

DEPARTMENT OF REAL ESTATE

B. Laurie L. Zins

In the Matter of the Accusation of)
ELI RODRIGUEZ,)
Respondents.)
_____)

OAH NO. N-1997110012

This Decision shall become effective at 12 o'clock noon
on March 13, 1998.

IT IS SO ORDERED 2/17, 1998.

JIM ANTT, JR.
Real Estate Commissioner

J. Lindh

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation	)	
Against:	)	No. H-2351
	)	
ELI RODRIGUEZ,	)	OAH No. L-1997110012
	)	
Respondent.	)	
	)	
	)	
	)	

PROPOSED DECISION

On January 16, 1998. in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

David A. Peters, Counsel, represented complainant.

Michael N. Taylor, Attorney at Law, represented respondent.

Evidence was received, the record was closed, and the matter was submitted on January 16, 1998.

FINDINGS OF FACT

I

J. Chris Graves, Deputy Real Estate Commissioner of the State of California, filed Accusation No. H-2351 SD on September 23, 1997, in his official capacity. Respondent filed a timely Notice of Defense dated October 5, 1997.

II

At all relevant times, respondent Eli Rodriguez was a licensed real estate broker holding license number 855492 issued by the Department of Real Estate (hereafter, "Department").

III

Respondent was first licensed by the Department as a real estate broker in 1987. He is in the business of property management. He has a main office at 467 Beech Street in San Diego, he has no branch offices, he has one licensed employee, and operates under the fictitious name "ER Realty." Between January and July, 1997, respondent managed approximately five single family residences and 15 apartment complexes with 120

units for approximately 17 owners. He collects on average \$30,000 to \$40,000 per month in rent receipts and charges a management fee of five to ten percent of collected rents.

IV

Between June 27, 1997 and July 2, 1997, Jennifer Borromeo, an auditor with the Department, conducted an audit of respondent's records for the period January 1, 1997 to June 26, 1997. Respondent maintains two accounts in a Home Savings Bank of America. Account No. 1 is under the name of Eli Rodriguez DBA ER Realty, and respondent is the sole signatory. Account No. 2 is in the name of David C. Lievsay, with Lievsay and respondent as the signatories.

The audit revealed the following violations of the Real Estate Law (Business and Professions Code section 10000 et seq [hereafter, "the Code"] and Title 10, California Code of Regulations [hereafter, "the Regulations"]):

1. As of June 5, 1997, there was a shortage in Account No. 1 of \$22,648.08 in violation of section 10145(a) of the Code and section 2832.1 of the Regulations. The adjusted bank balance was \$16,480.79 and respondent's accountability was \$39,128.87. Borromeo determined \$10,173.98 of the shortage was due to beneficiaries' negative balances, \$2,015.66 was due to a negative balance on the broker's property, and \$10,458.08 was unidentified. There was no evidence in the records the owners of the trust funds had given respondent written consent to reduce the balance of funds in the trust account to an amount less than the existing aggregate trust fund liabilities.

2. Account No. 1 was used for trust fund handling of multiple beneficiaries and was an interest bearing account which earned \$233.71 in interest between January 1, 1996, and June 5, 1997, in violation of section 10145(d) of the Code and section 2830 of the Regulations.

3. Records of funds received for Account No. 1 and Account No. 2 were not in compliance with section 2831 of the Regulations. Section 2831 requires the records indicate the date trust funds are received and the date the funds are deposited in an account. Respondent's records indicated only one date and it is not clear which date is referred to.

4. A reconciliation of the total of the separate beneficiary records with the control record was not done on a monthly basis as required by section 2831.2 of the Regulations.

5. Respondent uses Account No. 1 in connection with the operation of his property management business. While the checks respondent uses to pay expenses through Account No. 1

indicate the account is "ER REALTY CLIENT TRUST ACCOUNT," the account is not in fact a trust account and respondent is not a trustee. Account No. 2 is likewise not a trust account. Respondent therefore violated sections 2830 and 2832 of the Regulations.

V

It was not established respondent failed to maintain adequate separate records for each beneficiary for both accounts. The information was available in his automated data processing system and a report could be generated by his computer software. Section 2831.1 does not require a separate hard copy be printed.

It was not established respondent failed to immediately notify the Real Estate Commissioner in writing that real estate salesperson Bianca Burgos' employment with respondent had been terminated.

VI

Respondent testified in his own behalf. He explained he had a practice of writing checks for expenses and entering the information into the computer but holding the checks until he had received the rent. Respondent's practice also included sending out a monthly report so the property owners would know if a negative balance existed, and therefore prompt them to send him money. A review of some of respondent's monthly checking statements and checks shows respondent did in fact hold checks for periods of time before sending them to the payees.

The shortage was comprised in part of beneficiaries with negative balances in the amount of \$10,173.98. Respondent did not show his practice of writing but holding checks until he received the rent as of June 5, 1997 accounted for this shortage. He was offered an opportunity at the time of the audit in late June to explain the shortage. If he had written checks but was holding them, he could have shown them to the auditor or otherwise explained to her what his procedure was. He did neither. While respondent's practice may have accounted for some of this shortage, he did not account for all of it.

Respondent also testified he had two clients who terminated his services in June, 1997. This occurred at a time when he had written checks and had sent them out, but he had not yet received the rents, resulting in negative balances in their accounts. One of the owners was Greta Richardson, who owned three properties. At the time she terminated his services, her balance was a negative \$6872.06. Respondent offered this evidence to explain the unidentified portion of the shortage. The auditor did not include the Richardson properties in the identified portion of the shortage. Respondent did not

substantiate his testimony regarding this shortage other than a printout of a partial income statement, which does not explain how he arrived at his figures.

The other client who terminated his services, John Weems, had a negative balance of \$2506.49 at the time of the termination. The reason for this negative balance was the same as for the Richardson properties, according to respondent. However, the auditor considered this amount in arriving at her total of \$10,173.98 for beneficiaries with negative balances.

VII

Respondent sued Richardson after she terminated his services. They settled with her paying him about 50 percent of the deficit, which respondent deposited into Account No. 1. He is still in litigation with Weems.

Respondent borrowed \$10,000.00 and deposited that sum into Account No. 1. Combined with the money from Richardson, it is respondent's belief the account now has a positive balance. That claim is unsubstantiated. According to respondent, one property owner's balance is negative, but he has the owner's permission. That claim is unsubstantiated. Indeed, much of respondent's testimony was unsubstantiated.

Respondent admitted he believed there was a shortage in Account No. 1, but he felt it more in the range of \$7000 to \$8000.

VIII

Respondent has changed his bookkeeping practices. He now writes a check only if there is money in the account to cover it. He writes checks only for each beneficiary; he no longer lumps amounts owed by several owners to one payee such as SDG&E into one check. He has changed Account No. 1 into a non-interest bearing account.

IX

The Department in its investigation of respondent apparently did not discover any evidence any client of respondent's had been harmed by his business practices. The Department has not taken disciplinary action against respondent in the past. Respondent accepted responsibility for his conduct and upon learning of his errors, took steps to correct them. While respondent's conduct is of considerable concern, on balance it must be concluded his errors tended more toward lack of knowledge and experience than toward dishonesty. Under these circumstances, it is not in the public interest to revoke respondent's license. Rather, issuance of a restricted license,

with the Department given the opportunity, at respondent's cost, to conduct a followup audit to verify respondent's business is in compliance with the Real Estate Law and regulations, is an appropriate method for protecting the public. A lesser penalty is not appropriate. Respondent worked as a broker for more than 10 years without knowing about the problems the Department's audit revealed. It is thus necessary for the Department to have an opportunity to oversee respondent's activities for a period of time to satisfy itself respondent is capable of operating a residential property management business properly.

DETERMINATION OF ISSUES

Cause for discipline pursuant to Business and Professions Code sections 10177(d) and (g) was established by Finding IV.

ORDER

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

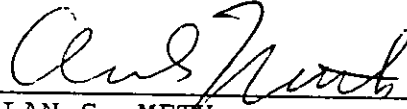
1. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
2. The 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 two years have elapsed from the effective date of this Decision.

4. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
5. Respondent shall, within six months from the effective date of the restricted license, 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 the restricted license until respondent passes the examination.
6. Pursuant to Section 10148 of the Business and Professions Code section, respondent shall pay the Commissioner's reasonable cost for an audit as a result of the trust fund violations found in the Findings and Determination of Issues. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all Department audit personnel, and shall include an allocation for travel time to and from the auditor's place of work. Respondent shall pay such cost within 45 days of receiving an invoice from the Commissioner detailing the activities performed during the audit. The Commissioner may suspend the restricted license pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between respondent and the Commissioner. The suspension shall remain in effect until payment is made in full or until respondent enters into an agreement satisfactory

to the Commissioner to provide for payment, or
until a decision providing otherwise is adopted
following a hearing held pursuant to this
condition.

Dated: January 21, 1998

A handwritten signature in cursive script, appearing to read "Alan S. Meth", written over a horizontal line.

ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings

FILED
NOV 7 1997

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Laurie A. Zain

In the Matter of the Accusation of

ELI RODRIGUEZ,

Case No. H-2351 SD

OAH No. L-1997110012

Respondent

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 the
Office of Administrative Hearings, 1350 Front Street, Suite 6022,
San Diego, CA 92101

on Friday, January 16, 1998, at the hour of 9:00 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: November 7, 1997

By Larry A. Alamao
LARRY A. ALAMAO Counsel
for DAVID A. PETERS, Counsel

1 DAVID A. PETERS, Counsel
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000
5 Telephone: (916) 227-0789
6 -or- (916) 227-0781 (Direct)
7

FILED
SEP 26 1997
DEPARTMENT OF REAL ESTATE

By *Laurie A. Zain*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 ELI RODRIGUEZ,)
13 Respondent.)
14 _____)

NO. H-2351 SD

ACCUSATION

15 The Complainant, J. Chris Graves, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against ELI RODRIGUEZ dba E R Realty (hereinafter "Respondent"),
18 is informed and alleges as follows:

19 FIRST CAUSE OF ACCUSATION

20 I

21 Respondent is presently licensed and/or has license
22 rights under the Real Estate Law, Part 1 of Division 4 of the
23 Business and Professions Code (hereinafter "Code"), as a real
24 estate broker.

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II

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

III

Beginning on or before January 1, 1996 through on or after June 26, 1997, Respondent for or in expectation of a compensation and acting on behalf of another or others, solicited prospective tenants for, collected rents from and otherwise managed certain real properties located in or near San Diego, California.

IV

During the course of the property management activities described in Paragraph III above, Respondent received and disbursed funds held in trust on behalf of another or others.

V

Beginning on or before January 1, 1996, and continuing through on or about June 26, 1997, Respondent maintained the following trust fund accounts:

TITLE AND ACCOUNT NO.

BANK

Eli Rodriguez dba ER Realty
Account No. 7419019307
(hereinafter "Account #1")

Home Savings of America
San Diego, California

David C. Lievsay
Account No. 7419019386
(hereinafter "Account #2")

Home Savings of America
San Diego, California

Account #1 and Account #2 were not in the name of Respondent as a trustee at a bank or other financial institution as required by Section 2830 of Title 10, California Code of



1 Regulations (hereinafter "Regulations") from January 1, 1996
2 through November 13, 1996, and from November 13, 1996 through
3 June 26, 1997, as required by Section 2832 of the Regulations.

4 VI

5 In connection with the collection and disbursement of
6 trust funds described in Paragraph IV above, Respondent failed to
7 deposit and maintain said trust funds in a bank trust account in
8 such manner that as of June 5, 1997, there was a shortage of
9 \$22,648.08 of trust funds in Account #1.

10 VII

11 Respondent failed to obtain prior written consent of her
12 principals for the reduction of the aggregate balance of trust
13 funds in said bank account to an amount less than the existing
14 aggregate trust fund liability to the owners of said funds.

15 VIII

16 The facts alleged above are grounds for the suspension
17 or revocation of Respondent's license and/or license rights under
18 Sections 2830, 2832 and 2832.1 of the Regulations and Section
19 10145 of the Code in conjunction with Section 10177(d) of the
20 Code.

21 SECOND CAUSE OF ACCUSATION

22 IX

23 There is hereby incorporated in this second, separate
24 and distinct cause of Accusation all of the allegations contained
25 in Paragraphs I through IV of the First Cause of Accusation with
26 the same force and effect as if herein fully set forth.

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X

Beginning on or before January 1, 1996 through June 26, 1997, in connection with the collection and disbursement of trust funds described in Paragraph IV above, Respondent opened, or caused to be opened Account #1 described in Paragraph V above, as an interest-bearing account. In opening and operating said interest-bearing account, Respondent failed to comply with the requirements of Sections 2830 and 2832 of the Regulations and Section 10145(d) of the Code.

XI

In connection with the receipt and disbursement of trust funds described in Paragraph IV above, Respondent failed to maintain adequate columnar records of all trust funds received and disbursed in the manner required by Section 2831 of the Regulations.

XII

In connection with the receipt and disbursement of trust funds described in Paragraph IV above, Respondent failed to maintain a separate record for each beneficiary or transaction, accounting therein for all said trust funds received, deposited, and disbursed in the manner required by Section 2831.1 of the Regulations.

XIII

In connection with the receipt and disbursement of trust funds described in Paragraph IV above, Respondent failed to adequately maintain and perform a reconciliation with records of all trust funds received and disbursed as required by Section



1 2831.1 of the Regulations, at least once per month, in conformance
2 with Section 2831.2 of the Regulations.

3 XIV

4 Within the three-year period immediately preceding the
5 filing of this Accusation, Respondent failed to immediately notify
6 the Real Estate Commissioner in writing that real estate
7 salesperson Bianca Burgos' employment with Respondent had been
8 terminated as required by Section 10161.8 of the Code.

9 XV

10 The facts alleged in this Second Cause of Accusation,
11 are grounds for the suspension or revocation of Respondent's
12 license and/or license rights under the following sections of the
13 Code and Regulations:

14 (1) As to Paragraph X, under Section 10177(d) of the
15 Code in conjunction with Sections 2830 and 2832 of the Regulations
16 and Section 10145(d) of the Code;

17 (2) As to Paragraph XI, under Section 10177(d) of the
18 Code in conjunction with Section 2831 of the Regulations;

19 (3) As to Paragraph XII, under Section 10177(d) of the
20 Code in conjunction with Section 2831.1 of the Regulations;

21 (4) As to Paragraph XIII, under Section 10177(d) of the
22 Code in conjunction with Sections 2831.1 and 2831.2 of the
23 Regulations; and

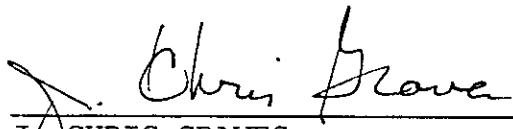
24 (5) As to Paragraph XIV, under Section 10177(d) of the
25 Code in conjunction with Section 10161.8 of the Code.

26 ///

27 ///



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

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9 
10 J. CHRIS GRAVES
Deputy Real Estate Commissioner

11 Dated at San Diego, California
12 this 23rd day of September, 1997.

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