



1 On or about March 20, 2007, Respondent again  
2 petitioned for reinstatement of Respondent's real estate  
3 salesperson license and the Attorney General of the State  
4 of California has been given notice of the filing of the  
5 petition.  
6

7 I have considered Respondent's petition and  
8 the evidence and arguments in support thereof. Respondent  
9 has failed to demonstrate to my satisfaction that Respondent  
10 has undergone sufficient rehabilitation to warrant the  
11 reinstatement of Respondent's real estate salesperson license,  
12 in that:  
13

14 I

15 In the Decision which revoked Respondent's real  
16 estate license, there were Determination of Issues made that  
17 there was cause to revoke Respondent's real estate license  
18 for violation of Code Section 10145(c) and for acts  
19 constituting negligence and dishonest dealing.  
20

21 In or about June and July, 1998, Respondent  
22 represented the prospective purchasers of real property.  
23 Respondent received a check from the purchasers in the amount  
24 of \$2,000, to be used as a deposit on real property.  
25 Respondent failed to give the deposit to his employing broker,  
26 place it in a trust account, or forward it to escrow. Rather,  
27 Respondent deposited the check into his personal bank account.

1 II

2 The burden of proving rehabilitation rests with the  
3 petitioner (Feinstein v. State Bar (1952) 39 Cal. 2d 541).

4 A petitioner is required to show greater proof of honesty and  
5 integrity than an applicant for first time licensure. The proof  
6 must be sufficient to overcome the prior adverse judgment on the  
7 applicant's character (Tardiff v. State Bar (1980) 27 Cal. 3d  
8 395).

9 The Department has developed criteria in Regulation  
10 2911, to assist in evaluating the rehabilitation of an applicant  
11 for reinstatement of a license. Among the criteria relevant in  
12 this proceeding are:

13 2911 (k) - Respondent has been out of the business  
14 for almost seven (7) years. Respondent has not shown that  
15 Respondent has corrected business practices resulting in injury  
16 to others, or with the potential to cause such injury.

17 Given the fact that Respondent has not established  
18 that Respondent has complied with Regulation 2911(k), I am not  
19 satisfied that Respondent is sufficiently rehabilitated to  
20 receive a real estate salesperson license.  
21

22 NOW, THEREFORE, IT IS ORDERED that Respondent's  
23 petition for reinstatement of Respondent's real estate  
24 salesperson license is denied.

25  
26 I am satisfied, however, that it will not be against  
27 the public interest to issue a restricted real estate  
salesperson license to Respondent.

1                   A restricted real estate salesperson license shall  
2 be issued to Respondent pursuant to Code Section 10156.5  
3 if Respondent within twelve (12) months from the date hereof:

4                   (a) takes and passes the written examination required  
5 to obtain a real estate salesperson license.

6                   (b) makes application therefor and pays the  
7 appropriate fee for said license.  
8

9                   The restricted license issued to Respondent shall be  
10 subject to all of the provisions of Code Section 10156.7 and to  
11 the following limitations, conditions and restrictions imposed  
12 under authority of Code Section 10156.6:

13                   1. The restricted license issued to Respondent  
14 may be suspended prior to hearing by Order of the Real Estate  
15 Commissioner in the event of Respondent's conviction or plea  
16 of nolo contendere to a crime which is substantially related  
17 to Respondent's fitness or capacity as a real estate licensee.  
18

19                   2. The restricted license issued to Respondent  
20 may be suspended prior to hearing by Order of the Real Estate  
21 Commissioner on evidence satisfactory to the Commissioner that  
22 Respondent has violated provisions of the California Real  
23 Estate Law, the Subdivided Lands Law, Regulations of the Real  
24 Estate Commissioner or conditions attaching to the restricted  
25 license.  
26

27 ///





1 I have considered Respondent's petition and  
2 the evidence and arguments in support thereof. Respondent  
3 has failed to demonstrate to my satisfaction that Respondent  
4 has undergone sufficient rehabilitation to warrant the  
5 reinstatement of Respondent's real estate salesperson license,  
6 in that:  
7

8 I

9 In the Decision which revoked the real estate license  
10 of Respondent, Legal Conclusions were made that there was cause  
11 to revoke Respondent's real estate license for dishonest  
12 dealing and negligence.  
13

14 In June and July, 1998, Respondent represented  
15 prospective purchasers of real property. Respondent received  
16 an earnest money deposit from the purchasers in the amount of  
17 \$2,000. Respondent deposited the money into his personal bank  
18 account. Respondent's bank account balance fell below zero  
19 on more than one occasion before the money was returned.  
20 The money was eventually returned, but only after several  
21 requests were made to Respondent. Respondent repaid the money  
22 in two installments.

23 II

24 In response to question number 3. of the Petition  
25 Application, to wit: "Have you ever been convicted of any  
26 violation of law?", Respondent failed to disclose the following  
27 convictions:

///

1 (a) On November 15, 1995, Respondent was convicted  
2 of disobeying a court order for failing to pay child support.

3 (b) On September 23, 1998, Respondent was convicted  
4 of violating Penal Code Section 166(a)(4) (failure to pay child  
5 support).

6 III

7 The burden of proving rehabilitation rests with the  
8 petitioner (Feinstein v. State Bar (1952) 39 Cal. 2d 541).

9 A petitioner is required to show greater proof of honesty and  
10 integrity than an applicant for first time licensure. The proof  
11 must be sufficient to overcome the prior adverse judgment on the  
12 applicant's character (Tardiff v. State Bar (1980) 27 Cal. 3d  
13 395).

14 The Department has developed criteria in Regulation  
15 2911 to assist in evaluating the rehabilitation of an applicant  
16 for reinstatement of a license. Among the criteria relevant in  
17 this proceeding are:

18 2911(a) - A longer period than two (2) years will be  
19 required if there is a history of substantially related conduct  
20 and acts. Given Respondent's history of substantially related  
21 acts and convictions, additional time is needed to assess his  
22 rehabilitation.

23 2911(c) - Expungement of criminal convictions  
24 resulting from antisocial acts. Respondent has not submitted  
25 proof that his convictions have been expunged.  
26

27 ///

///



1           2911 (n) (1) - Change in attitude from that which  
2 existed at the time of the conduct in question as evidenced  
3 by the testimony of Respondent. Respondent has not evidenced  
4 such change by the following:

5           (a) Respondent's failure to disclose the convictions  
6 set forth in Paragraph II, above.

7           This was a material misstatement. The failure  
8 to disclose relevant information in the Petition Application  
9 prevents or hinders a full investigation into the extent of  
10 rehabilitation. Information regarding convictions, and past  
11 due debts can reflect on Respondent's business practices and  
12 qualifications for a real estate license. A failure to  
13 disclose material facts shows a lack of candor and diligence  
14 expected of a licensee, is a dishonest act, and is additional  
15 cause pursuant to Code Section 10177(a) to deny Respondent's  
16 petition application.  
17

18           (b) In addition, as part of the petition application  
19 process, Respondent was interviewed by a Deputy Real Estate  
20 Commissioner. At the interview, Respondent stated that he tried  
21 to give the check back to the prospective borrowers. In truth  
22 and in fact, he deposited the check into his personal bank  
23 account and returned it only after several requests and two  
24 installment payments.

25 ///

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27 ///

1                   Given the fact that Respondent has not established  
2 that he has complied with Regulations 2911(a), 2911(c), and  
3 2911(n)(1), and is in violation of Code Section 10177(a),  
4 I am not satisfied that Respondent is sufficiently  
5 rehabilitated to receive a real estate salesperson license.  
6

7                   NOW, THEREFORE, IT IS ORDERED that Respondent's  
8 petition for reinstatement of Respondent's salesperson license  
9 is denied.

10                   This Order shall become effective at 12 o'clock noon  
11 on July 6, 2005.

12                   DATED: \_\_\_\_\_

*June 13, 2005*

14                   JEFF DAVI  
15                   Real Estate Commissioner

16                   \_\_\_\_\_  
17                   *John R. Liberator*

18  
19                   BY: John R. Liberator  
20                   Chief Deputy Commissioner

21  
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25                   cc: Esau G. Ramirez  
26                   762 Pamela Kay Lane  
27                   Whittier, CA 90601

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**FILED**  
APR 13 2001  
DEPARTMENT OF REAL ESTATE

By CS

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	No.H- 28468 LA
	)	L- 2000050530
ESAU GARCIA RAMIREZ and	)	
PAUL AGUILAR, JR. dba,	)	
"Maximum Gain Realtors,"	)	
Respondent.	)	

DECISION AFTER REJECTION

The matter came on regularly for hearing before Leslie Greenfield, Administrative Law Judge of the Office of Administrative Hearings in Los Angeles, California, on September 14, 2000. Martha J. Rosett, Counsel, represented the Complainant. Respondent RAMIREZ was present and represented by Gary Einstein, attorney at law. The accusation against Respondent PAUL AGUILAR, JR. was resolved by separate stipulation and the hearing and proposed decision pertained solely to the accusation against Respondent RAMIREZ.

Evidence was received and the matter stood submitted on September 14, 2000. On October 12, 2000, the Administrative Law

1 Judge submitted a Proposed Decision which I declined to adopt as  
2 the Decision of the Real Estate Commissioner. Pursuant to  
3 Section 11517(c) of the Government Code of the State of  
4 California, Respondent was served with a copy of the Proposed  
5 Decision dated October 12, 2000, and with notice of my  
6 determination not to adopt the Proposed Decision. Respondent was  
7 notified that the case would be decided by me upon the record,  
8 including the transcript of proceedings held on September 14,  
9 2000, and upon any written argument offered by the parties.

10 Argument has been submitted by the Respondent and by  
11 Complainant. I have given careful consideration to these  
12 arguments and to the record in this case, including the  
13 transcript of proceedings of September 14, 2000.

14 FINDINGS OF FACT

15 I have determined that the Findings of Fact in the  
16 Proposed Decision of the Administrative Law Judge, dated  
17 September 14, 2000, are proper with respect to Findings 1 through  
18 4. These findings are hereby adopted.

19 Respondent's explanations for soliciting a check which  
20 he placed into his personal account are not convincing.  
21 Therefore, Findings 5 and 6 are not supported by the evidence and  
22 are not adopted herein.

23 The following additional findings of fact are supported  
24 by the evidence and made, based upon a review of the record:

25 5. Respondent's broker maintained a trust account and  
26 the office maintained logs of funds received from clients.

27 Nonetheless, Respondent failed to record the receipt of funds in

1 his broker's log. Then he deposited the Dorado's check into his  
2 own personal account at the Montebello Federal Credit Union,  
3 rather than into the broker's trust account.

4           6. On more than one occasion between June 1, 1998 and  
5 August 31, 1998, the balance in Respondent's account at the  
6 Montebello Federal Credit Union fell below zero. Since no offer  
7 was accepted on behalf of the Dorados, and therefore no deposit  
8 was required, Respondent converted their \$2,000 to his own use.

9           7. Respondent failed to maintain and make available  
10 for hearing records of the Dorado transaction or any evidence  
11 that he purchased a money order or cashier's check on their  
12 behalf to submit to H.U.D. Respondent's claims that he had  
13 overdraft protection sufficient to cover up to \$10,000 were never  
14 substantiated and were refuted by evidence presented in the form  
15 of the testimony and records provided by the credit union's  
16 representative, Maria Macias. Although he eventually did return  
17 the money to the Dorados, his behavior constituted dishonest  
18 dealing, negligence and incompetence.

19                           DETERMINATION OF ISSUES

20           The Administrative Law Judge's Legal Conclusion 1 is  
21 hereby adopted in its entirety. With regards to Legal  
22 Conclusions 2 and 3, these are not adopted. The following  
23 additional Legal Conclusions are therefore made:

24           2. Grounds exist to suspend or revoke the real estate  
25 license of respondent for violation of sections 10176(i),  
26

1 10177(j), and/or 10177(g), by reason of Findings 3, 4, 5, 6 and  
2 7.

3 3. Consideration has been given to all the competent  
4 evidence of mitigation and rehabilitation. Evidence demonstrated  
5 that Respondent, a salesperson, acted independently and without  
6 the knowledge, supervision and authority of his broker.  
7 Therefore, allowing Respondent to act in a restricted capacity  
8 would not adequately protect the public in this case. Protection  
9 of the public mandates revocation of all licenses and license  
10 rights.

11 ORDER

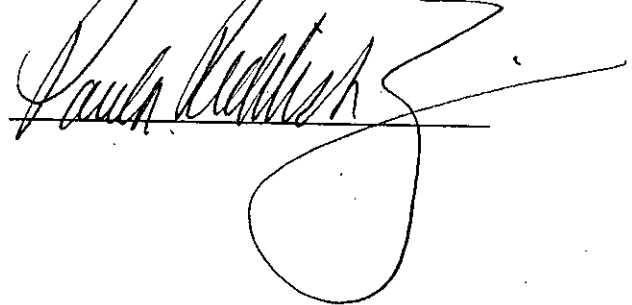
12 WHEREFORE, THE FOLLOWING ORDER is hereby made:

13 All licenses and licensing rights of Respondent ESAU GARCIA  
14 RAMIREZ under the Real Estate Law are revoked.

15 This Decision shall become effective at 12 o'clock noon  
16 on May 3, 2001.

17  
18 IT IS SO ORDERED April 6, 2001.

19  
20 PAULA REDDISH ZINNEMANN  
Real Estate Commissioner

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BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of

ESAU GARCIA RAMIREZ,

Respondent.

Case No. H-28468 LA

OAH No. L-2000050530

**PROPOSED DECISION**

This matter came on regularly for hearing before Leslie H. Greenfield, Administrative Law Judge, Office of Administrative Hearings, at Los Angeles, California, on September 14, 2000.

Martha J. Rosett, Real Estate Counsel, represented the complainant Department of Real Estate. Gary Einstein, Attorney at Law, represented respondent Esau G. Ramirez who was present throughout the hearing.

Oral and documentary evidence having been received and the matter submitted, the Administrative Law Judge finds as follows:

**FACTUAL FINDINGS**

1. Thomas McCrady, Deputy Real Estate Commissioner, Department of Real Estate made the Accusation in his official capacity.

2. Respondent has been licensed as a real estate salesperson since October 19, 1989, under license ID#01049534. Said license expires January 23, 2002.

3. In June and July 1998, respondent represented the prospective purchasers of real property, Ernestina and Benigno Dorado. During said representation he showed several properties to the Dorados. On June 12, 1998, respondent solicited and received from Mrs. Dorado an advance check for \$2,000 to be held by him and used as a deposit on a property once a bid was accepted. Respondent failed to forward the deposit to his broker, place it in a trust account or forward it to escrow. Rather, respondent deposited the check into his personal bank account located at Montebello Schools Federal Credit Union, Montebello, California.

4. None of the offers respondent made on behalf of the Dorados were accepted. After the Dorados terminated his services, the deposit was returned to them, but only after several requests and in two installments.

5. Respondent's contention that he placed the Dorado money into his personal account because he believed that his Broker did not have a trust account is credible. Respondent needed immediate access to the funds so that any bids made on behalf of his client that were accepted could be funded within the short deposit period allowed. It was not established that respondent's acts constituted dishonest dealing, negligence or incompetence.

6. Although it is true that the Dorados received the return of the deposit money in two installments, respondent's explanation that he in fact obtained two money orders and intended for simultaneous delivery of both money orders is believable.

\* \* \* \* \*

### LEGAL CONCLUSIONS

1. Cause exists to suspend or revoke the real estate license of respondent pursuant to Business and Profession Code section 10177(d), for violation of section 10145(c) of said code, by reason of Finding 3.

2. Grounds do not exist to suspend or revoke the real estate license of respondent for violation of sections 10176(i), 10177(j) and/or 10177(g). by reason of Findings 5 and 6.

3. Consideration has been given to all competent evidence of mitigation and rehabilitation. The public welfare will be adequately protected by the issuance to respondent of a restricted salesperson's license.

\* \* \* \* \*

### ORDER

All licenses and licensing rights of respondent are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within ninety (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



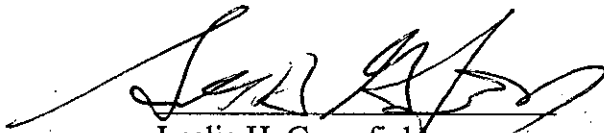
authority of section 10156.6 of said Code:

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 three years have elapsed from the effective date of the Decision herein.
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 license; and
  - b. That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.
5. Respondent shall, within nine months from the effective date of this decision, present evidence satisfactory to the Commissioner that she has taken and successfully completed the courses specified in subdivisions (a) and (b) of Section 10170.5 of the Real Estate Law for renewal of a real estate license. The restricted license issued pursuant to this Decision shall be deemed to be the first renewal of respondent's real estate salesperson license for the purpose of applying the provisions of Section 10153.4. Upon renewal of the license issued pursuant to this

Decision or upon reinstatement of Respondent's real estate license, Respondent shall submit evidence of having 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 months from the effective date of the Decision herein, 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: October 12, 2000



Leslie H. Greenfield  
Administrative Law Judge  
Office of Administrative Hearings

LHG:me



1 Administrative Procedure Act (APA), shall instead and in place  
2 thereof be submitted solely on the basis of the provisions of  
3 this Stipulation and Agreement.

4 2. Respondent has received, read and understands the  
5 Statement to Respondent, the Discovery Provisions of the APA and  
6 the Accusation filed by the Department of Real Estate in this  
7 proceeding.

8 3. On April 21, 2000, Respondent AGUILAR filed a  
9 Notice of Defense pursuant to Section 11506 of the Government  
10 Code for the purpose of requesting a hearing on the allegations  
11 in the Accusation. In order to effectuate this settlement,  
12 Respondent hereby freely and voluntarily withdraws said Notice of  
13 Defense. Respondent acknowledges that he understands that by  
14 withdrawing said Notice of Defense, he will thereby waive his  
15 rights to require the Commissioner to prove the allegations in  
16 the Accusation at a contested hearing held in accordance with the  
17 provisions of the APA and that he will waive other rights  
18 afforded to him in connection with the hearing such as the right  
19 to present evidence in defense of the allegations in the  
20 Accusation and the right to cross-examine witnesses.

21 4. This Stipulation and Agreement ("Stipulation") is  
22 based on the factual allegations contained in the Accusation  
23 filed in this proceeding. In the interest of expedience and  
24 economy, Respondent chooses not to contest these factual  
25 allegations, and understands that these factual statements,  
26 without being admitted or denied, will serve as a prima facie  
27 basis for the disciplinary action stipulated to herein. This



1 Stipulation and Respondent's decision not to contest the  
2 Accusation are hereby expressly limited to this proceeding and  
3 made for the sole purpose of reaching an agreed disposition of  
4 this proceeding. Respondent's decision not to contest the  
5 factual allegations is made solely for the purpose of  
6 effectuating this Stipulation and is intended by Respondent to be  
7 non-binding upon it in any actions against Respondent by third  
8 parties. The Real Estate Commissioner shall not be required to  
9 provide further evidence to prove such allegations.

10 5. This Stipulation and any Order made pursuant to  
11 this Stipulation shall have no collateral estoppel or res  
12 judicata effect in any proceedings in which Respondent and the  
13 Department (or the Department's representative) are not parties.  
14 This Stipulation is made by Respondent and received by the  
15 Commissioner and the Department, with the express understanding  
16 and agreement that it is for the purpose of settling these  
17 proceedings only, and that this Stipulation is not intended as,  
18 and shall not be deemed, used, or accepted as an acknowledgment  
19 or admission of fact in any other judicial, administrative, or  
20 other proceeding to which the Department is not a party.

21 6. It is understood by the parties that the Real  
22 Estate Commissioner may adopt the Stipulation and Agreement as  
23 her Decision in this matter, thereby imposing the penalty and  
24 sanctions on Respondent's real estate licenses and license rights  
25 as set forth in the below "Order." In the event that the  
26 Commissioner in her discretion does not adopt the Stipulation and  
27 Agreement, it shall be void and of no effect, and Respondent

1 shall retain the right to a hearing and proceeding on the  
2 Accusation under all the provisions of the APA and shall not be  
3 bound by any stipulation or waiver made herein.

4 7. The Order or any subsequent Order of the Real  
5 Estate Commissioner made pursuant to this Stipulation and  
6 Agreement shall not constitute an estoppel, merger or bar to any  
7 further administrative or civil proceedings by the Department of  
8 Real Estate with respect to any matters which were not  
9 specifically alleged to be causes for accusation in this  
10 proceeding.

11 8. Respondent understands that by agreeing to this  
12 Stipulation, Respondent agrees to pay, pursuant to Business and  
13 Professions Code Section 10148, the cost of the audit which led  
14 to this disciplinary action. The amount of said cost is  
15 \$2,227.72.

16 9. Respondent has received, read and understands the  
17 "Notice Concerning Costs of Subsequent Audit." Respondent  
18 further understands that by agreeing to this Stipulation, the  
19 findings set forth below in the DETERMINATION OF ISSUES become  
20 final, and the Commissioner may charge Respondent for the cost of  
21 any subsequent audit conducted pursuant to Business and  
22 Professions Code Section 10148 to determine if the violations  
23 have been corrected. The maximum cost of said audit will not  
24 exceed \$2,227.72.

25 DETERMINATION OF ISSUES

26 By reason of the foregoing stipulations and waivers and  
27 solely for the purpose of settlement of the pending Accusation



1 without a hearing, it is stipulated and agreed that the following  
2 Determination of Issues shall be made:

3 I

4 The conduct, acts and/or omissions of Respondent PAUL  
5 AGUILAR, JR., as set forth in the Accusation, constitute cause to  
6 suspend or revoke the real estate license and license rights of  
7 Respondent PAUL AGUILAR, JR. under the provisions of Business and  
8 Professions Code ("Code") section 10177(d) for violation of Code  
9 Section 10145 and Sections 2831, 2832, 2834 and 2950(h) of Title  
10 10, Chapter 6, California Code of Regulations ("Regulations.")

11 ORDER

12 WHEREFORE, THE FOLLOWING ORDER is hereby made:

13 All licenses and licensing rights of Respondent PAUL  
14 AGUILAR, JR. under the Real Estate Law are suspended for a  
15 period of ninety (90) days from the effective date of this  
16 Decision; provided however, that sixty (60) days of said  
17 suspension shall be stayed for two (2) years upon the following  
18 terms and conditions:

- 19 1. Respondent shall obey all laws, rules and  
20 regulations governing the rights, duties and  
21 responsibilities of a real estate licensee in the State  
22 of California; and  
23 2. That no final subsequent determination be made,  
24 after hearing or upon stipulation, that cause for  
25 disciplinary action occurred within two (2) years of  
26 the effective date of this Decision. Should such a  
27 determination be made, the Commissioner may, in her

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discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

The initial thirty (30) days of said ninety day suspension shall commence on the effective date of this Decision; provided, however, that if Respondent petitions, said suspension (or a portion thereof) shall be stayed upon condition that:

1. Respondent pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of \$50 for each day of the suspension for a total monetary penalty of \$1,500.
2. Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be received by the Department prior to the effective date of the Decision in this matter.
3. No further cause for disciplinary action against the real estate license of Respondent occurs within two years of the Decision in this matter.
4. If Respondent fails to pay the monetary penalty in accordance with the terms and conditions of the Decision, the Commissioner may without a hearing, order the immediate execution of all or any part of the stayed suspension in which event the Respondent shall not be entitled to any repayment nor credit, prorated



1 or otherwise, for the money paid to the Department  
2 under the terms of this Decision.


3 5. If Respondent pays the monetary penalty and if no  
4 further cause for disciplinary action against the real  
5 estate license of Respondent occurs within two years  
6 from the effective date of the Decision, the stay  
7 hereby granted shall become permanent.

8 Pursuant to Section 10148 of the Business and  
9 Professions Code, Respondent shall pay the Commissioner's  
10 reasonable cost for (a) the audit which led to this disciplinary  
11 actions, and (b) a subsequent audit to determine if Respondent is  
12 now in compliance with the Real Estate Law. The cost of the  
13 audit which led to this disciplinary action is \$2,227.72. In  
14 calculating the amount of the Commissioner's reasonable cost for  
15 the subsequent audit, the Commissioner may use the estimated  
16 average hourly salary for all persons performing audits of real  
17 estate brokers, and shall include an allocation for travel costs  
18 including mileage, time to and from the auditor's place of work  
19 and per diem. Said amount for the subsequent audit shall not  
20 exceed \$2,227.72.

21 Respondent shall pay the cost of both audits within  
22 sixty (60) days of receiving an invoice from the Commissioner  
23 detailing the activities performed during the audit and the  
24 amount of time spent performing those activities. The  
25 Commissioner may in her discretion, vacate and set aside any stay  
26 order, if payment is not timely made as provided for herein, or  
27 as provided for in a subsequent agreement between the Respondent

1 and the Commissioner. The vacation and the set aside of the stay  
2 shall remain in effect until payment is made in full or until  
3 Respondent enters into an agreement satisfactory to the  
4 Commissioner to provide for payment. Should no order vacating  
5 the stay be issued, the stay imposed herein shall become  
6 permanent.

7  
8 DATED: 9/12/00

  
9 MARTHA J. ROSETT  
10 Counsel for Complainant

11 \* \* \*

12 I have read the Stipulation and Agreement, and its  
13 terms are understood by me and are agreeable and acceptable to  
14 me. I understand that I am waiving rights given to me by the  
15 California Administrative Procedure Act (including but not  
16 limited to Sections 11506, 11508, 11509 and 11513 of the  
17 Government Code), and I willingly, intelligently and voluntarily  
18 waive those rights, including the right of requiring the  
19 Commissioner to prove the allegations in the Accusation at a  
20 hearing at which I would have the right to cross-examine  
21 witnesses against me and to present evidence in defense and  
22 mitigation of the charges.

23 Respondent can signify acceptance and approval of the  
24 terms and conditions of this Stipulation and Agreement by faxing  
25 a copy of its signature page, as actually signed by Respondent,  
26 to the Department at the following telephone/fax number: (213)  
27

1 576-6917. Respondent agrees, acknowledges and understands that  
2 by electronically sending to the Department a fax copy of his or  
3 her actual signature as it appears on the Stipulation and  
4 Agreement, that receipt of the faxed copy by the Department shall  
5 be as binding on Respondent as if the Department had received the  
6 original signed Stipulation and Agreement.

7  
8 DATED: 11-10-00

Paul Aguilar Jr.  
PAUL AGUILAR, JR., Respondent

9 DATED: 12-6-00

Frank M. Buda  
FRANK M. BUDA, ESQ.,  
Counsel for Respondent AGUILAR

12 \* \* \*

13  
14 The foregoing Stipulation and Agreement is hereby  
15 adopted as my Decision in this matter and shall become effective  
16 at 12 o'clock noon on January 25, 2001.

17  
18 IT IS SO ORDERED December 20, 2000.

19 PAULA REDDISH ZINNEMANN  
20 Real Estate Commissioner

21 Paula Reddish Zinnemann  
22  
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*[Handwritten signature]*

**FILED**  
NOV 20 2000  
DEPARTMENT OF REAL ESTATE

By *Laura B. Crow*

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

In the Matter of the Accusation of )  
  )     No. H-28468 LA  
                          ESAU GARCIA RAMIREZ,     )  
  )                     L-2000050530  
  )     Respondent.     )  
\_\_\_\_\_

NOTICE

TO: Respondent ESAU GARCIA RAMIREZ and GARY EINSTEIN, his  
Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision  
herein dated October 12, 2000, of the Administrative Law Judge is  
not adopted as the Decision of the Real Estate Commissioner. A  
copy of the Proposed Decision dated October 12, 2000, 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 September 14,

///

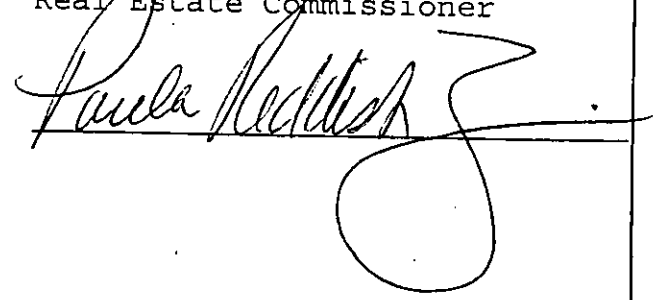
1 2000, and any written argument hereafter submitted on behalf of  
2 Respondent and Complainant.

3           Written argument of Respondent to be considered by me  
4 must be submitted within 15 days after receipt of the transcript  
5 of the proceedings of September 14, 2000, at the Los Angeles  
6 office of the Department of Real Estate unless an extension of  
7 the 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: November 13, 2000

15           PAULA REDDISH ZINNEMANN  
16           Real Estate Commissioner

17             
18           \_\_\_\_\_

27

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of

ESAU GARCIA RAMIREZ,

Respondent.

Case No. H-28468 LA

OAH No. L-2000050530

**PROPOSED DECISION**

This matter came on regularly for hearing before Leslie H. Greenfield, Administrative Law Judge, Office of Administrative Hearings, at Los Angeles, California, on September 14, 2000.

Martha J. Rosett, Real Estate Counsel, represented the complainant Department of Real Estate. Gary Einstein, Attorney at Law, represented respondent Esau G. Ramirez who was present throughout the hearing.

Oral and documentary evidence having been received and the matter submitted, the Administrative Law Judge finds as follows:

**FACTUAL FINDINGS**

1. Thomas McCrady, Deputy Real Estate Commissioner, Department of Real Estate made the Accusation in his official capacity.
2. Respondent has been licensed as a real estate salesperson since October 19, 1989, under license ID#01049534. Said license expires January 23, 2002.
3. In June and July 1998, respondent represented the prospective purchasers of real property, Ernestina and Benigno Dorado. During said representation he showed several properties to the Dorados. On June 12, 1998, respondent solicited and received from Mrs. Dorado an advance check for \$2,000 to be held by him and used as a deposit on a property once a bid was accepted. Respondent failed to forward the deposit to his broker, place it in a trust account or forward it to escrow. Rather, respondent deposited the check into his personal bank account located at Montebello Schools Federal Credit Union, Montebello, California.

4. None of the offers respondent made on behalf of the Dorados were accepted. After the Dorados terminated his services, the deposit was returned to them, but only after several requests and in two installments.

5. Respondent's contention that he placed the Dorado money into his personal account because he believed that his Broker did not have a trust account is credible. Respondent needed immediate access to the funds so that any bids made on behalf of his client that were accepted could be funded within the short deposit period allowed. It was not established that respondent's acts constituted dishonest dealing, negligence or incompetence.

6. Although it is true that the Dorados received the return of the deposit money in two installments, respondent's explanation that he in fact obtained two money orders and intended for simultaneous delivery of both money orders is believable.

\* \* \* \* \*

### LEGAL CONCLUSIONS

1. Cause exists to suspend or revoke the real estate license of respondent pursuant to Business and Profession Code section 10177(d), for violation of section 10145(c) of said code, by reason of Finding 3.

2. Grounds do not exist to suspend or revoke the real estate license of respondent for violation of sections 10176(i), 10177(j) and/or 10177(g). by reason of Findings 5 and 6.

3. Consideration has been given to all competent evidence of mitigation and rehabilitation. The public welfare will be adequately protected by the issuance to respondent of a restricted salesperson's license.

\* \* \* \* \*

### ORDER

All licenses and licensing rights of respondent are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within ninety (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

*Not adopted*

*NOT RECORDED*

authority of section 10156.6 of said 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 three years have elapsed from the effective date of the Decision herein.
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 license; and
  - b. That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.
5. Respondent shall, within nine months from the effective date of this decision, present evidence satisfactory to the Commissioner that she has taken and successfully completed the courses specified in subdivisions (a) and (b) of Section 10170.5 of the Real Estate Law for renewal of a real estate license. The restricted license issued pursuant to this Decision shall be deemed to be the first renewal of respondent's real estate salesperson license for the purpose of applying the provisions of Section 10153.4. Upon renewal of the license issued pursuant to this

NOT ADDED

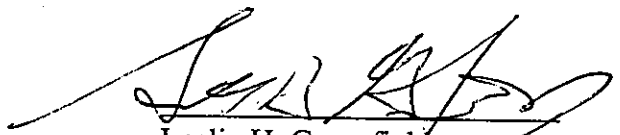


NOT ADOPTED

Decision or upon reinstatement of Respondent's real estate license, Respondent shall submit evidence of having 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 months from the effective date of the Decision herein, 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: October 12, 2000



Leslie H. Greenfield  
Administrative Law Judge  
Office of Administrative Hearings

LHG:me

*Sacto Joe*

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED  
AUG 22 2000  
DEPARTMENT OF REAL ESTATE

\* \* \* \*

In the Matter of the Accusation of ) Case No. H-28468 LA  
) OAH No. L-2000050530, *Laura B. Dora*  
ESAU GARCIA RAMIREZ, and )  
PAUL AGUILAR, JR., etc., )  
)  
Respondent(s).)

AMENDED 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, 320 West Fourth Street, 6<sup>th</sup> Floor, Suite 630, Los Angeles, California, on SEPTEMBER 14 & 15, 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 upon you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of hearing.

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

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

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

Dated: 8/21/00

DEPARTMENT OF REAL ESTATE

By: *Martha J. Rosett*  
MARTHA J. ROSETT, Counsel

cc: Esau Garcia Ramirez  
Paul Aguilar, Jr.  
Sacto., OAH  
Frank M. Buda, Esq.

*Sacto*

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILE  
JUN 12 2000  
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of ) Case No. H-28468 LA  
) OAH No. L-2000050530  
ESAU GARCIA RAMIREZ )  
and PAUL AGUILAR, JR., )  
dba "Maximum Gain Realtors, )  
)  
Respondent(s) )

By Laura B. Oron

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 the Office of Administrative Hearings, 320 West Fourth Street, 6th Floor, Suite 630, Los Angeles, California, on SEPTEMBER 13 & 14, 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 upon you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of hearing.

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

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

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

Dated: 6/12/00

DEPARTMENT OF REAL ESTATE  
By: Martha J. Rosett  
MARTHA J. ROSETT, Counsel

cc: Esau Garcia Ramirez  
Paul Aguilar, Jr.  
Gary Eistein, Esq.  
Frank M. Buda, Esq.  
Sacto., OAH

*facts*

MARTHA J. ROSETT, Counsel (SBN 142072)  
Department of Real Estate  
320 West Fourth Street, #350  
Los Angeles, California 90013

(213) 576-6982  
(213) 576-6914

**FILED**  
APR - 5 2000  
DEPARTMENT OF REAL ESTATE

By *K. Medeiros*

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DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \* \* \*

In the Matter of the Accusation of	)	No. H- 28468 LA
ESAU GARCIA RAMIREZ and	)	<u>A C C U S A T I O N</u>
PAUL AGUILAR, JR., dba,	)	
"Maximum Gain Realtors,"	)	
Respondents.	)	

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against ESAU GARCIA RAMIREZ, (hereinafter "Respondent RAMIREZ") and PAUL AGUILAR, JR., dba "Maximum Gain Realtors," (hereinafter "Respondent AGUILAR,") is informed and alleges as follows:

I

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

II

At all times relevant herein, Respondent ESAU GARCIA RAMIREZ was and is presently licensed and/or has license rights

1 under the Real Estate Law, Part 1 of Division 4 of the California  
2 Business and Professions Code (hereinafter "Code"), as a real  
3 estate salesperson. At all times relevant herein, Respondent  
4 RAMIREZ was employed by broker Respondent AGUILAR.

5 III

6 At all times material herein, Respondent PAUL AGUILAR,  
7 JR. was and is presently licensed and/or has license rights under  
8 the Real Estate Law, Part 1 of Division 4 of the California  
9 Business and Professions Code (hereinafter "Code"), as a real  
10 estate broker licensed to do business as, "Maximum Gain Realtors."

11 IV

12 At all times material herein, Respondents engaged in the  
13 business of, acted in the capacity of, advertised or assumed to  
14 act as a real estate broker in the State of California, within the  
15 meaning of Code Sections 10131(a), for another or others, for or  
16 in expectation of compensation. Said activity included the  
17 operation and conduct of a real estate sale business with the  
18 public, wherein they sold or offered to sell, bought or offered to  
19 buy, solicited prospective sellers or purchasers of, solicited or  
20 obtained listings of, or negotiated the purchase, sale or exchange  
21 of real property or a business opportunity.

22 V

23 In June and July of 1998, Respondent RAMIREZ represented  
24 the prospective purchasers of real property, Ernestina and Benigno  
25 Dorado. Respondent RAMIREZ, showed several properties to the  
26 Dorados. On or about June 12, 1998, he solicited and received  
27 from Mrs. Dorado an advance check for \$2,000 to be held by him and



1 used as a deposit on a property once a bid was made. Respondent  
2 RAMIREZ failed to forward said deposit to his broker, place it in  
3 trust account or forward to escrow. Rather, Respondent deposited  
4 the check into his personal bank account, Account Number 32279975,  
5 located at Montebello Schools Federal Credit Union, in Montebello,  
6 California.

7 VI

8 Respondent RAMIREZ never made an offer on behalf of the  
9 Dorados. After the Dorados terminated his services, the deposit  
10 was returned to them, but only after several requests and in two  
11 installments of \$1,000 each.

12 VII

13 The conduct, acts or omissions of Respondent RAMIREZ as  
14 alleged above, in placing the buyer's funds into his personal bank  
15 account rather than depositing it into a trust account, forwarding  
16 to his broker or to escrow is in violation of Section 10145(c) of  
17 the Business and Professions Code and is grounds to discipline the  
18 license and licensing rights of Respondent under the provisions of  
19 Section 10177(d) of the Code.

20 VIII

21 Further, the acts or omissions of Respondent RAMIREZ  
22 constitute dishonest dealing, negligence and/or or incompetence  
23 and are grounds for the revocation or suspension of Respondent's  
24 license and license rights pursuant to Sections 10176(i), 10177(j)  
25 and/or 10177(g) of the Code.

26 /

27 /



SECOND CAUSE OF ACCUSATION

(AUDIT)

IX

1  
2  
3 There is hereby incorporated in this second, separate  
4 and distinct cause of Accusation, all of the allegations contained  
5 in Paragraphs I through VIII with the same force and effect as if  
6 herein set forth.

7 X

8 On or about June 23, 1999, the Department completed an  
9 audit of Respondent PAUL AGUILAR, JR.'s books and records,  
10 pertaining to the real estate activities described in Paragraph  
11 IV. This audit examination, number LA980568, covered a period  
12 from approximately May 1, 1998 through May 31, 1999, and revealed  
13 violations of the Code and of Title 10, Chapter 6, California Code  
14 of Regulations ("Regulations"); as set forth below.

15 XI

16 In the course of activities described in Paragraphs  
17 and IV and V above, and during the examination period described in  
18 Paragraph X, Respondent AGUILAR acted in violation of the Code and  
19 the Regulations in that:

- 20 a) Respondent AGUILAR failed to maintain records of  
21 trust funds received and deposited into the trust  
22 account, and failed to maintain complete records of  
23 trust funds received and not deposited into the trust  
24 account, in violation of Regulation 2831;  
25 b) trust funds received by the broker were not always  
26 deposited into the trust account, forwarded to escrow,  
27



1 or returned to the owners within three business days  
2 following receipt of the funds, in violation of  
3 Regulation 2832;

4 c) the broker was not a signatory on the trust account,  
5 in violation of Regulation 2834; and

6 d) copies of all records in connection with  
7 transactions for which a real estate license is required  
8 were not maintained for three years, including records  
9 of bids made on behalf of purchasers of HUD property.

10 Each of the foregoing violations is grounds for the  
11 revocation or suspension of Respondent's real estate license  
12 pursuant to Code Section 10177(d).

13 THIRD CAUSE OF ACCUSATION

14 (Failure to Supervise)

15 XII

16 There is hereby incorporated in this second, separate  
17 and distinct cause of Accusation, all of the allegations contained  
18 in Paragraphs I through VIII with the same force and effect as if  
19 herein set forth.

20 XIII

21 During the period from April 1, 1997 through April 30,  
22 1998, Respondent AGUILAR failed to exercise reasonable supervision  
23 over the activities of salespersons in his employ. During the  
24 period described, Respondent AGUILAR failed to establish policies,  
25 rules, procedures and systems to review, oversee, inspect and  
26 manage those items set forth in Section 2725 (a through g) of  
27





1 Title 10, Chapter 6, California Code of Regulations, and to  
2 establish a system for monitoring compliance with such policies,  
3 rules, procedures and systems.

4 XIV

5 The facts alleged above are grounds for the suspension or  
6 revocation of Respondent AGUILAR's license under Section 10177(h)  
7 of the Code.

8 WHEREFORE, Complainant prays that a hearing be conducted  
9 on the allegations of this Accusation and that upon proof thereof,  
10 a decision be rendered imposing disciplinary action against all  
11 licenses and license rights of ESAU GARCIA RAMIREZ and PAUL  
12 AGUILAR, JR. under the Real Estate Law, and for such other and  
13 further relief as may be proper under other applicable provisions  
14 of law.

15 Dated at Los Angeles, California  
16 this 5th day of April, 2000.

17 THOMAS MC CRADY

18 Deputy Real Estate Commissioner

19  
20 cc: ESAU GARCIA RAMIREZ  
21 PAUL AGUILAR, JR.  
22 Michael Davis, Esq.  
23 Sacto.  
24 Audits  
25 Josie Ponce  
26  
27

