

*Sachs*

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

FILED  
APR 15 1998  
DEPARTMENT OF REAL ESTATE

By *Juan Alvarez*

DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \* \* \*

In the Matter of the Accusation of	)	No. H-27204 LA
	)	
MIGUEL CONTRERAS OYOQUE,	)	L-1997050500
individually and dba	)	
ERA Excellence Realty,	)	
	)	
Respondent.	)	

DECISION AFTER REJECTION

The matter came on for hearing before Jerry Mitchell, Administrative Law Judge of the Office of Administrative hearings, in Los Angeles, California, on December 9 and 10, 1997.

Sean Crahan, Counsel, represented the complainant. Respondent MIGUEL CONTRERAS OYOQUE appeared and was represented by Mark A. Nialis, Esq. of Wildish, Nialis & Bonetati.

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

On January 8, 1998, the Administrative Law Judge submitted a Proposed Decision which I declined to adopt as my Decision herein. Pursuant to Section 11517(c) of the Government

1 Code of the State of California, respondent was served with notice  
2 of my determination not to adopt the Proposed Decision of the  
3 Administrative Law Judge along with a copy of said Proposed  
4 Decision. Respondent was notified that the case would be decided  
5 by me upon the record including the transcript of proceedings held  
6 on December 9 and 10, 1997, and upon any written argument offered  
7 by any Respondent.

8 Written argument has been submitted on behalf of  
9 respondent and complainant.

10 I have given careful consideration to the record in this  
11 case, including the transcript of proceedings of December 9 and  
12 10, 1997, and to the argument submitted on behalf of respondent  
13 and complainant.

14 The following shall constitute the Decision of the Real  
15 Estate Commissioner in the above - entitled matter:

16 FINDINGS OF FACT

17 The Facts, paragraphs 1 through 10, and all  
18 subparagraphs therein, as set forth in the Proposed Decision dated  
19 January 8, 1998 of the Administrative Law Judge, are hereby  
20 adopted as the Findings of Fact of the Real Estate Commissioner in  
21 the above - entitled matter.

22 DETERMINATION OF ISSUES

23 Paragraphs 11 and 12, and all subparagraphs therein, of  
24 the Proposed Decision dated January 8, 1998 of the Administrative  
25 Law Judge are hereby adopted as the Determination of Issues of the  
26 Real Estate Commissioner in the above - entitled matter.

27 /

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

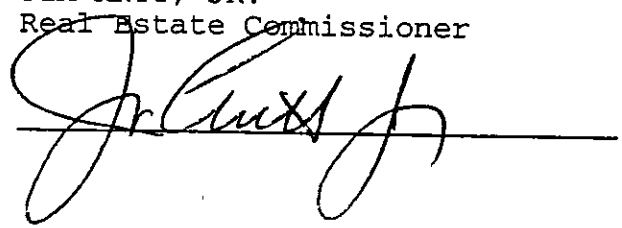
ORDER

The Order of the Proposed Decision dated January 8, 1998  
of the Administrative Law Judge is hereby adopted as the Order of  
the Real Estate Commissioner in the above - entitled matter.

This Decision shall become effective at 12 o'clock noon  
on May 5, 1998.

IT IS SO ORDERED 4/15/98

JIM ANTT, JR.  
Real Estate Commissioner



BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation	)	Case No. H-27204 LA
Against:	)	
	)	OAH No. L-1997050500
MIGUEL CONTRERAS OYOQUE	)	
individually and dba	)	
ERA Excellence Realty,	)	
	)	
Respondent.	)	

---

PROPOSED DECISION

Administrative Law Judge Jerry Mitchell of the Office of Administrative Hearings heard this matter on December 9 and 10, 1997, at Los Angeles, California. Sean Crahan, Counsel, represented the complainant. The respondent was present and was represented by Mark Nialis, Attorney at Law. The record was held open until December 22, 1997, for closing briefs. Complainant's brief was received and marked as Exhibit 28. Respondent's brief was received and marked as Exhibit B. The record was then closed and the matter deemed submitted.

THE FACTS

1. Thomas McCrady, acting in his official capacity as a Deputy Real Estate Commissioner of the State of California, brought this Accusation against Miguel Contreras Oyoque (respondent).
2. Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code. At all times herein mentioned, respondent was licensed by the Department of Real Estate of the State of California (Department) as a real estate broker individually and doing business as ERA Excellence Realty, until on or about December 13, 1995.
3. As used herein, "Section" refers to a section of the Business and Professions Code, and "Regulation" refers to a section of Title 10, California Code of Regulations.

4. At all times herein mentioned, respondent was engaged in the real estate resale brokerage business as defined by Code Section 10131(a) in that respondent, for or in expectation of compensation, solicited and negotiated with buyers and sellers of real estate.

5. At all times herein mentioned, respondent was engaged in the mortgage loan brokerage business as defined by Code Section 10131(d) in that respondent, for or in expectation of compensation, solicited and negotiated with borrowers for loans from third-party lenders secured by real property (secured loans).

6. In connection with the activities set forth in paragraphs 4 and 5, above, respondent conducted escrows.

7. Between December 28, 1995, through March 15, 1996, an auditor from the Department examined the books and records of respondent covering the period of October 1, 1993, through November 30, 1995 (the audit period). That examination revealed the following:

(a) In the conduct of the mortgage loan business, respondent was doing business as Renet Financial Excellence Mortgage (RFEM) without having a real estate license issued by the Department under that fictitious business name.

(b) In connection with the conduct of escrows, respondent received funds in trust from or on behalf of buyers, sellers and borrowers and deposited said funds into an escrow trust account at Guardian Bank, account number 001-743260 (Escrow Trust Account). As of March 10, 1995, respondent's adjusted bank balance in the Escrow Trust Account was \$144,567.18. Respondent's accountability to owners on that date was \$163,034.84, leaving a shortage of \$18,467.66, of which \$3,262.67 was caused, allowed or permitted by respondent and was without the written consent of each and every principal whose funds were in the trust account. The remaining \$15,204.99 shortage was caused by that amount being held by the Federal Deposit Insurance Corporation (FDIC) through no fault of respondent's. The Escrow Trust Account was frozen by FDIC on or about January 20, 1995 and closed on March 10, 1995, also through no fault of respondent's.

(c) On or about January 20, 1995, respondent opened an account at Imperial Bank, account number 07-090447 (Escrow Account), which he used for the receipt and disbursement of escrow trust funds received from or on behalf of buyers, sellers and borrowers.

(i) The Escrow Account was in the name of ERA Excellence Realty and was not established in the name of respondent as trustee.

(ii) As of November 30, 1995, respondent's adjusted bank balance in the Escrow Account was \$83,002.85. Respondent's accountability to owners on that date was \$110,051.32, leaving a shortage of \$27,048.47, of which \$11,843.48 was caused, allowed or permitted by respondent and was without the written consent of each and every principal whose funds were in the trust account. The remaining \$15,204.99 of the shortage was caused by that amount continuing being to be held by FDIC through no fault of respondent's.

(d) Respondent failed to maintain accurate columnar and separate records showing trust funds received and disbursed, in chronological sequence, including earnest moneys forwarded directly to escrow. By way of example:

(i) Respondent's trial balances reflected a total of 130 open escrows with escrow balances of \$212,552.89, as of November 30, 1995. In fact the maximum accountability as of that date was \$110,051.32.

(ii) Respondent's books reflected overdrawn escrows of \$2,728.75 when in fact the overdrawn escrows totaled \$4,339.13 as of November 30, 1995.

(iii) On or about June 12, 1995, respondent negotiated the sale of 1010 Winchester Avenue, Alhambra, California to buyers Bernardina Ramirez and Estephanie Aispurd. A purchase money deposit of \$1,000, received by respondent, was forwarded to escrow on or about June 19, 1995. No record was kept of the forwarding of the deposit.

(iv) In connection with the business of obtaining loans from third party lenders, respondent received funds from borrowers for credit and appraisal report fees but failed to maintain a columnar record of the forwarding of those funds to the providers.

(v) Funds were sometimes deposited into the Escrow Trust Account or Escrow Account with no escrow receipt; or the same escrow receipt was posted to two different escrow transactions and both reflected as a balance for the transaction; or escrow receipts were issued twice for the same funds received; or checks were issued and not properly reflected as disbursements; or the returned items from the bank were not properly posted.

(f) Respondent failed to accurately reconcile his control records with his separate records.

(g) In connection with the business of obtaining loans from third party lenders, respondent failed to retain Mortgage Loan Disclosure Statements (Borrowers) for three years and in some instances, such statements were not signed by the borrower, broker, or broker's representative who negotiated the loan.

8. Respondent's conduct as set forth above constitutes negligence in transactions for which a real estate license is required.

9. Respondent is very active in the Montebello Board of Realtors, and has received commendations for his service to that board. He is a director of that board, is chairman of its M.L.S. committee, and is its president-elect. He has had no previous disciplinary actions against his license. Although \$15,204.99 of the trust account shortage was caused - through no fault of his - by closure of the bank in which the trust account was maintained, he has voluntarily covered that shortage, as well as the others, and no member of the public is known to have been injured as a result of the violations herein. Respondent has hired qualified personnel to insure that these violations are not repeated.

10. Those allegations not herein above mentioned were satisfactorily explained or not proved.

11. Respondent contends that his license is not subject to discipline under Section 10177(d) because the evidence did not establish that the violations were willful. However, the violations need not be willful to establish cause for discipline under Section 10177(d). Handeland v. Department of Real Estate, 58 C.A. 3d 513.

12. Respondent has subjected his real estate licenses and license rights of discipline as follows:

(a) Under Section 10177(d) for willful violations of the following Sections and Regulations:

(ii) Section 10159.5 and Regulation 2731 for failure to have a real estate license issued by the Department under the fictitious business name Renet Financial Excellence Mortgage, as set forth in paragraph 7(a), above.

(iii) Section 10145 and Regulation 2830 for failure to have the Escrow Account designated as a trust account in the name of respondent as trustee, as set forth in paragraph 7(d)(i), above.

(iv) Section 10145 and Regulations 2831 and 2831.1 for failure to have accurate columnar and separate records, as set forth in paragraph 7(e), above.

(v) Regulation 2831.2 for failure to accurately reconcile the control records with the separate records, as set forth in paragraph 7(f), above.

(vi) Section 10145 and Regulation 2832.1 for the trust fund shortages of \$3,262.67 and \$11,843.48, as set forth in paragraphs 7(b) and 7(d)(ii), above.

(vii) Section 10240 and Regulations 2840 and 2842.5 for failure to retain copies of Mortgage Loan Disclosure Statements (Borrower), and failure to have them signed, as set forth in paragraph 7(g), above.

(b) Section 10177(g) for negligence in the operation of a real estate brokerage business, as set forth in paragraph 8, above.

### ORDER

All licenses and licensing rights of respondent Miguel Contreras Oyoque 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:

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

B. 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.

C. 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.



D. Respondent shall, within six months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

E. Pursuant to Section 10148 of the Business and Professions Code, respondent shall pay the Commissioner's reasonable costs for an audit of any real estate business licensed by the Department, in which respondent has an ownership interest as a result of the trust fund violation(s) found in paragraph 9 of the Legal Basis. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Respondent shall pay such cost within 45 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may suspend the restricted license issued to respondent pending a hearing held in accordance with Section 11500, et seq., of the Government code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the respondent and the Commissioner. The suspension shall remain in effect until payment is made in full or until respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

DATED: JAN. 8, 1998



JERRY MITCHELL  
Administrative Law Judge

JM:btm

*Handwritten signature/initials*

**FILED**  
JAN 30 1998  
DEPARTMENT OF REAL ESTATE

By Laura A. [Signature]

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

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	
	)	NO. H-27204 LA
MIGUEL CONTRERAS OYOQUE	)	
individually and dba	)	
ERA EXCELLENCE REALTY,	)	
	)	OAH NO. L-1997050500
Respondent.	)	

---

NOTICE

TO: Respondent MIGUEL CONTRERAS OYOQUE individually and dba ERA EXCELLENCE REALTY, and MARK NIALIS, his counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated January 8, 1998, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated January 8, 1998, 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 December 9 and

1 10, 1997, and any written argument hereafter submitted on behalf  
2 of 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 December 9 and 10, 1997, at the Los Angeles  
6 office of the Department of Real Estate unless an extension of the  
7 time 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 Los Angeles office of the Department of Real  
11 Estate unless an extension of the time is granted for good cause  
12 shown.

13 DATED: 1/22/98

14 JIM ANTT, JR.  
15 Real Estate Commissioner

16   
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation	)	Case No. H-27204 LA
Against:	)	
	)	OAH No. L-1997050500
MIGUEL CONTRERAS OYOQUE	)	
individually and dba	)	
ERA Excellence Realty,	)	
	)	
Respondent.	)	

---

PROPOSED DECISION

Administrative Law Judge Jerry Mitchell of the Office of Administrative Hearings heard this matter on December 9 and 10, 1997, at Los Angeles, California. Sean Crahan, Counsel, represented the complainant. The respondent was present and was represented by Mark Nialis, Attorney at Law. The record was held open until December 22, 1997, for closing briefs. Complainant's brief was received and marked as Exhibit 28. Respondent's brief was received and marked as Exhibit B. The record was then closed and the matter deemed submitted.

THE FACTS

1. Thomas McCrady, acting in his official capacity as a Deputy Real Estate Commissioner of the State of California, brought this Accusation against Miguel Contreras Oyoque (respondent).
2. Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code. At all times herein mentioned, respondent was licensed by the Department of Real Estate of the State of California (Department) as a real estate broker individually and doing business as ERA Excellence Realty, until on or about December 13, 1995.
3. As used herein, "Section" refers to a section of the Business and Professions Code, and "Regulation" refers to a section of Title 10, California Code of Regulations.

4. At all times herein mentioned, respondent was engaged in the real estate resale brokerage business as defined by Code Section 10131(a) in that respondent, for or in expectation of compensation, solicited and negotiated with buyers and sellers of real estate.

5. At all times herein mentioned, respondent was engaged in the mortgage loan brokerage business as defined by Code Section 10131(d) in that respondent, for or in expectation of compensation, solicited and negotiated with borrowers for loans from third-party lenders secured by real property (secured loans).

6. In connection with the activities set forth in paragraphs 4 and 5, above, respondent conducted escrows.

7. Between December 28, 1995, through March 15, 1996, an auditor from the Department examined the books and records of respondent covering the period of October 1, 1993, through November 30, 1995 (the audit period). That examination revealed the following:

(a) In the conduct of the mortgage loan business, respondent was doing business as Renet Financial Excellence Mortgage (RFEM) without having a real estate license issued by the Department under that fictitious business name.

(b) In connection with the conduct of escrows, respondent received funds in trust from or on behalf of buyers, sellers and borrowers and deposited said funds into an escrow trust account at Guardian Bank, account number 001-743260 (Escrow Trust Account). As of March 10, 1995, respondent's adjusted bank balance in the Escrow Trust Account was \$144,567.18. Respondent's accountability to owners on that date was \$163,034.84, leaving a shortage of \$18,467.66, of which \$3,262.67 was caused, allowed or permitted by respondent and was without the written consent of each and every principal whose funds were in the trust account. The remaining \$15,204.99 shortage was caused by that amount being held by the Federal Deposit Insurance Corporation (FDIC) through no fault of respondent's. The Escrow Trust Account was frozen by FDIC on or about January 20, 1995 and closed on March 10, 1995, also through no fault of respondent's.

(c) On or about January 20, 1995, respondent opened an account at Imperial Bank, account number 07-090447 (Escrow Account), which he used for the receipt and disbursement of escrow trust funds received from or on behalf of buyers, sellers and borrowers.

(i) The Escrow Account was in the name of ERA Excellence Realty and was not established in the name of respondent as trustee.

(ii) As of November 30, 1995, respondent's adjusted bank balance in the Escrow Account was \$83,002.85. Respondent's accountability to owners on that date was \$110,051.32, leaving a shortage of \$27,048.47, of which \$11,843.48 was caused, allowed or permitted by respondent and was without the written consent of each and every principal whose funds were in the trust account. The remaining \$15,204.99 of the shortage was caused by that amount continuing being to be held by FDIC through no fault of respondent's.

(d) Respondent failed to maintain accurate columnar and separate records showing trust funds received and disbursed, in chronological sequence, including earnest moneys forwarded directly to escrow. By way of example:

(i) Respondent's trial balances reflected a total of 130 open escrows with escrow balances of \$212,552.89, as of November 30, 1995. In fact the maximum accountability as of that date was \$110,051.32.

(ii) Respondent's books reflected overdrawn escrows of \$2,728.75 when in fact the overdrawn escrows totaled \$4,339.13 as of November 30, 1995.

(iii) On or about June 12, 1995, respondent negotiated the sale of 1010 Winchester Avenue, Alhambra, California to buyers Bernardina Ramirez and Estephanie Aispurd. A purchase money deposit of \$1,000, received by respondent, was forwarded to escrow on or about June 19, 1995. No record was kept of the forwarding of the deposit.

(iv) In connection with the business of obtaining loans from third party lenders, respondent received funds from borrowers for credit and appraisal report fees but failed to maintain a columnar record of the forwarding of those funds to the providers.

(v) Funds were sometimes deposited into the Escrow Trust Account or Escrow Account with no escrow receipt; or the same escrow receipt was posted to two different escrow transactions and both reflected as a balance for the transaction; or escrow receipts were issued twice for the same funds received; or checks were issued and not properly reflected as disbursements; or the returned items from the bank were not properly posted.

(f) Respondent failed to accurately reconcile his control records with his separate records.

(g) In connection with the business of obtaining loans from third party lenders, respondent failed to retain Mortgage Loan Disclosure Statements (Borrowers) for three years and in some instances, such statements were not signed by the borrower, broker, or broker's representative who negotiated the loan.

8. Respondent's conduct as set forth above constitutes negligence in transactions for which a real estate license is required.

9. Respondent is very active in the Montebello Board of Realtors, and has received commendations for his service to that board. He is a director of that board, is chairman of its M.L.S. committee, and is its president-elect. He has had no previous disciplinary actions against his license. Although \$15,204.99 of the trust account shortage was caused - through no fault of his - by closure of the bank in which the trust account was maintained, he has voluntarily covered that shortage, as well as the others, and no member of the public is known to have been injured as a result of the violations herein. Respondent has hired qualified personnel to insure that these violations are not repeated.

10. Those allegations not herein above mentioned were satisfactorily explained or not proved.

11. Respondent contends that his license is not subject to discipline under Section 10177(d) because the evidence did not establish that the violations were willful. However, the violations need not be willful to establish cause for discipline under Section 10177(d). Handeland v. Department of Real Estate, 58 C.A. 3d 513.

12. Respondent has subjected his real estate licenses and license rights of discipline as follows:

(a) Under Section 10177(d) for willful violations of the following Sections and Regulations:

(ii) Section 10159.5 and Regulation 2731 for failure to have a real estate license issued by the Department under the fictitious business name Renet Financial Excellence Mortgage, as set forth in paragraph 7(a), above.

(iii) Section 10145 and Regulation 2830 for failure to have the Escrow Account designated as a trust account in the name of respondent as trustee, as set forth in paragraph 7(d)(i), above.

(iv) Section 10145 and Regulations 2831 and 2831.1 for failure to have accurate columnar and separate records, as set forth in paragraph 7(e), above.

(v) Regulation 2831.2 for failure to accurately reconcile the control records with the separate records, as set forth in paragraph 7(f), above.

(vi) Section 10145 and Regulation 2832.1 for the trust fund shortages of \$3,262.67 and \$11,843.48, as set forth in paragraphs 7(b) and 7(d)(ii), above.

(vii) Section 10240 and Regulations 2840 and 2842.5 for failure to retain copies of Mortgage Loan Disclosure Statements (Borrower), and failure to have them signed, as set forth in paragraph 7(g), above.

(b) Section 10177(g) for negligence in the operation of a real estate brokerage business, as set forth in paragraph 8, above.

#### ORDER

All licenses and licensing rights of respondent Miguel Contreras Oyoque 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:

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

B. 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.

C. 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.

*Not Adopted*

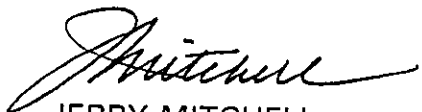


*Not Adopted*

D. Respondent shall, within six months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

E. Pursuant to Section 10148 of the Business and Professions Code, respondent shall pay the Commissioner's reasonable costs for an audit of any real estate business licensed by the Department, in which respondent has an ownership interest as a result of the trust fund violation(s) found in paragraph 9 of the Legal Basis. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Respondent shall pay such cost within 45 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may suspend the restricted license issued to respondent pending a hearing held in accordance with Section 11500, et seq., of the Government code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the respondent and the Commissioner. The suspension shall remain in effect until payment is made in full or until respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

DATED: JAN. 8, 1998



JERRY MITCHELL  
Administrative Law Judge

JM:btm

Sacto  
Jag

FILED  
DEC 11 1997  
DEPARTMENT OF REAL ESTATE

1 SEAN CRAHAN, Counsel  
California Bar #49351  
2 Department of Real Estate  
107 South Broadway, Room 8107  
3 Los Angeles, California 90012  
  
4 (213) 897-3937

By Laura B. Orma

5  
6  
7

DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

10

\* \* \* \* \*

11 In the Matter of the Accusation of ) No. H-27204 LA  
12 MIGUEL CONTRERAS OYOQUE, )  
13 individually and dba ) AMENDED  
14 ERA Excellence Realty, ) ACCUSATION  
15 Respondent. )

16 The Complainant, Thomas Mc Crady, a Deputy Real Estate  
17 Commissioner of the State of California, for cause of accusation  
18 against MIGUEL CONTRERAS OYOQUE, individually and doing business as  
19 ERA Excellence Realty, amends the accusation filed May 14, 1997 and  
20 alleges as follows:

21

1.

22 The Complainant, Thomas Mc Crady, a Deputy Real Estate  
23 Commissioner, brings this Amended Accusation in his official  
24 capacity.

25

2.

26 MIGUEL CONTRERAS OYOQUE (hereafter Respondent) is  
27 presently licensed and/or has license rights under the Real Estate

1 Law, Part 1 of Division 4 of the California Business and Professions  
2 Code (hereafter cited as the Code). At all times herein mentioned,  
3 Respondent was licensed by the Department of Real Estate of the  
4 State of California (hereafter the Department) as a real estate  
5 broker individually and doing business as ERA Excellence Realty,  
6 until on or about December 13, 1995.

7 3.

8 (a) At times herein mentioned, Respondent was engaged in  
9 the real estate resale brokerage business as defined by Code Section  
10 10131(a) in that Respondent, for or in expectation of compensation,  
11 solicited and negotiated with buyers and sellers of real estate.

12 (b) At times herein mentioned, Respondent was engaged in  
13 the mortgage loan brokerage business as defined by Code Section  
14 10131(d) in that Respondent, for or in expectation of compensation,  
15 solicited and negotiated with borrowers for loans from third-party  
16 lenders secured by real property (secured loans).

17 (c) In connection with the above set forth activities,  
18 Respondent conducted escrows.

19 4.

20 Between December 28, 1995 through March 15, 1996, an  
21 auditor from the Department examined the books and records of  
22 Respondent covering a period of time from October 1, 1993, through  
23 November 30, 1995 (hereafter the "audit period"). That examination  
24 revealed that Respondent, during the audit period, violated the  
25 following Code Sections and Regulations from Title 10, Chapter 6,  
26 California Code of Regulations (hereafter Regulations):

27



1 (a) In the conduct of the mortgage loan business,  
2 Respondent was doing business as Renet Financial Excellence Mortgage  
3 (hereafter RFEM) without having a real estate license issued by the  
4 department under that fictitious business name, in willful violation  
5 of Code Section 10159.5 and Regulation 2731.

6 (b) In connection with the conduct of escrows, Respondent  
7 failed to review, initial and date escrow instructions and closing  
8 statements in willful violation of Regulation 2725.

9 (c) In connection with the conduct of escrows, Respondent  
10 received funds in trust from or on behalf of buyers, sellers and  
11 borrowers and deposited said funds into an escrow trust account at  
12 Guardian Bank, account number 001-743260 (hereafter the Escrow Trust  
13 Account):

14 (i) As of March 10, 1995, Respondent's adjusted bank  
15 balance in the Escrow Trust Account was \$144,567.18. Respondent's  
16 accountability to owners on that date was \$163,034.84 leaving a  
17 shortage of \$18,467.66. Said shortage was caused, allowed or  
18 permitted by Respondent and was without the written consent of each  
19 and every principal whose funds were in the trust account and was in  
20 violation of Code Section 10145 and Regulation 2832.1.

21 (ii) The shortage was caused in part by \$15,204.99  
22 being held by the Federal Deposit Insurance Corporation (FDIC),  
23 overdrawn escrows of \$4,030.26, and unidentified amounts of \$767.59.

24 (iii) The Escrow Trust Account was frozen by FDIC on  
25 or about January 20, 1995 and closed on March 10, 1995.

26 (d) On or about January 20, 1995, Respondent opened an  
27 account at Imperial Bank, account number 07-090447 (hereafter the



1 Escrow Account) which he used for the receipt and disbursal of  
2 escrow trust funds received from or on behalf of buyers, sellers and  
3 borrowers.

4 (i) The Escrow Account was in the name of ERA  
5 Excellence Realty and was not established in the name of Respondent  
6 as trustee, in violation of Regulation 2830 and Code Section 10145  
7 of the Code.

8 (ii) As of November 30, 1995, Respondent's adjusted  
9 bank balance in the Escrow Account was \$83,002.85. Respondent's  
10 accountability to owners on that date was \$110,051.32 leaving a  
11 shortage of \$27,048.47. Said shortage was caused, allowed or  
12 permitted by Respondent and was without the written consent of each  
13 and every principal whose funds were in the trust account and was in  
14 violation of Code Section 10145 and Regulation 2832.1.

15 (iii) The shortage was caused in part by \$15,204.99  
16 being held by the FDIC, overdrawn escrows of \$4,339.13, accumulated  
17 bank charges of \$832.65 and unidentified amounts of \$6,671.70.

18 (e) Respondent failed to maintain accurate columnar and  
19 separate records showing trust funds received and disbursed, in  
20 chronological sequence, including earnest moneys forwarded directly  
21 to escrow, in violation of section 2831 and 2831.1. By way of  
22 example;

23 (i) Respondent's trial balances reflected a total of  
24 130 open escrows with escrow balances of \$212,552.89, as of November  
25 30, 1995. In fact the ~~minimum~~ maximum accountability as of that  
26 date was \$110,051.32.

27 (ii) Respondent's books reflected overdrawn escrows



1 of \$2,728.75 when in fact the overdrawn escrows totaled \$4,339.13 as  
2 of November 30, 1995.

3 (iii) On or about June 12, 1995, Respondent  
4 negotiated the sale of 1010 Winchester Avenue, Alhambra, California  
5 to buyers Bernardina Ramirez and Estephanie Aispurd. A purchase  
6 money deposit of \$1,000, received by Respondent, was forwarded to  
7 escrow on or about June 19, 1995. No record was kept of the  
8 forwarding of the deposit, in willful violation of Regulation 2831.

9 (iv) In connection with the business of obtaining  
10 loans from third party lenders, Respondent received funds from  
11 borrowers for credit and appraisal report fees but failed to  
12 maintain a columnar record of the forwarding of those funds to the  
13 providers, in willful violation of Regulation 2831.

14 (v) Funds were sometimes deposited into the escrow  
15 trust account or escrow account with no escrow receipt; or the same  
16 escrow receipt was posted to two different escrow transactions and  
17 both reflected as a balance for the transaction; or escrow receipts  
18 were issued twice for the same funds received; or checks were issued  
19 and not properly reflected as disbursements; or the returned items  
20 from the bank were not properly posted.

21 (f) Respondent failed to monthly reconcile his control  
22 records with his separate records, as is required by Regulation  
23 2831.2. The reconciliations maintained were not accurate, in  
24 willful violation of Regulation 2831.2.

25 (g) In connection with the business of obtaining loans  
26 from third party lenders, Respondent failed to provide to borrowers  
27



1 Mortgage Loan Disclosure Statements (Borrower) in willful violation  
2 of Code Section 10240 and Regulation 2840.

3 (i) In two transactions, Respondent failed to retain  
4 copies of the Mortgage Loan Disclosure Statements (Borrower) for  
5 three years, in willful violation of Code Section 10240.

6 (ii) Mortgage Loan Disclosure Statements (Borrower)  
7 were, in many instances, not signed by the borrower, broker, or  
8 broker's representative who negotiated the loan, in willful  
9 violation of Regulation 2842.5.

10 5.

11 Respondent's conduct constitutes negligence in  
12 transactions for which a real estate license is required.

13 6.

14 Respondent's conduct constitutes failure to adequately  
15 supervise the activities of persons handling the escrow trust fund  
16 account and the escrow account.

17 7.

18 The conduct or omissions of Respondent as set forth above  
19 subject his real estate licenses and license rights to suspension or  
20 revocation under the following Code Sections:

21 (a) Code Section 10177(d) for willful violations of the  
22 following Code Sections and Regulations:

23 (i) Regulation 2725 for failure to review, initial  
24 and date escrow instructions and closing statements, as set forth in  
25 paragraph 4(b), above.

26 (ii) Code Section 10159.5 and Regulation 2731 for  
27 failure to have a real estate license issued by the department under



1 that fictitious business name Renet Financial Excellence Mortgage,  
2 as set forth in paragraph 4(a), above.

3 (iii) Code Section 10145 and Regulation 2830 for  
4 failure to have the EA designated as a trust account in the name of  
5 Respondent as trustee, as set forth in paragraph 4(d)(i), above.

6 (iv) Code Section 10145 and Regulation 2831 and  
7 2831.1 for failure to have accurate columnar and separate records,  
8 as set forth in paragraph 4(e), above.

9 (v) Regulation 2831.2 for failure to monthly  
10 reconcile the control with the separate records, in an accurate  
11 manner, as set forth in paragraph 4(f), above.

12 (vi) Code Section 10145 and Regulation 2832.1 for  
13 the trust fund shortages, as set forth in paragraph 4(c)(i) and  
14 4(d)(ii), above.

15 (vii) Code Section 10240 and Regulations 2840 and  
16 2842.5 for failure to provide to borrowers Mortgage Loan Disclosure  
17 Statements (Borrower); for failure to retain copies; or for failure  
18 to have them signed by the borrower, broker, or broker's  
19 representative who negotiated the loan, as set forth in paragraph  
20 4(g), above.

21 (b) Code Section 10177(g) for negligence in the operation  
22 of a real estate brokerage business, as set forth in paragraph 5,  
23 above.

24 (c) Code Section 10177(h) for failure to supervise the  
25 activities of persons employed by ERA Excellence Realty, as set  
26 forth in paragraph 6, above.

27

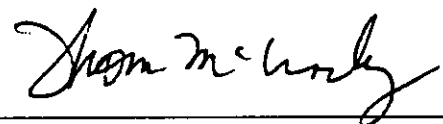




1           WHEREFORE, Complainant prays that a hearing be conducted  
2 on the allegations of this Accusation and, that upon proof thereof,  
3 a decision be rendered imposing disciplinary action against all  
4 licenses and license rights of Respondent MIGUEL CONTRERAS OYOQUE,  
5 individually and doing business as ERA Excellence Realty, under the  
6 Real Estate Law (Part 1 of Division 4 of the Business and  
7 Professions Code) and for such other and further relief as may be  
8 proper under other applicable provisions of law.

9 Dated December 11, 1997 at Los Angeles, California.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27



Thomas Mc Crady,  
Deputy Real Estate Commissioner

cc: Miguel Contreras Oyoque  
Sacto.  
LK/JDF

SC/sc

*Sacto*

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

**FILED**  
JUN 27 1997

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of )  
MIGUEL CONTRERAS OYOQUE, )  
Respondents. )

Case No. H-27204 LA  
OAH No. L-1997050500

By *James B. Cron*

**NOTICE OF HEARING ON ACCUSATION**

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at Office of Administrative Hearings, 107 South Broadway, 2nd Floor, Los Angeles, California DECEMBER 9, 10 & 11, 1997, at the hour of 9:00 a.m. or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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

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

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

Dated: JUN 27 1997

DEPARTMENT OF REAL ESTATE

By: *Sean Crahan*  
SEAN CRAHAN, Counsel

cc: Miguel Contreras Oyoque  
Bruce E. Miller, Esq.  
Sacto.  
OAH

SACH

1 SEAN CRAHAN, Counsel  
Department of Real Estate  
2 107 South Broadway, Room 8107  
Los Angeles, California 90012  
3 California Bar #49351  
4 (213) 897-3937  
5  
6  
7  
8

**FILED**  
MAY 14 1997  
DEPARTMENT OF REAL ESTATE  
By *[Signature]*

9 DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 \* \* \* \* \*

12 In the Matter of the Accusation of ) No. H-27204 LA  
13 MIGUEL CONTRERAS OYOQUE, ) A C C U S A T I O N  
14 individually and dba )  
ERA Excellence Realty, )  
15 Respondent. )  
16

17 The Complainant, Thomas Mc Crady, a Deputy Real Estate  
18 Commissioner of the State of California, for cause of accusation  
19 against MIGUEL CONTRERAS OYOQUE, individually and doing business as  
20 ERA Excellence Realty, alleges as follows:

21 1.

22 The Complainant, Thomas Mc Crady, a Deputy Real Estate  
23 Commissioner, brings this Accusation in his official capacity.

24 2.

25 MIGUEL CONTRERAS OYOQUE (hereafter Respondent) is  
26 presently licensed and/or has license rights under the Real Estate  
27 Law, Part 1 of Division 4 of the California Business and Professions

1 Code (hereafter cited as the Code). At all times herein mentioned,  
2 Respondent was licensed by the Department of Real Estate of the  
3 State of California (hereafter the Department) as a real estate  
4 broker individually and doing business as ERA Excellence Realty,  
5 until on or about December 13, 1995.

6 3.

7 (a) At times herein mentioned, Respondent was engaged in  
8 the real estate resale brokerage business as defined by Code Section  
9 10131(a) in that Respondent, for or in expectation of compensation,  
10 solicited and negotiated with buyers and sellers of real estate.

11 (b) At times herein mentioned, Respondent was engaged in  
12 the mortgage loan brokerage business as defined by Code Section  
13 10131(d) in that Respondent, for or in expectation of compensation,  
14 solicited and negotiated with borrowers for loans from third-party  
15 lenders secured by real property (secured loans).

16 (c) In connection with the above set forth activities,  
17 Respondent conducted escrows.

18 4.

19 Between December 28, 1995 through March 15, 1996, an  
20 auditor from the Department examined the books and records of  
21 Respondent covering a period of time from October 1, 1993, through  
22 November 30, 1995 (hereafter the "audit period"). That examination  
23 revealed that Respondent, during the audit period, violated the  
24 following Code Sections and Regulations from Title 10, Chapter 6,  
25 California Code of Regulations (hereafter Regulations):

26 (a) In the conduct of the mortgage loan business,  
27 Respondent was doing business as Renet Financial Excellence Mortgage

1 (hereafter RFEM) without having a real estate license issued by the  
2 department under that fictitious business name, in willful violation  
3 of Code Section 10159.5 and Regulation 2731.

4 (b) In connection with the conduct of escrows, Respondent  
5 failed to review, initial and date escrow instructions and closing  
6 statements in willful violation of Regulation 2725.

7 (c) In connection with the conduct of escrows, Respondent  
8 received funds in trust from or on behalf of buyers, sellers and  
9 borrowers and deposited said funds into an escrow trust account at  
10 Guardian Bank, account number 001-743260 (hereafter the Escrow Trust  
11 Account):

12 (i) As of March 10, 1995, Respondent's adjusted bank  
13 balance in the Escrow Trust Account was \$144,567.18. Respondent's  
14 accountability to owners on that date was \$163,034.84 leaving a  
15 shortage of \$18,467.66. Said shortage was caused, allowed or  
16 permitted by Respondent and was without the written consent of each  
17 and every principal whose funds were in the trust account and was in  
18 violation of Code Section 10145 and Regulation 2832.1.

19 (ii) The shortage was caused in part by \$15,204.99  
20 being held by the Federal Deposit Insurance Corporation (FDIC),  
21 overdrawn escrows of \$4,030.26, and unidentified amounts of \$767.59.

22 (iii) The Escrow Trust Account was frozen by FDIC on  
23 or about January 20, 1995 and closed on March 10, 1995.

24 (d) On or about January 20, 1995, Respondent opened an  
25 account at Imperial Bank, account number 07-090447 (hereafter the  
26 Escrow Account) which he used for the receipt and disbursement of  
27



1 escrow trust funds received from or on behalf of buyers, sellers and  
2 borrowers.

3 (i) The Escrow Account was in the name of ERA  
4 Excellence Realty and was not established in the name of Respondent  
5 as trustee, in violation of Regulation 2830 and Code Section 10145  
6 of the Code.

7 (ii) As of November 30, 1995, Respondent's adjusted  
8 bank balance in the Escrow Account was \$83,002.85. Respondent's  
9 accountability to owners on that date was \$110,051.32 leaving a  
10 shortage of \$27,048.47. Said shortage was caused, allowed or  
11 permitted by Respondent and was without the written consent of each  
12 and every principal whose funds were in the trust account and was in  
13 violation of Code Section 10145 and Regulation 2832.1.

14 (iii) The shortage was caused in part by \$15,204.99  
15 being held by the FDIC, overdrawn escrows of \$4,339.13, accumulated  
16 bank charges of \$832.65 and unidentified amounts of \$6,671.70.

17 (e) Respondent failed to maintain accurate columnar and  
18 separate records showing trust funds received and disbursed, in  
19 chronological sequence, including earnest moneys forwarded directly  
20 to escrow, in violation of section 2831 and 2831.1. By way of  
21 example;

22 (i) Respondent's trial balances reflected a total of  
23 130 open escrows with escrow balances of \$212,552.89, as of November  
24 30, 1995. In fact the minimum accountability as of that date was  
25 \$110,051.32.

26 (ii) Respondent's books reflected overdrawn escrows  
27 of \$2,728.75 when in fact the overdrawn escrows totaled \$4,339.13 as



1 of November 30, 1995.

2 (iii) On or about June 12, 1995, Respondent  
3 negotiated the sale of 1010 Winchester Avenue, Alhambra, California  
4 to buyers Bernardina Ramirez and Estephanie Aispurd. A purchase  
5 money deposit of \$1,000, received by Respondent, was forwarded to  
6 escrow on or about June 19, 1995. No record was kept of the  
7 forwarding of the deposit, in willful violation of Regulation 2831.

8 (iv) In connection with the business of obtaining  
9 loans from third party lenders, Respondent received funds from  
10 borrowers for credit and appraisal report fees but failed to  
11 maintain a columnar record of the forwarding of those funds to the  
12 providers, in willful violation of Regulation 2831.

13 (v) Funds were sometimes deposited into the escrow  
14 trust account or escrow account with no escrow receipt; or the same  
15 escrow receipt was posted to two different escrow transactions and  
16 both reflected as a balance for the transaction; or escrow receipts  
17 were issued twice for the same funds received; or checks were issued  
18 and not properly reflected as disbursements; or the returned items  
19 from the bank were not properly posted.

20 (f) Respondent failed to monthly reconcile his control  
21 records with his separate records, as is required by Regulation  
22 2831.2.

23 (g) In connection with the business of obtaining loans  
24 from third party lenders, Respondent failed to provide to borrowers  
25 Mortgage Loan Disclosure Statements (Borrower) in willful violation  
26 of Code Section 10240 and Regulation 2840.

27 /



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

5.

Respondent's conduct constitutes negligence in transactions for which a real estate license is required.

6.

Respondent's conduct constitutes failure to adequately supervise the activities of persons handling the escrow trust fund account and the escrow account.

7.

The conduct or omissions of Respondent as set forth above subject his real estate licenses and license rights to suspension or revocation under the following Code Sections:

(a) Code Section 10177(d) for willful violations of the following Code Sections and Regulations:

(i) Regulation 2725 for failure to review, initial and date escrow instructions and closing statements, as set forth in paragraph 4(b), above.

(ii) Code Section 10159.5 and Regulation 2731 for failure to have a real estate license issued by the department under that fictitious business name Renet Financial Excellence Mortgage, as set forth in paragraph 4(a), above.

(iii) Code Section 10145 and Regulation 2830 for failure to have the EA designated as a trust account in the name of Respondent as trustee, as set forth in paragraph 4(d)(i), above.

(iv) Code Section 10145 and Regulation 2831 and 2831.1 for failure to have accurate columnar and separate records, as set forth in paragraph 4(e), above.



1 (v) Regulation 2831.2 for failure to monthly  
2 reconcile the control with the separate records, as set forth in  
3 paragraph 4(f), above.

4 (vi) Code Section 10145 and Regulation 2832.1 for  
5 the trust fund shortages, as set forth in paragraph 4(c)(i) and  
6 4(d)(ii), above.

7 (vii) Code Section 10240 and Regulation 2840 for  
8 failure to provide to borrowers Mortgage Loan Disclosure Statements  
9 (Borrower), as set forth in paragraph 4(g), above.

10 (b) Code Section 10177(g) for negligence in the operation  
11 of a real estate brokerage business, as set forth in paragraph 5,  
12 above.

13 (c) Code Section 10177(h) for failure to supervise the  
14 activities of persons employed by ERA Excellence Realty, as set  
15 forth in paragraph 6, above.

16 WHEREFORE, Complainant prays that a hearing be conducted  
17 on the allegations of this Accusation and, that upon proof thereof,  
18 a decision be rendered imposing disciplinary action against all  
19 licenses and license rights of Respondent MIGUEL CONTRERAS OYOQUE,  
20 individually and doing business as ERA Excellence Realty, under the  
21 Real Estate Law (Part 1 of Division 4 of the Business and  
22 Professions Code) and for such other and further relief as may be  
23 proper under other applicable provisions of law.

24 Dated this 14th day of May, 1997 at Los Angeles, California.

25  
26 THOMAS McGRADY.

27 Thomas Mc Crady,  
Deputy Real Estate Commissioner



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

cc: Miguel Contreras Oyoque  
Sacto.  
LK/JDF

SC/sc

