

FILED

OCT 06 2004

DEPARTMENT OF REAL ESTATE

By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
BENJAMIN DIAZ,)
Respondent.)
No. H-1377 FRESNO

ORDER GRANTING REINSTATEMENT OF LICENSE

On October 26, 1998, an Order was rendered herein revoking the real estate broker license of Respondent, but granting Respondent the right to the issuance of a restricted real estate broker license. A restricted real estate broker license was issued to Respondent on April 1, 1999.

On November 13, 2003, Respondent petitioned for reinstatement of said real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered the petition of Respondent and the evidence and arguments in support thereof including Respondent's record as a restricted licensee. Respondent has demonstrated to

1 my satisfaction that Respondent meets the requirements of law for
2 the issuance to Respondent of an unrestricted real estate broker
3 license and that it would not be against the public interest to
4 issue said license to Respondent.

5 NOW, THEREFORE, IT IS ORDERED that Respondent's
6 petition for reinstatement is granted and that a real estate
7 broker license be issued to Respondent if Respondent satisfies
8 the following conditions within nine months from the date of this
9 Order:

10 1. Submittal of a completed application and payment of
11 the fee for a real estate broker license.

12 2. Submittal of evidence of having, since the most
13 recent issuance of an original or renewal real estate license,
14 taken and successfully completed the continuing education
15 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
16 for renewal of a real estate license.

17 This Order shall be effective immediately.

18 DATED: Oct. 4, 2004

19 JOHN R. LIBERATOR
20 Acting Real Estate Commissioner

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FILED

APR 16 2002

DEPARTMENT OF REAL ESTATE

By Juan Amador

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
BENJAMIN DIAZ,) NO. H-1377 FRESNO
Respondent.)

ORDER GRANTING REINSTATEMENT OF LICENSE

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On May 18, 2001, Respondent petitioned for reinstatement of said real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered the petition of Respondent and the evidence and arguments in support thereof including Respondent's record as a restricted licensee. Respondent has demonstrated to

1 my satisfaction that Respondent meets the requirements of law for
2 the issuance to Respondent of an unrestricted real estate broker
3 license and that it would not be against the public interest to
4 issue said license to Respondent.

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6 petition for reinstatement is granted and that a real estate
7 broker license be issued to Respondent if Respondent satisfies
8 the following conditions within nine months from the date of this
9 Order:

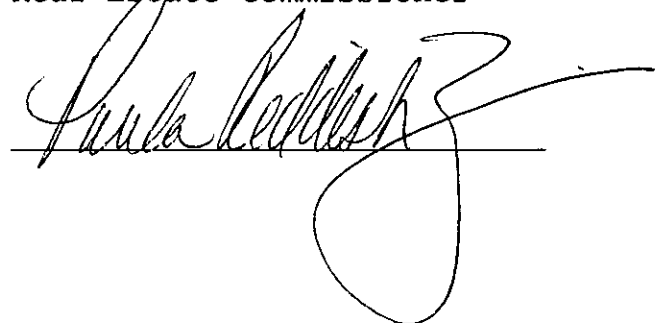
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13 recent issuance of an original or renewal real estate license,
14 taken and successfully completed the continuing education
15 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
16 for renewal of a real estate license.

17 This Order shall be effective immediately.

18 DATED: March 28, 2002.
19

20 PAULA REDDISH ZINNEMANN
21 Real Estate Commissioner

22 
23
24
25
26
27

1 Department of Real Estate
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4
5 Telephone: (916) 227-0789
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FILED
DEC - 4 1998
DEPARTMENT OF REAL ESTATE

By Gerald M. Leverett

9 BEFORE THE
10 DEPARTMENT OF REAL ESTATE
11 STATE OF CALIFORNIA
12
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14 * * *

15 In the Matter of the Accusation of)
16 BENJAMIN DIAZ,)
17)
18)
19)
20 Respondent.)
21)
22)
23)
24)
25)
26)
27)

NO. H-1377 FRESNO
STIPULATION AND AGREEMENT

28 It is hereby stipulated by and between BENJAMIN DIAZ
29 (hereinafter "Respondent") and his attorney of record, Gerald M.
30 Leverett, and the Complainant, acting by and through David B.
31 Seals, Counsel for the Department of Real Estate; as follows, for
32 the purpose of settling and disposing of the Accusation filed on
33 July 3, 1998, in this matter:

34 1. All issues which were to be contested and all
35 evidence which was to be presented by Complainant and Respondent
36 at a formal hearing on the Accusation, which hearing was to be
37 held in accordance with the provisions of the Administrative



1 Procedure Act (APA) (Government Code Section 11500 et seq.), shall
2 instead and in place thereof be submitted solely on the basis of
3 the provisions of 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 July 16, 1998, Respondent filed a Notice of
9 Defense pursuant to Section 11505 of the Government Code for the
10 purpose of requesting a hearing on the allegations in the
11 Accusation. Respondent hereby freely and voluntarily withdraws
12 said Notice of Defense. Respondent acknowledges that he
13 understands that by withdrawing said Notice of Defense he waives
14 his right to require the Commissioner to prove the allegations in
15 the Accusation at a contested hearing held in accordance with the
16 provisions of the APA and that he waives other rights afforded to
17 him in connection with the hearing such as the right to present
18 evidence in defense of the allegations in the Accusation and the
19 right to cross-examine witnesses.

20 4. This Stipulation is based on the factual allegations
21 contained in the Accusation. In the interests of expedience and
22 economy, Respondent chooses not to contest these allegations, but
23 to remain silent and understands that, as a result thereof, these
24 factual allegations, without being admitted or denied, will serve
25 as a prima facie basis for the disciplinary action stipulated to
26 herein. The Real Estate Commissioner shall not be required to
27 provide further evidence to prove said factual allegations.



1 5. It is understood by the parties that the Real Estate
2 Commissioner may adopt the Stipulation and Agreement as his
3 Decision in this matter, thereby imposing the penalty and
4 sanctions on Respondent's real estate license and license rights
5 as set forth in the below "Order". In the event that the
6 Commissioner in his discretion does not adopt the Stipulation and
7 Agreement, it shall be void and of no effect, and Respondent shall
8 retain the right to a hearing and proceeding on the Accusation
9 under all the provisions of the APA and shall not be bound by any
10 admission or waiver made herein.

11 6. The Order or any subsequent Order of the Real Estate
12 Commissioner made pursuant to this Stipulation and Agreement shall
13 not constitute an estoppel, merger or bar to any further
14 administrative or civil proceedings by the Department of Real
15 Estate with respect to any matters which were not specifically
16 alleged to be causes for accusation in this proceeding.

17 DETERMINATION OF ISSUES

18 By reason of the foregoing stipulations and waivers, and
19 solely for the purpose of settlement of the pending Accusation
20 without a hearing, it is stipulated and agreed that the following
21 determination of issues shall be made:

22 I

23 The conduct of the Respondent, as alleged in the
24 Accusation, constitutes cause for the suspension or revocation of
25 the real estate license and license rights of Respondent under the
26 provisions of Section 10177(j) of the California Business and
27 Professions Code (hereinafter the "Code").



ORDER

A. The real estate broker license and all license rights of Respondent under the Real Estate Law are revoked.

B. A restricted real estate broker license shall be issued to Respondent pursuant to Business and Professions Code Section 10156.5, if Respondent makes application therefor and pays to the Department the appropriate fee for said license within ninety (90) days from the effective date of this ORDER.

C. The restricted license issued to Respondent shall be subject to all 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 license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under the restricted license in the event of:

(a) The conviction of Respondent (including a plea of nolo contendere) to a crime which bears a significant relation to Respondent's fitness or capacity as a real estate licensee; or,

(b) The receipt of evidence that Respondent has violated provisions of the California Real Estate Law, Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.



1 (2) Respondent shall not be eligible to apply for issuance
2 of an unrestricted real estate license nor the removal
3 of any of the conditions, limitations or restrictions
4 attaching to the restricted license until one (1) year
5 has elapsed from the date of issuance of a restricted
6 license to Respondent.

7 D. Respondent shall, within nine (9) months from the effective
8 date of this ORDER, present evidence satisfactory to the Real
9 Estate Commissioner that he has, since the most recent
10 issuance of an original or renewal real estate license, taken
11 and successfully completed the continuing education
12 requirements of Article 2.5 of Chapter 3 of the Real Estate
13 Law for renewal of a real estate license. If Respondent
14 fails to satisfy this condition, the Commissioner may order
15 the suspension of the restricted license until Respondent
16 presents such evidence. The Commissioner shall afford
17 Respondent the opportunity for a hearing pursuant to the
18 Administrative Procedure Act to present such evidence.

19 E. Respondent shall, within six (6) months from the effective
20 date of this Order, take and pass the Professional
21 Responsibility Examination administered by the Department
22 including the payment of the appropriate examination fee. If
23 Respondent fails to satisfy this condition, the Commissioner
24 may order suspension of Respondent's license until Respondent
25 passes the examination.

26 F. Any restricted real estate broker license issued to
27 Respondent may be suspended or revoked for a violation by



1 Respondent of any of the conditions attaching to the
2 restricted license.

3

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10/8/98

DATED

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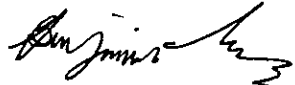
I have read the Stipulation and Agreement and its terms
8 are understood by me and are agreeable and acceptable to me. I
9 understand that I am waiving rights given to me by the California
10 Administrative Procedure Act (including but not limited to
11 Sections 11506, 11508, 11509 and 11513 of the Government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

17

October 6, 1998

18

DATED


BENJAMIN DIAZ, Respondent

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I have reviewed the Stipulation and Agreement as to form
23 and content and have advised my client accordingly.

24

25

October 6, 1998

26

DATED


Gerald M. Leverett
Attorney for Respondent

27



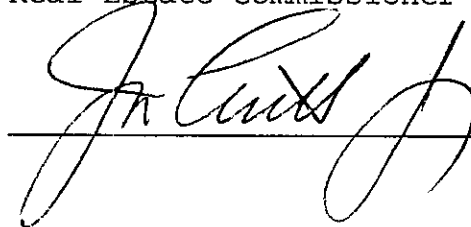
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* * *

The foregoing Stipulation and Agreement is hereby
adopted by the Real Estate Commissioner as his Decision and Order
and shall become effective at 12 o'clock noon on
December 23, 1998.

IT IS SO ORDERED 10/26, 1998.

JIM ANTT, JR.
Real Estate Commissioner



FILED
AUG 6 1998

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Shelly El

In the Matter of the Accusation of

BENJAMIN DIAZ

Case No. H-1377 FRESNO

OAH No. L-1998070388

Respondent

CONTINUED
NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at _____

Bureau of Automotive Repairs, 4801 District Boulevard,

Bakersfield, California 93309

on Friday -- October 16, 1998, at the hour of 10:30 AM,
or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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

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

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

DEPARTMENT OF REAL ESTATE

Dated: August 6, 1998

By

David B. Seals
DAVID B. SEALS

Counsel

1 DAVID B. SEALS, Counsel
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789

FILED
JUL - 3 1990
DEPARTMENT OF REAL ESTATE

By Juan B. Diaz

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13 BENJAMIN DIAZ,) NO. H-1377 FRESNO
14 Respondent.) ACCUSATION

15 The Complainant, M. Dolores Ramos, a Deputy Real Estate
16 Commissioner of the State of California for cause of Accusation
17 against BENJAMIN DIAZ (hereinafter "Respondent") is informed and
18 alleges as follows:

19 I

20 The Complainant, M. Dolores Ramos, a Deputy Real Estate
21 Commissioner of the State of California, makes this Accusation in
22 her official capacity.

23 II

24 Respondent is licensed and/or has license rights under
25 the Real Estate Law, Part 1 of Division 4 of the California
26 Business and Professions Code (hereinafter "Code") as a real
27 estate broker dba Benjamin's Real Estate.

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III

On or about September 30, 1995, Joseph W. Ronczyk, Sr. (hereinafter "Ronczyk") executed a Real Estate Purchase Contract and Receipt for Deposit for purchase of the real property owned by Respondent and his wife, Barbara A. Diaz, located at 3412 Beyers Street, Bakersfield (hereinafter the "Beyers Property").

IV

In connection with the sale of the Beyers Property, and in order to induce the lender to approve the loan to Ronczyk, Respondent: (1) gave \$6140 to Laura Niemand, a friend of Ronczyk; (2) caused Laura Niemand to execute a gift letter to give the impression to the lender that she gave the \$6140 to Ronczyk; and, (3) caused Ronczck's grandmother, Geneva Hinds, to apply as a co-borrower, and falsely claim she intended to occupy the Beyers Property when she never had such intention.

V

In reliance upon the actions taken by Respondent as described in Paragraph IV, the lender funded the loan to Ronczyk.

VI

The actions of Respondent as alleged in Paragraph IV above were dishonest or fraudulent and were known or should have been known by Respondent to be dishonest or fraudulent at the times they were made.

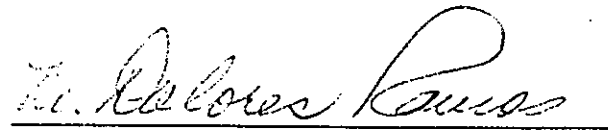
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VII

By reason of the facts alleged above, Respondent has committed acts and/or omissions that constitute fraud and/or dishonest dealing, and constitute grounds for disciplinary action under the provisions of Section 10177(j) of the Code.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondent under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other provisions of law.


M. DOLORES RAMOS
Deputy Real Estate Commissioner

Dated at Fresno, California,
this 11th day of June, 1998.