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DEPARTMENT OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	No. H-27518 LA
)	
W. DARROW FIEDLER,)	
)	
Respondent.)	

ORDER GRANTING REINSTATEMENT OF LICENSE

On April 12, 2005, a Decision was rendered herein, revoking the real estate broker license of Respondent, but granting Respondent the right to apply for a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on May 3, 2005. Respondent's current restricted salesperson license expires May 2, 2013.

On or about May 22, 2009, Respondent petitioned for reinstatement of said real estate broker license.

I have considered Respondent's petition and the evidence and arguments submitted in support thereof. Respondent has demonstrated to my satisfaction that Respondent meets the requirements of law for the issuance to Respondent of an unrestricted real estate broker license and that it would not be against the public interest to issue said license to Respondent.

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NOW, THEREFORE, IT IS ORDERED that Respondent's petition for reinstatement is granted and that a real estate broker license be issued to Respondent, if

Respondent satisfies the following requirements:

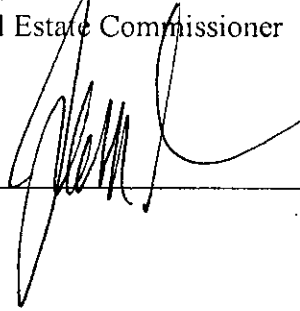
1. Submittal of a completed application and pays the fee for a real estate broker license within the 12 month period following the date of this Order; and

2. Submits proof that Respondent has completed the continuing education requirements for renewal of the license sought. The continuing education courses must be completed either (i) within the 12 month period preceding the filing of the completed application, or (ii) within the 12 month period following the date of this Order.

This Order shall be effective immediately.

Dated: 12/14/2000

JEFF DAVIS
Real Estate Commissioner



FILED
APR 13 2005
DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
W. DARROW FIEDLER,)
)
Respondent.)

No. H-27518 LA
L-1998020074

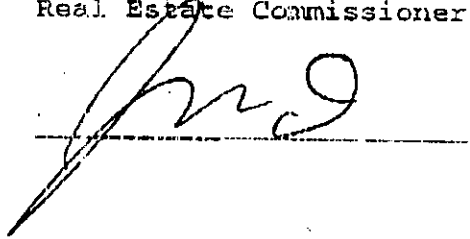
DECISION

The Proposed Decision dated March 8, 2005,
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 May 3, 2005.

IT IS SO ORDERED 4/13/05

JEFF DAVI
Real Estate Commissioner



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

In the Matter of the Accusation of:

W. DARROW FIEDLER,

Respondent.

No. H-27518 LA

OAH No. L1998020074

PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on February 8, 9 and 10, 2005, in Los Angeles, California. Complainant was represented by Chris Leong, Staff Counsel for the Department of Real Estate. W. Darrow Fiedler (Respondent) appeared and was represented by Lawrence H. Lackman, attorney at law.

Oral and documentary evidence was received and argument was heard. The record was closed and the matter was submitted for decision on February 10, 2005.

On February 22, 2005, the Administrative Law Judge received from Complainant a letter, attaching minimized copies of an architectural drawing and six photographs that had been used as demonstrative evidence during the hearing. Complainant's letter requested that the drawing and photographs be marked for identification and included in the record for illustrative purposes only.¹ The letter indicated that that Respondent's counsel had been sent copies of the letter and its attachments. The Administrative Law Judge, on her own motion, re-opened the record to allow for Complainant's late submission of evidence. Complainant's letter and attachments were collectively marked as Complainant's Exhibit 16 and admitted as demonstrative, not direct, evidence. On February 23, 2004, the record was closed and the matter was submitted for decision.

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¹ Poster-sided originals were utilized as demonstrative evidence during the hearing. At one point in the proceeding, Complainant's counsel raised the possibility of submitting reduced photocopies of the original poster boards for inclusion as demonstrative, but not direct, evidence. However, the record was closed without further discussion of the submission of reduced copies.

FACTUAL FINDINGS

1. On January 14, 1998, Complainant, Thomas McCrady, filed the Accusation while acting in his official capacity as Deputy Real Estate Commissioner of the Department of Real Estate (Department), State of California. On January 27, 1998, the Amended Accusation was filed, and on June 12, 1998, the First Supplement to Amended Accusation was filed.

2. Respondent is licensed by the Department as a real estate broker. He was originally licensed as a real estate salesperson on November 11, 1978, and his salesperson license terminated on September 29, 1981. His real estate broker license was originally issued on September 29, 1981, and expired on September 28, 1985. The license was re-issued on April 10, 1986, and will expire on April 9, 2006, unless renewed.

Facts Re: 1995 Transaction

3. In 1995, Respondent was engaged as a seller's agent to list for sale property located at 201 Calle Miramar, Unit #3, Torrance, California (the property), in the Vista Bahia condominium complex (the complex). The seller of the property, E.P. (Seller), was the executor of the estate of R.S.²

4. From January through December of 1995, Respondent was a member of the Vista Bahia Condominium Association Board of Directors (Board). Respondent was also an owner of a unit in the complex during 1994 and 1995.

5. In February of 1995, Paul Romano (Romano) of Schwartz, Romano & Associates, Forensic Architecture and Engineering (SRA), was retained by the Board to conduct an assessment of the complex following complaints of water intrusion in several areas of the complex after several storms.

6. On March 7, 1995, Respondent attended a Board meeting, during which the Board approved applying for a Small Business Association / Federal Emergency Management Agency (SBA/FEMA) disaster loan to fund any necessary repairs that SRA recommended.

7. On March 23, 1995, the Vista Bahia Homeowners Association (HOA) filed a Disaster Business Loan Application with the SBA seeking assistance with repair of storm and flood damages.

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² The seller's and decedent's initials are used, in lieu of their full names, to protect their privacy.

8. On April 11, 1995, Respondent attended a Board meeting, during which the directors discussed submitting an insurance claim to State Farm Insurance "in reference to water and earthquake damage."³ At that meeting, the Board approved borrowing reserve funds to pay SRA's fees, in the amount of \$23,500, and also approved repayment of the reserve fund by special assessment commencing June 1, 1995.

9. On April 24, 1995, the members of the HOA were sent a letter from the Board, giving notice of a special assessment. That letter stated, in pertinent part:

[T]he Board has been working with the engineering and architectural firm of Schwartz, Romano & Associates ("SRA") to assess the damage to the Project caused by the January 17, 1994 earthquake and/or the recent rain storms. . . . The proceeds of this assessment will be used to restore monies borrowed from Association reserves to pay for the costs of retaining SRE to prepare a preliminary inspection report on the costs and scope of work to repair certain common area damages caused or exacerbated by the recent rain storms and/or the January 1994 earthquake. . . Finally, an insurance claim has been filed as some of the needed repairs may be paid for by insurance...

10. On May 7, 1995, H.F. (Buyer) employed real estate agent Jackie Wang (Wang) to prepare an offer to purchase the property.⁴ A Real Estate Purchase Contract was drafted as an offer to purchase the Property and sent via facsimile to Tammy at Respondent's office.

11. On May 10, 1995, Respondent attended a Board meeting, during which Romano presented the findings in SRA's Damage Assessment Report and stated that "structural issues were the first concern." SRA's Damage Assessment Report noted that the building had "suffered considerable physical damages which are directly related to rainwater infiltration generated by the recent major storm activity."

12. On May 10, 1995, Respondent attended an information meeting of the membership of the HOA, during which a discussion took place about the SBA/FEMA loan that the HOA was securing "to make necessary emergency repairs."

13. On May 11, 1995, Respondent sent Wang a counter offer for the sale of the property. In the counter offer, Respondent included the following disclosure: "Buyer to be aware that there is a possible pending special assessment which will increase the monthly homeowner dues. The amount has not yet been determined." Respondent's disclosure contained no mention of any storm damage or the reason for the special assessment.

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³ The earthquake to which they referred was the January 1994 Northridge earthquake.

⁴ The buyer's initials are used, in lieu of his full name, to protect his privacy.

14. On May 7, 1995, a Real Estate Purchase Contract (the Contract) for the sale of the Property was executed by the parties. Paragraph 12, subdivision C, of the Contract specified:

Seller shall, within the time specified in Paragraph 28(A)(4), request and provide to Buyer any known pending special assessments, claims, or litigation; copies of covenants, conditions and restrictions; articles of incorporation; by-laws; other governing documents; most current financial statement distributed (Civil Code §1365); statement regarding limited enforceability of age restrictions, if applicable; current HOA statement showing any unpaid assessments (Civil Code §1368); any other documents required by law; and the most recent 12 months of HOA minutes, if available...

15. The escrow instructions for the sale of the Property, executed May 12, 1995, specified the following:

Seller shall, as soon as practicable, prior to the close of escrow, . . . (2) provide the buyer copies of covenants, conditions and restrictions, articles of incorporation, by-laws, other governing documents, most current financial statement distributed pursuant to Civil Code §1365, statement regarding limited enforceability of age restrictions, if applicable, current Association statement showing amount of any unpaid assessments (Civil Code §1368), any other documents required by law.

16. On May 15, 1995, Respondent signed and provided to the buyer a Real Estate Transfer Disclosure Statement (TDS) relating to the sale of the property. In the TDS, page 2, Part II, Section C reads: "Are you (Seller) aware of any of the following: . . . 9. Major damage to the property or of any of the structures from fire, earthquake, floods or landslides." The box next to this phrase was checked "No."

17. In the TDS, Section III, Agent's Inspection Disclosure, Respondent provided the following statement: "Buyer to be aware the association is conducting a study of all the common areas and the possibility of a special assessment to improve same." Respondent's disclosure contained no mention of water/storm damage or the purpose of the study.

18. On May 18, 1995, in an Amendment to Escrow Instructions, the escrow instructions were amended to reflect the following:

Buyer hereby states he has received, read and approves the covenants, conditions and restrictions, by-laws, articles of incorporation, if any, current budget and financial statement and any other documents required by law.

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19. Prior to the close of escrow, the parties discovered that the Seller had mistakenly indicated in the Contract and in the escrow instructions that the property had two assigned parking spaces, when in fact it had only one assigned parking space. In late May of 1995, Wang spoke to Respondent about the parking space issue. On June 15, 1995, the escrow instructions were amended to reflect that the unit was assigned only one parking space and to indicate that Buyer would be given a \$2000 credit toward the purchase of the property.

20. Prior to the close of escrow, Wang attempted to obtain the 12 months of HOA minutes, but was never able to secure the documents from the property management company. She told the Buyer that the documents were unavailable. Since he had to close his loan and he understood that he was going to get the minutes after close of escrow, the Buyer allowed escrow to close without obtaining the HOA minutes.

21. Escrow closed on June 22, 1995.

22. The Final Settlement Statement, dated June 22, 1995, indicated that the Seller had paid the Homeowner's documents and transfer fee.

23. Shortly after Buyer moved into the property, he received a special assessment bill from the HOA. This assessment bill included \$420.66 for the damage inspection and \$5,214.27 for estimated earthquake and storm damage repairs.⁵ The Buyer then contacted the HOA and finally received the HOA meeting minutes from the preceding 12 months.

24. If the Buyer had known of earthquake or water/storm damage, he would not have purchased the Property, because such damaged property was less desirable to him.

25. Based upon the information Respondent obtained as a HOA member and as a director of the Board, Respondent had knowledge, prior to June 22, 1995, of water/storm damage to the building.

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⁵ Minutes from a July 11, 1995 Board meeting indicate that the SBA loan was approved on an undisclosed date for \$150,700 in earthquake damage assistance and \$140,600 in flood damage assistance.

26. Based upon the information provided to Respondent, he did not have knowledge of actual earthquake damage as alleged by Complainant. Respondent credibly testified that, in 1994, he received a copy of minutes from a HOA meeting, from which he understood that there was an inspection of the Complex by the City of Torrance and that the City did not find any earthquake damage.⁶ Given Respondent's prior knowledge of the City's findings, and the lack of definitive findings of earthquake-caused damage by SRA prior to June 22, 1995, Complainant did not prove that, prior to June 22, 1995, Respondent had knowledge of earthquake damage to the Complex. Respondent also had no knowledge, prior to June 22, 1995, of "major damage to the property or of any of the structures from fire, earthquake, floods or landslides." His knowledge of water/storm damage did not rise to the level of "major damage to the property" due to "floods."

27. The information known to Respondent was reflected in the minutes of the HOA and Board meetings which transpired between January 1, 1995, and June 22, 1995.

28. Respondent did not specify the reason for the SRA study (to ascertain earthquake or storm damage) nor the basis for the pending special assessment in his disclosure documents, because he believed that information would be revealed when the Buyer read the HOA minutes.

29. Respondent did not know that the HOA meeting minutes had not been delivered to the Buyer prior to the close of escrow. At that time, Respondent was aware of a document signed by the Buyer indicating that the Buyer had received all the requisite documents (see Factual Finding 18), and Respondent assumed that all of the documents had been delivered to the Buyer.

30. Respondent did not knowingly conceal information with the belief that the information was inaccessible to the Buyer prior to close of escrow.

31. Complainant alleged in his Amended Accusation, paragraph VIII:

On or about May 11, 1995, Wang asked Respondent what the "special assessment" was for. Respondent represented that the Homeowner's Association was doing a study of how to upgrade the common areas and improve the look of the building due to the age of the building. Wang asked Respondent what kind of improvements and upgrades they would do. Respondent represented that the improvements would be such things as painting the exterior of the building and improving the look of the entrance lobby. The possible assessment was for the cost of those improvements. Respondent again failed to disclose the earthquake and storm damage.

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⁶ The City of Torrance's inspection of the building and its failure to find earthquake damage was corroborated by the testimony of Dr. Melvin Harter.

32. Complainant also alleged in his Amended Accusation, paragraph XI:

On or about May 20, 1995, Wang asked Respondent specifically what kind of study the Homeowners Association was conducting and what he meant by "a special assessment." Respondent again represented that the Homeowner's Association was doing a study of how to upgrade the common areas and improve the look of the building due to the age of the building. Wang asked Respondent what kind of improvements and upgrades they would do. Respondent represented that the improvements would be such things as painting the exterior of the building and improving the look of the entrance lobby. The possible assessment was for the cost of those improvements. Respondent again failed to disclose the earthquake and storm damage.

33. Complainant failed to prove the allegations in the Amended Accusation, paragraphs VIII and XI, for the following reasons:

(a) Respondent denied making the alleged representations to Wang.⁷ At the time of the transaction, Respondent employed two "listing coordinators," Tammy and Lynn, who were in charge of managing offers and transactions until the close of escrow. Respondent worked on servicing his clients and getting more listings, and Tammy and Lynn dealt with most of the agents. Because Tammy and Lynn were both licensed, Respondent felt that they could answer agents' questions as well as he could. At the time of the transaction, it was Respondent's policy that, when buyers' agents' called, he generally would not take their calls, but would have all communication stop at Tammy or Lynn. However, he admitted that he did occasionally take calls from agents. Respondent admitted having a conversation with Wang to remedy the confusion over the number of parking spaces which were assigned to the buyer's unit. However, Respondent denied having any other conversations with Wang. He specifically denied telling Wang that the special assessment was related to painting, maintenance or cosmetic improvements to the common areas. Respondent noted that he would have been lying if he said such a thing and that he had no reason to make up such a story, because he believed that the Buyer would be receiving the contradictory HOA meeting minutes. Respondent recalled only speaking to Wang the one time that they discussed the parking space situation.

(b) Respondent's testimony was corroborated by Wang's testimony in material respects.⁸ Wang testified that, when contacting Respondent's office, she typically talked to Lynn. Wang specifically recalls talking to Respondent about the parking space situation. However, Wang admitted that, when she called about the counteroffer, she does not recall if

⁷ While Complainant attacked Respondent's credibility pursuant to Evidence Code section 788, based upon his federal conviction (discussed in Factual Finding 39), this was not sufficient to fully discredit Respondent's testimony, which was not contradicted by Wang.

⁸ While it was asserted that Wang was also the subject of the Buyer's complaint to the Department regarding the transaction, and that Wang had not been the subject of an Accusation, these veiled assertions of bias or self-interest did not discredit Wang's testimony.

she spoke to Tammy or Lynn or Respondent. Wang never positively identified Respondent as the person to whom she spoke on May 11 and May 20, 1995.

34. Complainant offered the persuasive expert testimony of Guy Puccio, who has worked for 42 years in the real estate field, to address whether Respondent's actions fell below the standard of care in the industry.⁹ Mr. Puccio testified that, in addition to the disclosures made by the Respondent, he should have also disclosed: (a) why the SRA study was being done; (b) that an insurance claim for earthquake and storm damage had been filed; and (c) that the HOA had applied for a SBA/FEMA disaster assistance loan. Mr. Puccio opined that, in failing to reveal such information, Respondent's disclosures constituted "half-truths" and fell below the standard of care. According to Mr. Puccio, Respondent should have amended his TDS after the May 10, 1995 HOA meeting to reflect Respondent's knowledge at that time. He further testified that, even if the Buyer had received all of the HOA meeting minutes, it would not have relieved Respondent of his obligation to make the full disclosure.¹⁰

35. Respondent did not present any expert testimony to contradict Mr. Puccio's testimony regarding whether Respondent's actions were within the standard of care.

36. Respondent's failure to disclose the water/storm damage to the Buyer was below the standard of care and constituted negligence.

37. Respondent also failed to disclose: (a) the purpose of SRA's study (to determine earthquake and/or storm damage); (b) that an insurance claim for earthquake and storm damage had been filed; and (c) that the HOA had applied for a SBA/FEMA disaster assistance loan. Complainant proved at hearing that these non-disclosures also fell below the standard of care and constituted negligence. However, these facts were not alleged in Amended Accusation or the Supplement to the Amended Accusation, and Complainant made no motion to amend the pleadings to conform to proof. Consequently, these non-disclosures may not serve as a separate basis for discipline.

38. Respondent's failure to specifically disclose information regarding water/storm damage did not constitute misrepresentation, fraud or dishonest dealing, because Complainant failed to prove Respondent's intent to deceive the Buyer.

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⁹ Mr. Puccio's testimony was considered only with regard to the negligence allegations in the Amended Accusation.

¹⁰ Complainant also offered the expert testimony of Sandra Sanders, who has worked in the field of real estate for 30 years. Ms. Sanders concurred with Mr. Puccio's opinion. However, the witness admitted that her real estate license had been disciplined and that she is currently practicing with a restricted license. Given her licensing status, Ms. Sanders' testimony regarding whether Respondent met the standard of care was given little weight.

Facts Re: Conviction

39. On May 26, 1998, in the United States District Court for the Central District of California, Case Number CR 98-261 GH, entitled *The United States of America v. Jodi A. Voy, W. Darrow Fiedler, and Robert K. Todd*, Respondent pleaded guilty to three counts of violating 18 U.S.C. §§1014 and 2 (aiding and abetting false statements in a loan application), crimes involving moral turpitude, which are substantially related to the qualifications, functions and duties of a real estate licensee. On September 8, 2003, Respondent was found guilty and judgment was entered against him on September 19, 2003. In the Judgment and Probation / Commitment Order, the United States District Judge noted, "The offenses of conviction do not contain, as an element, the intent to defraud."

40. As a result of his conviction, Respondent was placed on probation for one year, which he completed. He was also ordered to pay restitution in the amount of \$105,200, which he paid in full. He also paid all Court-ordered fines and penalties. During the sentencing hearing and in writing in the Judgment and Probation / Commitment Order, the Court noted that "It is recommended that the defendant be allowed to continue to practice in real estate, in light of his post offense rehabilitation."

41. The facts and circumstances surrounding the conviction are as follows: Co-defendant Voy was employed by Citibank as an account executive and sales manager. In 1987, at a general sales meeting of 150 to 250 real estate agents at RE/MAX Beach Cities Realty, where Respondent worked, Voy solicited mortgage loan business under the Mortgage Power Program. This program offered incentives to the real estate agents for obtaining loan business. Voy told the RE/MAX agents that Citibank would approve mortgage loans for prospective borrowers who were purchasing real property without verifying the source of the borrower's down payment. However, the borrowers were required by law to disclose in the loan application whether any portion of the down payment was borrowed. Some borrowers represented in loan applications, under penalty of perjury, that no portion of their down payments were borrowed, when this was not truthful. Respondent was the responsible real estate broker for several of these transactions.

42. Respondent admitted responsibility for his crimes and expressed regret for his actions. Respondent noted that he did not know that, in assisting with the loans, he was doing anything wrong. However, when the Federal Bureau of Investigation contacted him and pointed out the illegality, he felt that, since he was broker in the transactions, he should plead guilty. Although he pleaded guilty in 1998, it took five years for his sentencing to take place, because he cooperated in investigations of the other parties and agreed to be a government witness. After the last of 21 related cases was completed, his sentencing took place.

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Facts Re: Additional Mitigation / Rehabilitation

43. With regard to the 1995 transaction, Respondent acknowledged that, knowing what he knows now, he wishes that he had made a fuller and more complete disclosure. However, Respondent maintained his belief that he acted appropriately in the 1995 transaction.

44. Respondent described himself as a "recovering addict," who has been sober since 1987. He currently has no problems with controlled substances or alcohol.

45. Respondent is involved with his local Chabad and with the National Council of Alcoholics and Drug Dependents.

46. Respondent has closed 1123 transactions to date, ranging from single family homes to commercial properties.

LEGAL CONCLUSIONS

1. Cause exists to suspend or revoke Respondent's real estate broker's license, pursuant to Business and Professions Code section 10177, subdivision (g), as a result of his negligence in acts requiring a real estate license, as set forth in Factual Findings 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 34, 35, and 36.

2. Cause does not exist to suspend or revoke Respondent's real estate broker's license, pursuant to Business and Professions Code section 10176, subdivisions (a) or (i), for misrepresentation or dishonest dealing, as set forth in Factual Findings 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, 28, 29, 30, 31, 32, 33, and 38.

3. Cause exists to suspend or revoke Respondent's real estate broker's license, pursuant to Business and Professions Code section 490 and California Code of Regulations, title 10, section 2910, subdivisions (4) and (8), for his conviction of crimes which are substantially related to the duties, qualifications, and functions of a real estate licensee, as set forth in Factual Findings 39, 40 and 41.

4. Cause exists to suspend or revoke Respondent's real estate broker's license, pursuant to Business and Professions Code section 10177, subdivision (b), based upon his conviction of crimes of moral turpitude, as set forth in Factual Findings 39, 40 and 41.

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Legal Discussion Regarding Negligence

5. Respondent argued against a finding of negligence, pointing out he owed no fiduciary duty to the Buyer. However, non-disclosure of facts may be actionable without such a fiduciary relationship, particularly where a real estate agent has knowledge of material facts which are not accessible to a buyer. (See *Kovich v. Paseo Del Mar Homeowners' Association* (1996) 41 Cal.App.4th 863, 866.)¹¹ Respondent also argued that that Civil Code section 2079.3 indicates that, in the sale of a unit within a condominium complex, a seller's agent is not required to inspect the common areas if Civil Code section 1368 is met.¹² However, "[s]ection 2079.3 was . . . not intended to change any existing duty of a broker or salesperson to disclose material facts within the knowledge of the licensee, that are not otherwise accessible to the buyer, including the existence of nuisances or other conditions of nearby properties that may effect the value or desirability of the property offered for sale." (*Padgett v. Phariss* (1997) 54 Cal.App.4th 1270, 1281-1282.) Furthermore, Civil Code section 2079.16, "defines the duty brokers owe to persons who are not their clients in nonfiduciary terms as the 'diligent exercise of reasonable skill and care,' 'honest and fair dealing and good faith,' and 'duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of the parties...'" (*Field v. Century 21 Klowden-Forness Realty* (1998) 63 Cal.App.4th 18, 26 - 27.) Therefore, while Respondent owed no fiduciary duty to the Buyer and while Civil Code section 2079.3 limited Respondent's inspection responsibility, Respondent still owed the Buyer a duty as set forth in Civil Code section 2079.16.

6. Where a duty is found to exist, a real estate agent must fulfill it by exercising the degree of care that a reasonably prudent real estate agent would exercise. (Civil Code section 2079; See also, *Padgett v. Phariss* (1997) 54 cal.App.4th 1270, 1279.) Respondent failed to disclose the fact of water/storm damage, which was within his knowledge. Moreover, the known water/storm damage was a material fact in that it affected the desirability and value of the property. (See, *Reed v. King* (1983) 145 Cal.App. 3d 261, 265.) Complainant's expert testified that Respondent's disclosures fell below the standard of care, and there was no expert testimony to refute this opinion.¹³

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¹¹ In his closing brief, Respondent cited *Kovich v. Paseo Del Mar Homeowners' Association, supra*, for proposition that a HOA bears no fiduciary duty to prospective buyer which would require disclosure. However, this argument is irrelevant, since Respondent's duty as a HOA director is not at issue in this case, but rather his duty as a licensed real estate agent.

¹² Civil Code section 1368, subdivision (a), lists several, specific documents which an owner must provide to a prospective purchaser. Complainant made no argument that Civil Code section 1368 was violated.

¹³ "The degree of care and skill required to fulfill a professional duty ordinarily is a question of fact, and may require testimony by professionals in the field, if the matter is within the knowledge of experts only." (*Padgett v. Phariss* (1997) 54 cal.App.4th 1270, 1279.) In this case, the expert testimony was helpful in assessing what facts a reasonably prudent seller's agent should disclose.

7. In an attempt to shift the responsibility for ascertaining all material facts, Respondent cited *Pagano v. Krohn* (1997) 60 Cal.App.4th 1, wherein the Court applied Civil Code 2079.5 in finding that "nothing in this article relieves a buyer or prospective buyer of the duty to exercise reasonable care to protect himself or herself, including those facts which are known to or within the diligent attention and observation of the buyer or prospective buyer." In this case, Respondent argued that the facts known to him were accessible to the Buyer in the HOA minutes. Respondent essentially asserted that his minimal disclosure was an invitation for the Buyer and his agent to request information relating to the study disclosed in the TDS. Respondent maintained that "had the buyer or his agent bothered to review the [HOA] ... minutes, they would have found disclosure, and would have had knowledge of all known facts and contentions as to earthquake and/or water damages applicable to the entire complex." This attempt to escape responsibility is not persuasive. Respondent still had a separate duty of disclosure, separate and apart from any responsibility of the Buyer or his agent. In an administrative disciplinary proceeding, there is no comparative negligence provision that would impact a finding of inappropriate conduct. In this case, the question to be answered is whether Respondent engaged in inappropriate conduct which would subject him to discipline. While it is true that an agent is "not bound to pursue the homeowner's association to make sure it carried out its duties to provide information on request," (*Padgett v. Phariss* (1997) 54 Cal. App.4th 1270, 1285), this does not relieve the seller's agent of his duty to disclose known facts. Thus, while Respondent did not have the duty to ensure the delivery of the HOA minutes, he still had the duty to disclose known material facts contained therein.

Legal Discussion Re: Misrepresentation / Dishonest Dealing

8. Although Complainant alleged that Respondent made misrepresentations, the evidence did not establish that he made any affirmative representations of fact. Rather, the evidence showed only a negligent non-disclosure, without the intent to defraud. "Negligent misrepresentation is a species of fraud or deceit specifically requiring a 'positive assertion' (§ 1572, subd. 2) or 'assertion' (§ 1710, subd. 2) of fact. [Citation.] An 'implied' assertion or representation is not enough." (*Wilson v. Century 21 Great Western Realty* (1993) 15 Cal.App.4th 298, 306.) Here, the evidence does not show an adequate "assertion" to constitute misrepresentation. Furthermore, the evidence did not establish Respondent's dishonest intent, precluding a finding of dishonest dealing. Therefore, on the established facts and the law in this case, Respondent is not subject to discipline for misrepresentation or dishonest dealing.

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9. Respondent has substantially complied with several of the Department's rehabilitation criteria set forth in California Code of Regulations, title 10, section 2912, as follows:

- (1) While less than two years have elapsed since the time of sentencing, it has been seven years since the guilty plea and over 10 years since the actions leading up to the conviction.
(Subdivision (a).);
- (2) Respondent has paid all Court-ordered restitution, as set forth in Factual Finding 40.
(Subdivision (b).);
- (3) Respondent has successfully completed his probation, as set forth in Factual Finding 40.
[Subdivision (e)];
- (4) Respondent has paid all fines and monetary penalties imposed in connection with his criminal conviction, as set forth in Factual Finding 40.
(Subdivision (g).);
- (5) Respondent is involved in the community through his local Chabad and through his work with the National Council of Alcoholics and Drug Dependents.
(Subdivision (l).);
- (6) Respondent has had a change in attitude since his conviction, as set forth in Factual Finding 42.
(Subdivison (m).).

10. Notwithstanding Legal Conclusions Numbers 1, 3, and 4 above, Respondent has demonstrated sufficient rehabilitation following his conviction, such that, in this case, outright revocation of all licensing rights would be overly-harsh discipline. However, Respondent has exhibited negligence in his licensed activity. Because Respondent is a real estate broker, he is licensed to work unsupervised. If Respondent continues to work as a broker, the Department would have no safeguards to ensure Respondent's proper professional conduct. Given his prior negligent conduct and apparent his need for supervision, permitting Respondent to continue working in a broker capacity would present an unacceptable risk to the public. However, the public interest would be adequately protected by the revocation of Respondent's real estate **broker's** license and the issuance to him of a properly-conditioned, restricted real estate **salesperson's** license.

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ORDER

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

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

2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

3. Respondent shall 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 four (4) 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 which granted the right to a restricted real estate salesperson's 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.

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5. Respondent shall, within nine (9) 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.

6. Respondent shall, within six (6) 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.

DATED: *March 8, 2005*



JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings

SAC

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)

Case No. H-27518 LA

W. DARROW FIEDLER,)

OAH No. L-1998020074

Respondent (s)

FILED
DEC - 5 2002
DEPARTMENT OF REAL ESTATE

NOTICE OF CONTINUED 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 the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, CA 90013-1105 on June 16, 2003 and will proceed as necessary through June 27, 2003, 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.

DEPARTMENT OF REAL ESTATE

Dated: December 5, 2002

By


CHRIS LEONG, Counsel

cc: W. Darrow Fiedler
Lawrence H. Lackman, Esq.
Sacto.
OAH

SAL

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
W. DARROW FIEDLER,)
Respondent(s)

Case No. H-27518 LA

OAH No. L-1998020074

FILED
JUL 24 2002
DEPARTMENT OF REAL ESTATE

NOTICE OF CONTINUED HEARING ON ACCUSATION

By Chris Leong

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, CA 90013-1105 on DECEMBER 10, 2002 and will continue on a day-to-day basis until DECEMBER 12, 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.

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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.

DEPARTMENT OF REAL ESTATE

Dated: July 24, 2002

By Chris Leong
CHRIS LEONG, Counsel

cc: W. Darrow Fiedler
Lawrence H. Lackman, Esq.
Sacto.
OAH

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
W. DARROW FIEDLER,)
_____))
Respondent(s)

Case No. H-27518 LA
OAH No. L-1998020074

FILE
DEC 22 2000
DEPARTMENT OF REAL ESTATE

NOTICE OF CONTINUED 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 the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, CA 90013-1105 on OCTOBER 22, 2001 and will continue on a day-to-day basis until OCTOBER 26, 2001, 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.

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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.

DEPARTMENT OF REAL ESTATE

Dated: December 22, 2000

By CHRIS LEONG
CHRIS LEONG, Counsel

cc: W. Darrow Fiedler
Lawrence H. Lackman, Esq.
Sacto.
OAH

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
 W. DARROW FIEDLER,)
)
)
)

Case No. H-27518 LA

OAH No. L-1998020074

Respondent(s)

FILED
APR 19 2000
DEPARTMENT OF REAL ESTATE

NOTICE OF CONTINUED HEARING ON ACCUSATION

To the above-named Respondent(s):

By CS

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, CA 90013-1105 on TUESDAY, WEDNESDAY, THURSDAY and FRIDAY, JANUARY 23, 24, 25 and 26, 2001, 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.

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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.

DEPARTMENT OF REAL ESTATE

Dated: April 19, 2000

By

CHRIS LEONG
CHRIS LEONG, Counsel

cc: W. Darrow Fiedler
Lawrence H. Lackman, Esq.
Sacto.
OAH

SAC

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)

W. DARROW FIEDLER,)

Respondent(s)

Case No. H-27518 LA

OAH No. L-1998020074

FILED
JAN 13 2000
DEPARTMENT OF REAL ESTATE

NOTICE OF CONTINUED HEARING ON ACCUSATION

To the above-named Respondent(s):

By C. Leong

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, CA 90013-1105 on THURSDAY, FRIDAY and MONDAY, JUNE 29, 30 and JULY 3, 2000, 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.

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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.

DEPARTMENT OF REAL ESTATE

Dated: January 13, 2000

By

CHRIS LEONG
CHRIS LEONG, Counsel

cc: W. Darrow Fiedler
Lawrence H. Lackman, Esq.
Sacto.
OAH

SAC

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
 W. DARROW FIEDLER,)
)
 _____)
 Respondent(s)

Case No. H-27518 LA
OAH No. L-1998020074

FILED
OCT 13 1999
DEPARTMENT OF REAL ESTATE

NOTICE OF CONTINUED HEARING ON ACCUSATION

By CB

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, CA 90013-1105 on MONDAY, TUESDAY and WEDNESDAY, MARCH 27, 28 and 29, 2000, 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.

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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.

DEPARTMENT OF REAL ESTATE

Dated: October 13, 1999

By CHRIS LEONG
CHRIS LEONG, Counsel

cc: W. Darrow Fiedler
Lawrence H. Lackman, Esq.
Sacto.
OAH

SAC

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
W. DARROW FIEDLER,)
_____)

Case No. H-27518 LA

OAH No. L-1998020074

Respondent(s)

FILED
MAY 26 1999
DEPARTMENT OF REAL ESTATE

NOTICE OF CONTINUED HEARING ON ACCUSATION

By CSJ

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, CA 90013-1105 on OCTOBER 4, 5, 6, 7 and 8, 1999, 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.

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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.

DEPARTMENT OF REAL ESTATE

Dated: May 26, 1999

By CHRIS LEONG

CHRIS LEONG, Counsel

cc: W. Darrow Fiedler
Lawrence H. Lackman, Esq.
Sacto.
OAH

SAC

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
 W. DARROW FIEDLER,)
)
)
 _____)
 Respondent(s)

Case No. H-27518 LA
OAH No. L-1998020074

FILED
MAY - 6 1999
DEPARTMENT OF REAL ESTATE

AMENDED NOTICE OF CONTINUED HEARING ON ACCUSATION ^{By} _____

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, CA 90013-1105 on JUNE 21, 22, 23, 24 and 25, 1999, 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.

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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: May 6, 1999

By Chris Leong
CHRIS LEONG, Counsel

cc: W. Darrow Fiedler
Lawrence H. Lackman, Esq.
Sacto.
OAH

SAC

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)

W. DARROW FIEDLER,)

Respondent (s)

Case No. H-27518 LA

OAH No. L-1998020074

FILED
FEB - 3 1999
DEPARTMENT OF REAL ESTATE

By (37)
NOTICE OF CONTINUED 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 the Office of Administrative Hearings, 320 West Fourth Street, 6th Floor, Los Angeles, CA 90013 on JUNE 21, 22, 23, 24 and 25, 1999, 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.

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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. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: February 3, 1999

By

Chris Leong
CHRIS LEONG, Counsel

cc: W. Darrow Fiedler
Lawrence H. Lackman, Esq.
/Sacto.
OAH

CEB

RE 501 (La Mac 11/92)

SAC

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
 W. DARROW FIEDLER,)
)
)
)
 _____)
 Respondent (s)

Case No. H-27518 LA

OAH No. L-1998020074

FILED
AUG 13 1998
DEPARTMENT OF REAL ESTATE

By [Signature]

NOTICE OF CONTINUED 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 the Office of Administrative Hearings, 107 South Broadway, Second Floor, Los Angeles, CA 90012 on FEBRUARY 1, 2, 3, 4 and 5, 1999, 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.

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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. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: August 13, 1998

By

[Signature]

CHRIS LEONG, Counsel

cc: W. Darrow Fiedler
Lawrence H. Lackman, Esq.
Sacto.
OAH

CEB

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CHRIS LEONG, Counsel
State Bar Number 141079
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, CA 90012
(213) 897-3937

FILED
JUN 12 1998
DEPARTMENT OF REAL ESTATE

By CR

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
W. DARROW FIEDLER,)	NO. H-27518 LA
Respondent.)	L-1998020074
_____)	<u>FIRST SUPPLEMENT</u>
	<u>TO AMENDED ACCUSATION</u>

The Accusation heretofore filed on January 14, 1998, and the Amended Accusation filed January 27, 1998, in the above-mentioned matter is hereby amended as follows:

XVII

Complainant incorporates by reference Paragraphs I through XVI, of his Amended Accusation filed January 27, 1998.

XVIII

On or about March 16, 1998, in the United States District Court for the Central District of California, Respondent was indicted for violating six counts of 18 USC 1014 (False Statement to Federally Insured Financial Institution); and 18 USC §2 (Aiding and Abetting and Causing an Act to be Done), crimes involving moral turpitude which are substantially related

1
2 under Section 2910, Title 10, California Code of Regulations to
3 the qualifications, functions or duties of a real estate
4 licensee. On or about May 26, 1998, Respondent plead guilty to
5 violating three counts of 18 USC §§ 1014; 2 of this indictment.
6 Sentencing is pending and is scheduled for August 1998.

7 THIRD CAUSE OF ACCUSATION

8 (Violation by Respondent of Sections 490 and 10177(b) of the Code)

9 XIX

10 As a Third Cause of Accusation, Complainant
11 incorporates herein by this reference the Preamble and each of
12 the allegations in Paragraphs I through XVIII, herein above.

13 XX

14 Respondent's criminal conviction, as alleged above in
15 Paragraph XVIII, will be cause under Sections 490 and 10177(b)
16 of the Code for the suspension or revocation of all licenses and
17 license rights of Respondent under the Real Estate Law.

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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, W. DARROW FIEDLER, under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California
this 12th day of June 1998.

THOMAS McCRADY

Deputy Real Estate Commissioner

cc: W. Darrow Fiedler
Larry Lackman, Esq.
Sacto.
LK
OAH

SAC

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
 W. DARROW FIEDLER,)
)
)
)
 _____)
 Respondent (s)

Case No. H-27518 LA
OAH No. L-1998020074

FILED
FEB 26 1998
DEPARTMENT OF REAL ESTATE

NOTICE OF HEARING ON ACCUSATION

To the above-named Respondent(s):

By CB

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 107 South Broadway, Second Floor, Los Angeles, CA 90012 on JULY 27, 28, 29, 30 and 31, 1998, at the hour of 9:00 A.M., or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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

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

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

DEPARTMENT OF REAL ESTATE

Dated: February 26, 1998

By CHRIS LEONG
CHRIS LEONG, Counsel

cc: W. Darrow Fiedler
Lawrence H. Lackman, Esq.
Sacto.
OAH

CEB

1 CHRIS LEONG, Counsel
2 State Bar Number 141079
3 Department of Real Estate
4 107 South Broadway, Room 8107
5 Los Angeles, CA 90012
6 (213) 897-3937

FILED
JAN 27 1998
DEPARTMENT OF REAL ESTATE

By CB

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 W. DARROW FIEDLER,) NO. H-27518 LA
13 Respondent.) AMENDED
14) ACCUSATION

15 The Accusation heretofore filed on January 14, 1998, in
16 the above-mentioned matter is hereby amended as follows:

17 The Complainant, Thomas McCrady, a Deputy Real Estate
18 Commissioner of the State of California, for cause of Accusation
19 against W. DARROW FIEDLER (hereinafter "Respondent"), is
20 informed and alleges as follows:

21 I

22 The Complainant, Thomas McCrady, a Deputy Real Estate
23 Commissioner of the State of California, makes this Accusation
24 against Respondent in his official capacity.

25 II

26 All Sections of Title 10, Chapter 6, California Code
27 of Regulations, are hereinafter referred to as "Regulations".

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III

At all times herein mentioned, Respondent was and still is licensed by the Department of Real Estate of the State of California (hereinafter "Department") as a real estate broker.

IV

At all times mentioned herein, in Los Angeles County, California, Respondent acted as a real estate broker in the State of California, within the meaning of Section 10131(a) of the Business and Professions Code (hereinafter "Code"), wherein he arranged, negotiated, processed and consummated on behalf of others sales and purchases of real property to the public for compensation or in expectation of compensation.

V

On or May 7, 1995, Hiroshi Fujii (hereinafter "Buyer") employed real estate agent Jackie C. Wang (hereinafter "Wang") to prepare an offer to purchase real property in the Vista Bahia condominium complex, located at 201 Calle Miramar, #3, Torrance, CA (hereinafter "Vista Bahia property"). The seller of the Vista Bahia property was Ema Parth, Executor of the estate of Renate Schubkegel. Respondent was seller's agent.

VI

Respondent, as an owner of a unit in the Vista Bahia property, and as a member of the Vista Bahia Condominium Association Board of Governors (hereinafter "Homeowners Association"), knew or should have known, that the Vista Bahia property had suffered water damage due to a storm and earthquake

1 damage. Respondent knew that this damage was significant enough
2 for the Homeowners Association to file a Small Business
3 Association/FEMA loan application to repair the storm and
4 earthquake damage in March of 1995. Respondent failed to
5 disclose the storm and earthquake damages to the Buyer.

6 VII

7 On or about May 11, 1995, Respondent sent Wang a
8 counter offer for this transaction. On the counter offer,
9 Respondent states: "Buyer to be aware that there is a possible
10 pending special assessment which will increase the monthly
11 homeowner dues. The amount has not yet been determined." There
12 was no mention of the earthquake and storm damage by Respondent.

13 VIII

14 On or about May 11, 1995, Wang asked Respondent what
15 the "special assessment" was for. Respondent represented that
16 the Homeowners Association was doing a study of how to upgrade
17 the common areas and improve the look of the building due to the
18 age of the building. Wang asked Respondent what kind of
19 improvements and upgrades they would do. Respondent represented
20 that the improvements would be such things as painting the
21 exterior of the building and improving the look of the entrance
22 lobby. The possible assessment was for the cost of those
23 improvements. Respondent again failed to disclose the
24 earthquake and storm damage.

25 IX

26 On May 15, 1995, Respondent signed a Real Estate
27 Transfer Disclosure Statement for this transaction. This



1 statement was given to the Buyer. On page 2, Part II, question
2 9: Are you seller aware of any of the following: "Major damage
3 to the property or of any of the structures from fire,
4 earthquake, floods or landslides." The box was checked "No".

5 X

6 On the same document, Section III, Agent's Inspection
7 Disclosure, Respondent states: "Buyer to be aware the
8 association is conducting a study of all the common areas and
9 the possibility of a special assessment to improve same." There
10 was no mention of the earthquake and storm damage by Respondent.

11 XI

12 On or about May 20, 1995, Wang asked Respondent
13 specifically what kind of study the Homeowners Association was
14 conducting and what he meant by "a special assessment".
15 Respondent again represented that the Homeowners Association was
16 doing a study of how to upgrade the common areas and improve the
17 look of the building due to the age of the building. Wang asked
18 Respondent what kind of improvements and upgrades they would do.
19 Respondent represented that the improvements would be such
20 things as painting the exterior of the building and improving
21 the look of the entrance lobby. The possible assessment was for
22 the cost of those improvements. Respondent again failed to
23 disclose the earthquake and storm damage.

24 XII

25 Relying on Respondent's representations, and unaware
26 of Respondent's intent to deceive him, Buyer closed the
27 transaction on about June 22, 1995. Shortly after Buyer moved



1 into the Vista Bahia property, he received a special assessment
2 bill from the Homeowners Association. This assessment bill
3 included \$420.66 for earthquake damage inspection and \$5,214.27
4 for estimated earthquake and storm damage repairs. If Buyer had
5 known of the earthquake and storm damage he would not have
6 purchased the Vista Bahia property.

7 FIRST CAUSE OF ACCUSATION

8 (Violation by Respondent of Section 10177(g) of the Code)

9 XIII

10 As a First Cause of Accusation, Complainant
11 incorporates herein by this reference the Preamble and each of
12 the allegations in Paragraphs I through XII, herein above.

13 XIV

14 The conduct of Respondent, in failing to disclose the
15 storm and earthquake damage, as alleged in Paragraphs VIII
16 through XII, constitutes negligence. Said conduct is cause
17 pursuant to Section 10177(g) of the Code for the suspension or
18 revocation of all licenses and license rights of Respondent
19 under Real Estate Law.

20 SECOND CAUSE OF ACCUSATION

21 (Violation by Respondent of Section 10176(a) and (i) of the Code)

22 XV

23 As a Second Cause of Accusation, Complainant
24 incorporates herein by this reference the Preamble and each of
25 the allegations in Paragraphs I through XII, herein above.

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XVI

The conduct of Respondent, in making omissions or misrepresentations, as alleged in Paragraphs I through XII, constitutes violation under Section 10176(a) and (i). Said conduct is cause for the suspension or revocation of all licenses and license rights of Respondent under 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, W. DARROW FIEDLER, under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California
this 27th day of January, 1998.

THOMAS MCCRADY
Deputy Real Estate Commissioner

cc: W. Darrow Fiedler
Sacto.
LK



1 CHRIS LEONG, Counsel
2 State Bar Number 141079
3 Department of Real Estate
4 107 South Broadway, Room 8107
5 Los Angeles, CA 90012
6 (213) 897-3937

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By C. [Signature]

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