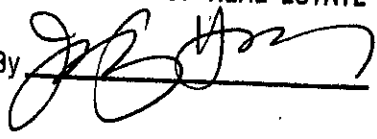


SACUO

FILED
APR - 9 2003
DEPARTMENT OF REAL ESTATE
By 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) NO. H-2314 SD
HENRY RUBIO,)
Respondent.)

ORDER GRANTING REINSTATEMENT OF LICENSE

On October 8, 1997, a Decision was rendered herein
revoking the real estate broker license of Respondent
HENRY RUBIO aka Enrique Hernandez Rubio, 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 or about June 27, 1998, and Respondent
has operated as a restricted licensee without cause for
disciplinary action against Respondent since that time.

On October 30, 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.

1 I have considered the petition of Respondent and
2 the evidence and arguments in support thereof including
3 Respondent's record as a restricted licensee. Respondent
4 has demonstrated to my satisfaction that Respondent meets
5 the requirements of law for the issuance to Respondent of
6 an unrestricted real estate broker license and that it would
7 not be against the public interest to issue said license to
8 Respondent HENRY RUBIO.
9

10 NOW, THEREFORE, IT IS ORDERED that Respondent's
11 petition for reinstatement is granted and that a real estate
12 broker license be issued to Respondent if Respondent satisfies
13 the following conditions within nine (9) months from the date
14 of this Order:

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

17 2. Submittal of evidence of having, since the most
18 recent issuance of an original or renewal real estate license,
19 taken and successfully completed the continuing education
20 requirements of Article 2.5 of Chapter 3 of the Real Estate
21 Law for renewal of a real estate license.

22 This Order shall become effective immediately.

23 DATED: April 2, 2003.

24 PAULA REDDISH ZINNEMANN
25 Real Estate Commissioner

26 *Paula Reddish*

27 cc: Henry Rubio
4427 Benhurst Avenue
San Diego, CA 92122

[Handwritten signature]

Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, California, 90012

FILED
OCT 16 1997
DEPARTMENT OF REAL ESTATE

(213) 897-3937

By *Laura B. Crane*

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of	)	H-2314 SD
ENRIQUE HERNANDEZ RUBIO,	)	
Respondent.	)	<u>STIPULATION AND AGREEMENT</u>
	)	<u>IN SETTLEMENT AND ORDER</u>

It is hereby stipulated by and between ENRIQUE HERNANDEZ RUBIO (referred to as Respondent), acting by and through Stuart E. Fagan, Esq. of Fagan & Fagan, and the Complainant, acting by and through Sean Crahan, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation filed on March 13, 1997, in this matter:

1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondent at a formal hearing on the Accusation, which hearing was to be held in accordance with the provisions of the Administrative Procedure Act (APA), shall instead and in place thereof be submitted solely on the basis of the provisions of this Stipulation And Agreement In Settlement And Order (hereafter Stipulation).

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

5 3. On March 27, 1997, Respondent filed a Notice of
6 Defense pursuant to Section 11505 of the Government Code for the
7 purpose of requesting a hearing on the allegations in the
8 Accusation. Respondent hereby freely and voluntarily withdraws
9 said Notice of Defense.. Respondent acknowledges that he
10 understands that by withdrawing said Notice of Defense, he will
11 thereby waive his right to require the Commissioner to prove the
12 allegations in the Accusation at a contested hearing held in
13 accordance with the provisions of the APA and that he will waive
14 other rights afforded to him in connection with the hearing such as
15 the right to present evidence in defense of the allegations in the
16 Accusation and the right to cross-examine witnesses.

17 4. Respondent, pursuant to the limitations set forth
18 below, hereby admits that the factual allegations in Paragraphs one
19 (1) through six (6) in the Accusation filed in this proceeding are
20 true and correct and the Real Estate Commissioner shall not be
21 required to provide further evidence to prove such allegations.

22 5. It is understood by the parties that the Real Estate
23 Commissioner may adopt the Order in this Stipulation as his
24 order in this matter thereby imposing the penalty and sanctions on
25 Respondent's real estate licenses and/or license rights as set
26 forth in the below Order. In the event that the Commissioner in
27 his discretion does not adopt the Stipulation, the Stipulation And



1 Agreement In Settlement shall be void and of no effect, and
2 Respondent shall retain the right to a hearing and proceeding on
3 the Accusation under all the provisions of the APA and shall not be
4 bound by any admission or waiver made herein.

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

11 DETERMINATION OF ISSUES

12 By reason of the foregoing stipulations and waivers, made
13 solely for the purpose of settlement of the pending Accusation
14 without a hearing, it is stipulated and agreed that the following
15 Determination of Issues shall be made:

16 The conduct or omissions of Respondent ENRIQUE HERNANDEZ
17 RUBIO, as set forth in paragraphs one (1) through six (6) in the
18 Accusation constitute cause to suspend or revoke his real estate
19 broker license and/or license rights under the provisions of Code
20 Sections 10177(j).

21 ORDER

22 WHEREFORE, THE FOLLOWING ORDER is hereby made:

23 All licenses and license rights of Respondent ENRIQUE
24 HERNANDEZ RUBIO under Part 1 of Division 4 of the Business and
25 Professions Code are revoked; provided, however, a restricted real
26 estate broker license shall be issued to Respondent ENRIQUE
27 HERNANDEZ RUBIO pursuant to Section 10156.5 of the Code if



1 Respondent makes application therefor and pays to the Department of
2 Real Estate the appropriate fee for said licenses within ninety
3 (90) days from the effective date of the Order. The restricted
4 license issued to Respondent ENRIQUE HERNANDEZ RUBIO shall be
5 subject to all of the provisions of Section 10156.7 of the Business
6 and Professions Code and to the following limitations, conditions
7 and restrictions imposed under authority of Section 10156.6 of said
8 Code:

9 A. Prior to the issuance of any restricted license to
10 Respondent ENRIQUE HERNANDEZ RUBIO, Respondent RUBIO shall present
11 evidence satisfactory to the Commissioner that he has satisfied the
12 judgment entered against him in the Claremont Mesa Municipal Court,
13 Fixmer v. Rubio San Diego County, case No. SC 637528.

14 B. The restricted licenses issued to Respondent RUBIO
15 shall be subject to all of the provisions of Section 10156.7 of the
16 Business and Professions Code and to the following limitations,
17 conditions and restrictions imposed under authority of Section
18 10156.6 of said Code:

19 (1) The restricted license may be suspended prior
20 to hearing by order of the Real Estate Commissioner in the event of
21 Respondent RUBIO'S conviction or plea of nolo contendere to a crime
22 which bears a significant relation to Respondent's fitness or
23 capacity as a real estate licensee.

24 (2) The restricted license may be suspended prior
25 to hearing by Order of the Real Estate Commissioner on evidence
26 satisfactory to the Commissioner that Respondent RUBIO has, during
27 the time she holds a restricted license, violated provisions of the



1 California Real Estate Law, the Subdivided Lands Law, Regulations
2 of the Real Estate Commissioner, or the conditions attaching to
3 these restricted licenses.

4 (3) Respondent RUBIO shall report in writing to the
5 Department of Real Estate as the Real Estate Commissioner shall
6 direct by his Order herein or by separate written order issued
7 while Respondent holds a restricted license, such information
8 concerning Respondent's activities for which a real estate license
9 is required as the Commissioner shall deem to be appropriate to
10 protect the public interest.

11 (4) Respondent RUBIO shall not be eligible to apply
12 for the issuance of an unrestricted real estate license nor the
13 removal of any of the conditions, limitations or restrictions of a
14 restricted license until two (2) years have elapsed from the date
15 of issuance of the restricted license to Respondent.

16 (5) Respondent RUBIO shall, within twelve months
17 from the effective date of this Order, present evidence
18 satisfactory to the Real Estate Commissioner that Respondent has,
19 since the most recent issuance of an original or renewal real
20 estate license, taken and successfully completed the continuing
21 education requirements of Article 2.5 of Chapter 3 of the Real
22 Estate Law for renewal of a real estate license. If Respondent
23 fails to satisfy this condition, the Commissioner may order the
24 suspension of the restricted license until the Respondent presents
25 such evidence. The Commissioner shall afford Respondent the
26 opportunity for a hearing pursuant to the Administrative Procedure
27 Act to present such evidence.

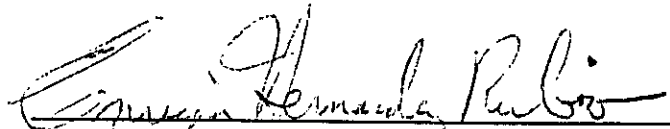


1 (6) Respondent RUBIO shall, within six months from
2 the effective date of this Order, take and pass the Professional
3 Responsibility Examination administered by the Department including
4 the payment of the appropriate examination fee. If Respondent
5 fails to satisfy this condition, the Commissioner may order
6 suspension of Respondent's license until Respondent passes the
7 examination.

8 * * * * *

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

20 DATED: 9-2-97


ENRIQUE HERNANDEZ RUBIO, Respondent.

21
22 DATED: 9-8-97


STUART E. FAGAN, ESQ. of Fagan &
Fagan, Counsel for Enrique Hernandez
Rubio, Respondent, approved as to
form

23
24
25
26 DATED: 9-12-97


SEAN CRAHAN, Counsel for
Complainant.

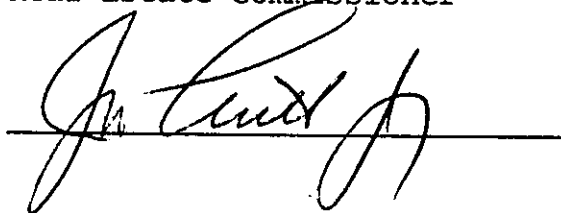
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The foregoing Stipulation And Agreement In Settlement is
hereby adopted as my Order as to Respondent ENRIQUE HERNANDEZ RUBIO
and shall become effective at 12 o'clock noon on
November 6, 1997.

IT IS SO ORDERED 10/8 1997.

JIM ANTT, JR.
Real Estate Commissioner



SACTO

398-0220-007
BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
MAY 01 1997
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation and

ENRIQUE HERNANDEZ RUBIO

Respondents.

By

)
) NOTICE OF HEARING ON ACCUSATION

) Case No. H-2314 SD

) L- 9704069
)
)
)
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)

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, 1350 Front Street, Room 6022, San Diego, CA 92101 on September 15 & 16, 1997. at 9:00 a.m. or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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

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

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

Dated: May 1, 1997

DEPARTMENT OF REAL ESTATE

By:


SEAN CRAHAN, DRE Counsel

CC: Enrique Hernandez Rubio
Stuart E. Pagan, Esq.
RM, OAH, SACTO,

5-2-97

Sean Crahan, Counsel
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, California, 90012

(213) 620-4790

FILED
MAR 13 1997
DEPARTMENT OF REAL ESTATE

By 

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	
ENRIQUE HERNANDEZ RUBIO,)	H-2314 SD
Respondent.)	A C C U S A T I O N

The Complainant, J. Chris Graves, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against ENRIQUE HERNANDEZ RUBIO, alleges as follows:

1.

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

2.

ENRIQUE HERNANDEZ RUBIO (hereafter respondent) is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (herein "the Code"). At all times mentioned herein, respondent

1 was and now is licensed by the Department of Real Estate of the
2 State of California (herein "the Department") as a real estate
3 broker.

4 3.

5 Clyde Fixmer and Kathleen Fixmer (hereafter the Fixmers)
6 were the owners of 5145 Gary Street and 5676 Campanile Way, San
7 Diego, California, (hereafter the Gary and Campanile properties)
8 which were encumbered by three promissory notes secured by three
9 trust deeds, the third for \$25,000 owing to John F. Davie
10 (hereafter Davie or the Davie note). The Davie note became due on
11 or about February 5, 1995. At this time, the Fixmers were unable
12 to pay off or refinance the Davie note.

13 4.

14 On or about May 13, 1995, the Fixmers, Davie and
15 Respondent, entered into an oral agreement which in substance
16 provided: (1) in order to protect Davie's \$25,000 investment,
17 Fixmer was to quitclaim the Gary and Campanile properties to a
18 partnership called the Campanile-Gary Partnerships, of which
19 Respondent was managing general partner; (2) Respondent was to use
20 the rents collected from the Gary and Campanile properties and pay
21 the promissory notes secured by the first and second trust deeds
22 on the Gary and Campanile properties, and (3), to sell the Gary
23 and Campanile properties and remit the proceeds to Davie. The
24 consideration to Fixmers was that Davie returned to Fixmer the
25 Davie note marked and signed "Paid in Full 5-13-95 by mutual
26 agreement".
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5.

Pursuant to the above agreement, Fixmer quitclaimed the Gary and Campanile properties to the Campanile-Gary Partnerships. Pursuant to the above agreement, the Fixmers delivered to Respondent the mortgage payment books and informed the tenants that Respondent was the new owner and manager and rents should be paid to him.

6.

Respondent did not make any payments to the lenders on the first and second trust deeds and, as a result, the Gary property was foreclosed. Respondent converted the rents to his own use and benefit. Respondent made no effort to sell the property. Fixmer sued Respondent and obtained a judgment in the amount of \$4,838.88 for the rents Respondent collected. Fixmer assigned that judgment to Davie. Respondent has not paid that judgment.

7.

The conduct or omissions of respondent, as set forth above, subjects his real estate license to suspension or revocation under the provisions of Code Section 10177(j) for fraud or dishonest dealing.

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

9 Dated at San Diego, California this 13th day of
10 March, 1997.

11 J. CHRIS GRAVES

12 J. Chris Graves,
13 Deputy Real Estate Commissioner
14
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23

24 cc: Enrique Hernandez Rubio
25 Sacto
26 RM

27 SC/sc