

FILED
FEB - 3 2004

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By: Kathleen Contreras

* * *

In the Matter of the Accusation of))	NO. H-8488 SF
ROBERT RULAND FITZ-STEPHENS,))	OAH NO. N-2003100046
Respondent.))	

DECISION

The Proposed Decision dated January 8, 2004, 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 February 23, 2004.

IT IS SO ORDERED January 30, 2004.

Real Estate Commissioner

By:

John R. Liberator
JOHN R. LIBERATOR
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

ROBERT RULAND FITZ-STEPHENS

Respondent.

Case No. H-8488 SF

OAH No. N2003100046

PROPOSED DECISION

This matter was heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, in Oakland, California on December 22, 2003.

Complainant Les R. Bettencourt, Deputy Real Estate Commissioner, State of California, was represented by Deidre L. Johnson, Counsel.

Respondent Robert Ruland Fitz-Stephens was present and was represented by Stephen R. Gianelli, Attorney at Law, 1000 Green Street, Suite 1004, San Francisco, CA 94133.

The record was held open to allow respondent to submit a brief in response to complainant's hearing brief. However, counsel for respondent subsequently notified the administrative law judge that the matter could be submitted without additional briefing. The matter was submitted on December 22, 2003.

BACKGROUND AND ISSUES

Business and Professions Code section 10177.5 provides that a real estate licensee may be disciplined, "[w]hen a final judgment is obtained in a civil action against [the] licensee upon grounds of fraud, misrepresentation, or deceit with reference to any transaction for which a license is required"

Respondent was one of several defendants named in a civil suit for, among other things, intentional misrepresentation, negligent misrepresentation, breach of contract, concealment, negligence, and conspiracy. The suit generally alleged that defendants had "engaged in a scheme and conspiracy to defraud" plaintiff by coercing her into financial transactions which primarily benefited defendants. Some of these transactions required a real estate license, some did not. A jury rendered a verdict that found respondent had made false representations to plaintiff, had concealed facts from her, had made promises to her without the intent of performing, had engaged in a conspiracy to defraud her, and had

breached his duties to her. However, the jury did not specify which, if any, of these actions occurred in relation to a transaction for which a real estate license is required.

Based upon this judgment, the Department of Real Estate now seeks to discipline respondent's license. The issue presented is whether the judgment falls within the scope of section 10177.5.

FACTUAL FINDINGS

License History

1. Robert Ruland Fitz-Stephens (respondent) is licensed and has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code). He currently holds a restricted real estate broker license issued February 11, 2003. The terms of that restricted license permit the Real Estate Commissioner to suspend the license prior to hearing upon evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law. Under those terms, respondent's restricted license was suspended on August 12, 2003 upon the filing of this action.

2. Respondent was first licensed by the Department as a real estate salesperson in October 1984. That license was issued as a restricted license because of convictions respondent had suffered in 1981. The restrictions were removed from respondent's license in June 1986. Respondent was licensed as a real estate broker in July 1988. In the intervening years, respondent has done business as a broker under a number of dba's: VLS Financial, First Financial Mortgage, First Financial, and American Mortgage Associates.

3. In March 2002, an accusation was filed against respondent and real estate salesperson Kevin Hunter regarding a February 1999 transaction handled by Hunter while employed by American Mortgage Associates. In October 2002, respondent entered into a stipulation and agreement with the Department that resulted in the revocation of his broker license and issuance of a restricted broker license. The stipulated basis for this action was a violation of Business and Professions Code section 10177(h), failure to exercise reasonable supervision over the activities of his salesperson.

Civil Suit

4. In March 1998, Noreen Cardinale filed a complaint for damages and to quiet title, for injunctive relief, for claim and delivery, and for declaratory relief, against respondent, both individually and doing business as First Financial and First Financial Mortgage, and against Steven Daggett and Daniel R. Miller, Jr. The civil complaint contained 18 causes of action. These included intentional misrepresentation, negligent misrepresentation, breach of contract in regard to the refinance, concealment of intent to defraud, breach of fiduciary duty, professional negligence, and conspiracy to defraud.

5. The complaint alleged the following facts: that respondent was a licensed real estate broker doing business as First Financial and First Financial Mortgage; that Daggett at one time held a real estate license and was an agent associated with respondent doing business as First Financial and First Financial Mortgage; that Miller held himself out to be affiliated with respondent and his dba's; and that Miller also operated under the fictitious names Miller Financial and Miller Autosport. The complaint further alleged that Cardinale owned property in Oakland; that in November 1997 she refinanced the property with Golden Bear Mortgage; that at about the same time, Miller solicited Cardinale to make a further refinance loan through First Financial; that Miller introduced her to Daggett and together they made representations to Cardinale that she would receive proceeds of about \$130,000 from a new refinance and that her payments would be about \$2,500 per month; that in reliance upon these representations Cardinale closed escrow on the loan but netted only \$105,000 and had payments of \$3,000, which were beyond her means; that defendants collected \$30,305 in fees in connection with the loan; and that defendants induced Cardinale to give them \$7,000 on the promise they would invest it to produce a monthly income that would make up the difference between the property's rental income and the loan payments after the second refinance. The complaint also alleged that, in anticipation of receipt of the proceeds of the refinance, Cardinale had purchased a small home in San Jose but that, because of the shortfall of proceeds from the refinance and the \$7,000 she had given to defendants, she was \$6,000 short of the funds needed to close the purchase; and that defendants, by representing her car was to be used as collateral for an interim loan, then induced Cardinale to sell her car to Miller Autosport for \$6,000 even though its wholesale value was \$8,000. The complaint further alleged that, because of Cardinale's difficulty in meeting payments on the refinanced loan, defendants then solicited her to sell the Oakland property to Miller for an amount well below the appraised value that had been used on the refinance; that defendants used undue influence to obtain Cardinale's signature on a grant deed in favor of Miller, which they promised would not be used or recorded until terms of the purchase agreement were fulfilled; that the terms of the purchase agreement were not fulfilled but Miller represented to the tenants in the property that he was the new owner and thereby obtained from them the rental payment due in February 1998; and that defendants had refused demands to redeliver the deed to the property and the pink slip to Cardinale's vehicle, and to pay \$6,000 still owed her.

6. Of these various transactions, the only one with which respondent was involved for which a real estate license was required was the refinance of the Oakland property. Although the purchase contract for the sale of Cardinale's Oakland property to Miller was signed in respondent's office, neither respondent nor Daggett acted as real estate agents in that transaction. The contract specifically stated that there was no listing agent, no selling agent and no real estate broker involved. No commissions were paid.

7. Cardinale's suit went to trial in Contra Costa Superior Court in October 2000.¹ During closing argument, Cardinale's attorney presented to the jury a schedule of damages

¹ Although not received in evidence, a declaration from plaintiff's attorney indicates that trial had proceeded only against respondent—all other defendants were "severed and/or dismissed."

seeking a total of \$104,703 in actual damages. The largest portion of claimed damages, \$64,128.24, was attributed to the costs of the refinance through First Financial. Other claimed losses were \$10,575 for the loss of value of Cardinale's car, \$15,000 for lost rents due to misuse of the deed, and \$15,000 for a settlement Cardinale had to pay in order to obtain consent to liquidate her San Jose home.

8. Following trial, the jury rendered a verdict against respondent. It found that plaintiff had been damaged in the amount of \$100,000. The jury also assessed punitive damages of \$50,000. In its special verdict, except as set forth below, the jury answered all of the following questions in the affirmative:

Question No. 1: Did any of the following parties make a false representation as to a past or existing material fact which was justifiably relied on by Plaintiff? Answer "yes" or "no" as to each: Robert Fitz-Stephens, Steven Daggett, Daniel R. Miller, Jr.

Question No. 2: If you have answered "yes" for Steven Daggett, were any of the representations made in the course and scope of Steven Daggett's employment with defendant Fitz-Stephens?

Question No. 3: If you have answered "yes" for Daniel Miller, were any of the representations made as an ostensible or actual agent for defendant Fitz-Stephens?

Question No. 4: Did these parties know that the representations they made to Plaintiff were false when they made them? Answer "yes" or "no" as to each: Robert Fitz-Stephens, Steven Daggett, Daniel R. Miller, Jr.

Question No. 5: If any of the following parties did not actually know that the representations were false, did these parties still make the representation(s) without reasonable grounds for believing them to be true? Answer "yes" or "no" as to each: Robert Fitz-Stephens, Steven Daggett, Daniel R. Miller, Jr.

Question No. 6: Did any of the following parties conceal any past or existing fact from plaintiff which he/they had a duty to disclose? Answer "yes" or "no" as to each: Robert Fitz-Stephens, Steven Daggett, Daniel R. Miller, Jr.

Question No. 7: If you have answered "yes" for Steven Daggett, were any of the true facts concealed from Plaintiff

made in the course and scope of Steven Daggett's employment with defendant Fitz-Stephens?

Question No. 8: If you have answered "yes" for Daniel Miller, were any of the true facts concealed from Plaintiff made as an ostensible or actual agent for defendant Fitz-Stephens?

Question No. 9: Did any of the following parties make any promises to plaintiff without any intent of performing? Answer "yes" or "no" as to each: Robert Fitz-Stephens, Steven Daggett, Daniel R. Miller, Jr.

Question No. 10: If you have answered "yes" for Steven Daggett, was any promise made to Plaintiff in the course and scope of Steven Daggett's employment with defendant Fitz-Stephens?

Question No. 11: If you have answered "yes" for Daniel Miller, was any promise made to Plaintiff as an ostensible or actual agent for defendant Fitz-Stephens?

Question No. 12: Was there a conspiracy to defraud Plaintiff?

Question No. 13: Who were the parties to the conspiracy? (Place a check beside each name): Robert Fitz-Stephens, Steven Daggett, Daniel R. Miller, Jr. [The jury placed a check beside each name.]

Question No. 14: Did any of the parties breach their duties to Plaintiff? Answer "yes" or "no" as to each: Robert Fitz-Stephens, Steven Daggett, Daniel R. Miller, Jr.

Question No. 15: If you have found breach of duty, do you also find that Plaintiff is contributorily negligent?

Question No. 16: If your answer to Question No. 15 is "yes", please state a percentage by which you feel Plaintiff was contributorily negligent? [To this question the jury answered 18%.]

9. The court reduced the jury's \$100,000 damages award by 18% to reflect the jury's finding on contributory negligence and, on November 3, 2000, entered judgment for \$132,000 (including the \$50,000 punitive damages). Both sides attacked the judgment. Respondent moved for a judgment notwithstanding the verdict on the basis that the evidence did not support the judgment. Cardinale moved to modify the judgment, contending that the

18% reduction should not have been made since the jury found for plaintiff on fraud as well as negligence.

10. On December 14, 2000, the court issued its decision. As to respondent's motion, the court found:

The evidence overwhelming[ly] establishes that Plaintiff was a victim of fraudulent practices brought about primarily by Messrs. Daggett and Miller. The churning of financial transactions . . . meets all of the criteria of outrageous conduct. The loan transaction which generated excess fees and profits and increased her monthly payment beyond her financial ability, followed by an [in]appropriate borrowing from her of \$7000, the requirement that she "pawn" her automobile in order to be "advanced" a repayment of a portion of the \$7000, and the "purchase" of her Oakland property were disgraceful transactions. They were also accompanied by numerous material false representations.

The evidence was sufficient to establish that Daggett and Miller were agents of the sole proprietorship business of Defendant Fitz-Stephens and that there existed a conspiracy even though Fitz-Stephens was not as involved as the others. The finding of liability by the jury is therefore supported by the evidence, as is the award of punitive damages.

11. In response to Cardinale's motion, the court wrote:

The Court finds that the issue of whether the Court properly reduced the verdict is a close question. While Plaintiff is correct that a reduction is not made for comparative negligence when one is found liable for fraud, Plaintiff acquiesced in the form of special verdict which only asked the jury to determine the total amount of damage suffered and did not distinguish between those caused by negligence and those caused by fraud. The Court therefore cannot tell whether the jury concluded that the amount of damages caused by each tort was the same amount as the jury may have concluded that only the loan fees of less than \$30,000 were damages caused by fraud [sic].

The court went on to find that this issue was "not of major significance" because the evidence did not support an award of \$100,000. The court concluded that the majority of the damage claims shown in Cardinale's schedule of damages (See Finding 7, above) were supported by the evidence. However, the court found that the "excess payments" claimed (the difference between the payments on the First Financial refinance and

the prior Golden Bear refinance) had been miscalculated. The court found that this portion of the damage claim should be reduced by \$18,450, leaving "the maximum amount of damage which could have been awarded under the judgment" to \$86,254. Thus, the court concluded, the total judgment of \$132,000 was "in order."

12. Although, as set forth in Finding 9, above, respondent attacked the verdict and judgment, he nevertheless paid the judgment in full on November 3, 2000, the same day it was issued.

Additional Evidence

13. Respondent has not engaged in activities requiring a real estate license since his broker license was suspended in August 2003. Respondent is currently in partnership with a builder in Richmond. They have obtained about 20 properties in that city's "Iron Triangle" with the intent of constructing entry-level single-family residences to help rehabilitate the area. As part of this project, the partnership has started a program to hire unemployed and "problem" youths from the area to work in hauling and on the construction projects.

14. Respondent, who is 51 years old, resides with his wife and two sons. His wife is not employed. For the past seven years, respondent has been active in coaching various youth sports. He has also volunteered time with the Boy Scouts and for charities. Respondent has been involved "off and on" for about twelve years with the Walnut Creek Presbyterian Church. He attends church services about once a month.

15. Regarding the refinance transaction with Cardinale, respondent testified that he now understands the circumstances of the loan were improper. He also now concedes that Daggett did some things outside respondent's supervision of him—things respondent would not have approved of had he known of them at the time.

LEGAL CONCLUSIONS

1. Under Business and Professions Code section 10177.5, a real estate licensee may be disciplined, "[w]hen a final judgment is obtained in a civil action against [the] licensee upon grounds of fraud, misrepresentation, or deceit with reference to any transaction for which a license is required"

2. Complainant concedes that the civil judgment in issue here does not expressly find that respondent's liability is based on a transaction for which a real estate license is required. But, it is argued, extrinsic evidence underlying the judgment may be examined in order to determine whether the transactions upon which the judgment is based fall within the scope of section 10177.5. Respondent does not disagree with this proposition. However, he argues that, as noted by the court in its December 14, 2000 decision, because the form of special verdict used did not distinguish between those damages caused by negligence and those caused by fraud, it was not possible to determine how the jury may (or may not) have

apportioned its award between fraud and negligence. By the same reasoning, it is argued, it is not possible to determine whether the jury found a conspiracy to defraud that included the refinance transaction, or a conspiracy that related only to the other transactions. Thus, respondent contends, a determination of whether the fraud judgment was necessarily related to a transaction for which a real estate license is required would be speculative.

3. The key question here is whether the fraud judgment against respondent was based upon a transaction for which a real estate license was required. Because respondent was not involved in the real estate purchase transaction, and because none of the other transactions cited in the civil suit required a real estate license, the necessary determination is whether the fraud judgment was based, at least in part, upon the First Financial refinance. An examination of the extrinsic evidence offered shows that the answer to that question is an unequivocal "yes."

The manner in which the jury may have apportioned its damage award between fraud and negligence is irrelevant. What is important is that the judgment was unquestionably based, in part, upon fraud. The complaint overwhelmingly sounded in fraud. The jury made affirmative findings on each and every fraud allegation. The jury found that Daggett, "in the course and scope" of his employment with respondent, concealed facts from Cardinale and made false representations and false promises to her. The jury found that Miller, acting as respondent's ostensible or actual agent, concealed facts from Cardinale and made false representations and false promises to her. The jury found there was a conspiracy to defraud Cardinale, and that respondent was part of that conspiracy. And the court's December 14, 2000 decision makes clear that the main transaction in the suit—the one that was responsible for the bulk of the damages and that was part of a "churning of financial transactions" described by the court as "outrageous conduct"—was the transaction that began it all: the First Financial refinance.

It is determined, therefore, that the civil judgment against respondent was, at least in part, based upon fraud and misrepresentation with reference to a transaction for which a real estate license is required. Cause for disciplinary action thereby exists pursuant to Business and Professions Code section 10177.5

4. In determining the appropriate discipline to impose, a number of factors must be considered. First, respondent's broker license was previously disciplined and at the time this accusation was filed he held a restricted license (since suspended as the result of this filing). But that fact is tempered by the recognition that the facts that formed the basis for the civil suit occurred more than a year before the facts that resulted in the prior discipline: the refinance involved in the civil suit occurred in November 1997, the transaction involved in the earlier disciplinary action occurred in February 1999. It cannot be concluded, therefore, that respondent "failed to learn" from his earlier disciplinary experience. Second, respondent essentially conceded that, in the Cardinale transaction, he did not adequately supervise Daggett. To that extent, there is similarity between the November 1997 transaction and the February 1999 transaction that resulted in the prior disciplinary action. It is not difficult, therefore, to reach the conclusion that, for a period of more than a year, respondent

failed to exercise reasonable supervision over his salespersons. Third, while the civil suit involved fraud in a transaction for which a real estate license is required, the trial court recognized in its decision that the fraud was "brought about primarily by" Daggett and Miller, and that, while respondent was found by the jury to be part of a conspiracy to defraud Cardinale, he "was not as involved as the others." In fact, it is unclear from the jury's verdict to what extent respondent's liability was based upon his conduct and to what extent it was based upon vicarious liability for the actions of Daggett and Miller.² Fourth, respondent immediately fully satisfied the judgment against him. This is an indicator of respondent's level of responsibility and good faith. Fifth, the civil judgment was rendered more than three years ago and there is no evidence respondent has committed any violations of the licensing law since then. Nor is there any evidence he committed any such violations since the February 1999 transaction that resulted in the earlier disciplinary action.

5. Upon consideration of all the factors set forth in Legal Conclusion 4, it is determined that the public interest would be adequately protected if respondent were permitted to retain his broker license on a restricted basis. The circumstances of the instant disciplinary action, even when coupled with the earlier one, do not demonstrate that respondent is unfit to be a real estate broker. Therefore, neither outright revocation of his broker license nor "demotion" to a salesperson license is necessary or warranted. An additional term of two years under a restricted broker license would be sufficient to ensure that respondent continues to practice with safety to the public. One appropriate condition of the restricted license would be for respondent to take and pass the Professional Responsibility Examination. However, respondent presumably took and passed this examination in satisfaction of the restrictions placed upon him in February 2003. If that is the case, respondent need not retake the examination.

ORDER

All licenses and licensing rights of respondent Robert Ruland Fitz-Stephens under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's

² Even if respondent's fraud liability was entirely based upon vicarious liability, cause for discipline would nevertheless exist pursuant to section 10177.5. (See *California Real Estate Loans, Inc. v. Wallace* (1993) 18 Cal.App.4th 1575, 1583.) But for purposes of determining the degree of discipline to impose, the extent of respondent's actual involvement is a factor to be considered.

conviction or plea of nolo contendere to 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, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of respondent's license until respondent passes the examination. However, if respondent took and passed this examination in satisfaction of the conditions placed upon the restricted license issued to him in February 2003, then he shall not again be required to take and pass the examination as a condition of this restricted license.

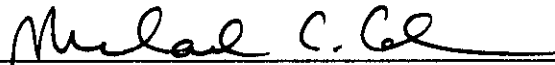
5. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct in this Decision or by separate written order issued while the restricted license is in effect such information concerning respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of respondent and periodic summaries of salient information concerning each real estate transaction in which respondent engaged during the period covered by the report.

6. 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: January 8, 2004



MICHAEL C. COHN
Administrative Law Judge
Office of Administrative Hearings

FILED
OCT 14 2003

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

DEPARTMENT OF REAL ESTATE

Kathleen Contreras

In the Matter of the Accusation of

ROBERT RULAND FITZ-STEPHENS,

Case No. H-8488 SF

OAH No. 2003100046

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

**OFFICE OF ADMINISTRATIVE HEARING
THE ELIHU HARRIS STATE BUILDING
1515 CLAY STREET, SUITE 206
OAKLAND, CALIFORNIA 94612**

on **DECEMBER 22, 2003**, at the hour of **9:00 AM**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: OCTOBER 14, 2003

By *Deidre L. Johnson*
DEIDRE L. JOHNSON, Counsel

1 DEIDRE L. JOHNSON, Counsel
SBN 66322
2 DEPARTMENT OF REAL ESTATE
P. O. Box 187000
3 Sacramento, CA 95818-7000
4 Telephone: (916) 227-0789

FILED
AUG 12 2003

DEPARTMENT OF REAL ESTATE

By *Les R. Bettencourt*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

10 In the Matter of the Accusation of)
11 ROBERT RULAND FITZ-STEPHENS,) NO. H-8488 SF
12 Respondent.) ACCUSATION
13)

14 The Complainant, LES R. BETTENCOURT, a Deputy Real
15 Estate Commissioner of the State of California, for cause of
16 Accusation against ROBERT RULAND FITZ-STEPHENS, is informed and
17 alleges as follows:

I

18
19 ROBERT RULAND FITZ-STEPHENS (hereafter Respondent) is
20 presently licensed and/or has license rights under the Real
21 Estate Law, (Part 1 of Division 4 of the Business and Professions
22 Code, hereafter the Code) as a restricted real estate broker.

II

23
24 The Complainant, LES R. BETTENCOURT, a Deputy Real
25 Estate Commissioner of the State of California, makes this
26 Accusation against Respondent in his official capacity and not
27 otherwise.

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

III

On or about November 3, 2000, in the Superior Court of the State of California, County of Contra Costa, in Case No. C98-03078, a judgment was entered against Respondent upon grounds of fraud, misrepresentation, or deceit with reference to a transaction for which a real estate license is required.

IV

The facts set forth in Paragraph III above constitute cause under Section 10177.5 of the Code for suspension or revocation of all license(s) and license rights of Respondent under the Real Estate Law.

PRIOR PROCEEDINGS

V

Effective February 11, 2003, in Case No. H-8065 SF the Real Estate Commissioner revoked the real estate broker license of Respondent with the right to a restricted license for violation of Section 10177(h) of the California Business and Professions Code.

VI


Effective October 23, 1984, in Case No. H-5450 SF before the Department of Real Estate, the Real Estate Commissioner denied the application of Respondent FITZ-STEPHENS for a real estate salesperson license, and granted the right to a restricted license on grounds of violation of Sections 480 and 10177(b) of the Code.

///

///

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

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 license(s) 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 22nd day of May, 2003.