ESTATE

Laurie [Signature]

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
LUIS MANUEL FRAUSTO-RAMIREZ,)	No. H-8066 SF
)	
Respondent.)	N-2002040223

NOTICE

TO: LUIS MANUEL FRAUSTO-RAMIREZ, Respondent, and FRANK M. BUDA, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated December 13, 2002, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated December 13, 2002, 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 November 13,

///

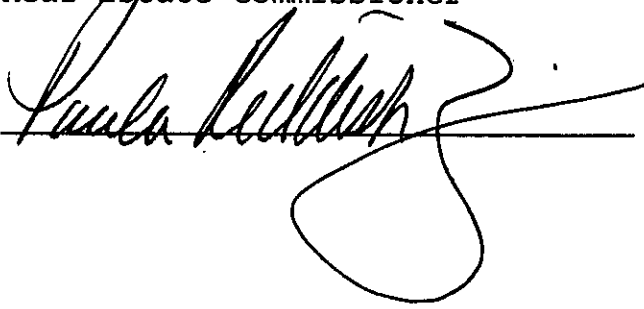
1 2002, and any written argument hereafter submitted on behalf of
2 Respondent and Complainant.

3 Written argument of Respondent to be considered by me
4 must be submitted within 15 days after receipt of the transcript
5 of the proceedings of November 13, 2002, at the Sacramento office
6 of the Department of Real Estate unless an extension of the time
7 is granted for good cause shown.

8 Written argument of Complainant to be considered by me
9 must be submitted within 15 days after receipt of the argument of
10 Respondent at the Sacramento office of the Department of Real
11 Estate unless an extension of the time is granted for good cause
12 shown.

13 DATED: January 8, 2003

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15 PAULA REDDISH ZINNEMANN
16 Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

LUIS MANUEL FRAUSTO RAMIREZ,

Respondent.

No. H-8066 SF

OAH No. N 2002040223

PROPOSED DECISION

Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, heard this matter on November 13, 2002, in Oakland, California.

Department of Real Estate Counsel David A. Peters represented complainant Les R. Bettencourt, Deputy Real Estate Commissioner, State of California.

Attorney at Law Frank M. Buda represented respondent Luis Manuel Frausto Ramirez, who was present.

The matter was submitted on November 13, 2002.

FACTUAL FINDINGS

1. Respondent Luis Manuel Frausto Ramirez is presently licensed and/or has license rights under the Real Estate Law (Bus. & Prof. Code, div. 4, pt. 1) as a real estate salesperson. His salesperson license was originally issued March 10, 1989. Respondent's current license expiration date is August 27, 2005.

2. On February 12, 2001, in the United States District Court, Northern District of California, respondent was convicted on a plea of guilty of violating Title 31, United States Code section 5324(a)(2) (causing a financial institution to file a report with a material omission or misstatement). On June 14, 2001, respondent was placed on probation for 48 months, with the first six months to be served in home detention with electronic monitoring. He was also ordered to perform 300 hours of volunteer service, to participate in a drug/alcohol aftercare treatment program and to participate in mental health treatment as directed by his probation officer.

3. The facts and circumstances of respondent's conviction are as follows: In 1998, respondent was operating a money order business in Santa Rosa, Money Orders International. As the only Latino in this type of business, respondent had a large Latino clientele. He sold international money orders and money orders to people without bank accounts who needed to pay their bills. His clients paid him with cash. Respondent knew Marco Hernandez as the nephew of his friend Elias Hernandez, whom he held in high esteem. Elias Hernandez is a successful businessman who owns several jewelry stores in Sonoma and Mendocino counties. Respondent had refinanced Elias Hernandez' home.

In November 1998, Marco Hernandez called respondent about doing business with him. He said he had some wealthy people in Mexico who had sold a business there and were buying a business in Oakland. Hernandez needed respondent to issue money orders for the investors' cash. He told respondent that he would recommend him to others with real estate and notary public business. On December 3, 1998, Hernandez came by with \$50,000 cash, which he said belonged to the investors, and asked respondent to sell him money orders. Respondent was not alarmed, because people in Mexico do not trust banks and customarily deal in cash. Respondent issued three checks – for \$20,000, \$20,000 and \$10,000, dated November 25, 1998, November 26, 1998, and December 2, 1998, respectively. Hernandez had respondent make the checks out to R. J. International, which he said was the name of the business in Oakland. At Hernandez' direction, respondent also noted on each check as purchaser the name of a person Hernandez said was one of the Mexican investors. On January 22, 1999, Hernandez brought respondent another \$50,000 cash, and respondent issued another three checks dated that day for the same amounts as before. Respondent charged Hernandez a total of about \$80 for his services in issuing the six checks. He did not see or do business with Hernandez again.

On both occasions when Marco Hernandez gave him \$50,000, respondent deposited the cash in his bank account. When he filled out the bank paperwork required for large cash deposits, respondent identified the source of the funds as Money Orders International (as opposed to Marco Hernandez). Respondent maintains that he believed he was being truthful, and he never suspected that the cash came from illegal activities. He trusted Marco Hernandez because of his respect for Elias Hernandez. Only after he was arrested did respondent learn that Marco Hernandez was involved in illegal drug sales and trafficking. Had respondent known this, he never would have done business with Hernandez.

4. When he was arrested, respondent discontinued his money order business. As a result of his experience with Marco Hernandez, he is much more careful in all his business dealings and less trusting of others.

5. Respondent is in full compliance with the terms of his federal probation. He never used drugs and only occasionally drinks alcohol. All his random drug tests were negative, and respondent was not required to participate in any drug or alcohol treatment. He did attend some counseling sessions. Respondent has completed over half of his required 300 hours of volunteer service, working for St. Vincent de Paul and doing translation for the

Sonoma County Human Rights Commission. Respondent's probation officer will recommend early termination of probation once he has completed his volunteer service hours.

6. Since 1997, respondent has worked for Century 21 – Alliance in Santa Rosa. He previously worked for another company as a loan agent and real estate agent. Respondent is active in the Latino community, and he has helped many Latinos become homeowners. When clients have been unable to qualify for home loans, respondent has found properties whose sellers are willing to finance the sales. Respondent then works with his clients so they can establish a credit history and qualify for an institutional loan. He gets a lot of repeat business and referrals. Respondent's bilingual ability is valued in his office, and he helps other agents when they need a Spanish translator.

7. Patricia Provost is a long-time licensed real estate broker and the designated officer of the corporation that owns Century 21 – Alliance. She or one of the managers in the company monitors all of respondent's deals. In her testimony, Provost described respondent as hardworking, honest and fair in his real estate activities. She receives a lot of positive feedback about him. Provost knows about respondent's conviction, and she supports his continued licensure as a real estate salesperson.

8. Respondent is involved in many community activities. He attends church and Bible study, and he has worked with church youth groups. Respondent took a course in television production, and he has volunteered at his local public television station. He plays music and writes music, and he has produced a music video as part of a campaign for AIDS prevention. He is interested in working with other musicians to raise money for charity.

9. Respondent submitted a large number of character letters from friends, business associates, clients and family members, several of whom also came to the hearing to testify on his behalf. They praise respondent as honest, trustworthy, conscientious, generous, caring and compassionate.

LEGAL CONCLUSIONS

1. Respondent's conviction was for a crime involving moral turpitude that is substantially related to the qualifications, functions or duties of a real estate licensee. Cause to discipline his license exists under Business and Professions Code sections 490 and 10177(b).

2. Respondent's conviction is relatively recent, but the criminal acts occurred almost four years ago. Although the conviction raises some concerns about respondent's honesty and judgment, there is no evidence that he has conducted his activities as a real estate licensee in anything other than an honest, ethical and lawful manner. Respondent is in full compliance with the requirements of his probation, and he is a productive and respected member of his community. It would not be contrary to the public interest to allow him to keep his real estate license on a restricted basis.


ORDER

All licenses and licensing rights of respondent Luis Manuel Frausto Ramirez 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 he 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:

- not adapted*
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, including by a plea of nolo contendere, of a crime that 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 two 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 that 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 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 respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: December 13, 2002



NANCY L. RASMUSSEN
Administrative Law Judge
Office of Administrative Hearings

FILED
AUG 14 2002

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

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

In the Matter of the Accusation of

LUIS MANUEL FRAUSTO-RAMIERZ,

} Case No. H-8066 SF

} OAH No. N-2002040223

Respondent

**SECOND 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 HEARING, THE ELIHU HARRIS STATE BUILDING, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612** on **NOVEMBER 13, 2002**, at the hour of **1:30 PM**, 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: AUGUST 14, 2002

By David A. Peters
DAVID A. PETERS, Counsel

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

FILED
MAY 02 2002

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

LUIS MANUEL FRAUSTO-RAMIERZ,

By Shelly Ely
Case No. H-8066 SF
OAH No. N2002-04-0223

Respondent

**FIRST 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, THE ELIHU HARRIS STATE BUILDING, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612** on **WEDNESDAY--AUGUST 14, 2002**, 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.

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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.

Dated: MAY 2, 2002

DEPARTMENT OF REAL ESTATE
By Larry Alamao
LARRY ALAMAQ Counsel

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
MAR 25 2002

DEPARTMENT OF REAL ESTATE

By Lauriel P. Zini

In the Matter of the Accusation of

LUIS MANUEL FRAUSTO-RAMIREZ,

} Case No. H-8066 SF

} OAH No.

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, 1515 CLAY STREET, SUITE 206, OAKLAND, CA 94612** on **WEDNESDAY, JULY 10, 2002**, at the hour of **9:00 A.M.**, 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.

Dated: MARCH 26, 2002

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

1 JAMES L. BEAVER, Counsel (SBN 60543)
2 DEPARTMENT OF REAL ESTATE
3 P. O. Box 187000
4 Sacramento, CA 95818-7000
5 Telephone: (916) 227-0789
6 (916) 227-0788 (Direct)

FILED
MAR - 7 2002

DEPARTMENT OF REAL ESTATE
By *Laurie L. Zini*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No.: H-8066 SF
12 LUIS MANUEL FRAUSTO-RAMIREZ,) ACCUSATION
13 Respondent.)
14

15 The Complainant, Les R. Bettencourt, a Deputy Real
16 Estate Commissioner of the State of California, for cause of
17 Accusation against LUIS MANUEL FRAUSTO-RAMIREZ (hereinafter
18 "Respondent"), is informed and alleges as follows:

19 I

20 Respondent is presently licensed and/or has license
21 rights under the Real Estate Law, Part 1 of Division 4 of the
22 Business and Professions Code (hereinafter "Code") as a real
23 estate salesperson.

24 II

25 The Complainant, Les R. Bettencourt, a Deputy Real
26 Estate Commissioner of the State of California, makes this
27 Accusation against Respondent in his official capacity.

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III

On or about June 14, 2001, in the United States District Court for the Eastern District of California, Respondent was convicted of violating Title 31, United States Code, Section 5324(a)(2) (Causing a Financial Institution to File a Report with a Material Omission or Misstatement), a felony and a crime involving moral turpitude which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations (herein "the Regulations"), to the qualifications, functions or duties of a real estate licensee.

IV

The facts alleged above constitute cause under Sections 490 and 10177(b) of the Code for suspension or revocation of all licenses and license rights of Respondent under the Real Estate Law.

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 Respondent 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.


LES R. BETTENCOURT
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 17th day of January, 2002.