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FILED

DEC - 4 2001

DEPARTMENT OF REAL ESTATE

By Laurie L. Jan

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

| | | |
|------------------------------------|---|----------------|
| In the Matter of the Accusation of |) | No. H-2753 SAC |
| |) | |
| ROY LEE LARRY, |) | |
| |) | |
| Respondent. |) | |
| |) | |

ORDER SUSPENDING RESTRICTED REAL ESTATE LICENSE

TO: ROY LEE LARRY

On November 4, 1992, a restricted real estate broker license was issued by the Department of Real Estate to Respondent on terms, conditions and restrictions set forth in the Real Estate Commissioner's Order effective November 4, 1992, in Case No. H-2753 SAC.

This Order granted the right to the issuance of a restricted real estate broker license subject to the provisions of Section 10156.7 of the Business and Professions Code and to enumerated additional terms, conditions and restrictions imposed under authority of Section 10156.6 of said Code.

///

1 On November 8, 2001, in Case No. H-8019 SF,
2 an Accusation by a Deputy Real Estate Commissioner of the State
3 of California was filed charging Respondent with violation of
4 Section 10177.5 of the Business and Professions Code of the
5 State of California.

6 NOW, THEREFORE, IT IS ORDERED under the authority of
7 Section 10156.7 of the Business and Professions Code of the
8 State of California that the restricted real estate broker
9 license heretofore issued to Respondent and the exercise of any
10 privileges thereunder is hereby suspended pending final
11 determination made after the hearing on the aforesaid
12 Accusation.

13 IT IS FURTHER ORDERED that all license certificates
14 and identification cards issued by the Department of Real Estate
15 which are in the possession of Respondent be immediately
16 surrendered by personal delivery or by mailing in the enclosed
17 self-addressed, stamped envelope:

18 DEPARTMENT OF REAL ESTATE
19 Attention: Flag Section
20 P. O. Box 187000
 Sacramento, CA 95818-7000

21 This Order shall be effective immediately.

22 DATED: November 28, 2001

23 PAULA REDDISH ZINNEMANN
24 Real Estate Commissioner

25 *Paula Reddish Zinnemann*
26 _____
27

FILED
OCT 15 1992

DEPARTMENT OF REAL ESTATE

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Kathleen Contreras

* * *

In the Matter of the Accusation of)
)
ROY LEE LARRY,)
LINDA FAY KINCHEN,)
)
Respondent.)

NO. H-2753 SAC
N-40691

DECISION

The Proposed Decision dated September 15, 1992,
of the Administrative Law Judge of the Office of Administrative
Hearings is hereby adopted as the Decision of the Real Estate
Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon
on November 4, 1992.

IT IS SO ORDER October 5, 1992.

CLARK WALLACE
Real Estate Commissioner

John R. Liberator
BY: John R. Liberator
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation)
Against:) No. H-2753 SAC
)
ROY LEE LARRY,)
LINDA FAY KINCHEN,) OAH No. N-40691
)
)
Respondents.)
_____)

PROPOSED DECISION

On August 17, 1992, in Sacramento, California, Muriel Evens, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Roland Adickes, Counsel, represented the complainant.

Respondents Roy Lee Larry and Linda Fay Kinchen were present and represented themselves.

Evidence was received, the record was closed and the matter was submitted.

FINDINGS OF FACT

I

Respondent Roy Lee Larry , dba First American Capitol and dba Chanteclair Realty and Investments, is licensed by the Department as a real estate broker. His license expires February 24, 1995.

Respondent Linda Fay Kinchen is licensed by the Department as a real estate salesperson. Her license expires September 11, 1993.

II

The parties stipulated to the following:

From time to time during 1990 and 1991, respondent Larry received funds belonging to others (trust funds) in the course of the

real estate brokerage business he conducted in Sacramento, California. Respondent Larry failed to maintain records as required by law, so that as of October 31, 1991, the trust bank account of respondent Larry's brokerage firm contained \$279.76 of funds whose owner could not be identified.

In particular, respondent Larry did not reconcile at least once a month, the records kept for each beneficiary or transaction with the records kept of the overall inflow and outflow of trust funds as required by Regulation 2831.2, Title 10, California Code of Regulations.

While the trust bank account was in the fictitious business name of respondent Larry, the account was not "in the name of the broker as trustee" as required by Regulation 2830, Title 10, California Code of Regulations.

III

The parties stipulated to the following:

On or about December 13, 1990, respondent Kinchen presented or caused to be presented to Jeffrey D. Freeman and Tony Jones an offer to purchase for \$55,000 a property known as 2279 Babette Way, Sacramento, California, then owned by Freeman and Jones. The offer recited that the brokerage firm had received from the buyer a personal check for \$5,000 to be deposited into the firm's bank trust account upon acceptance of the offer. Freeman and Jones accepted the offer in reliance on this representation. Respondent Kinchen did not tell Freeman or Jones at any time before they accepted the offer that Kinchen had not received and was not holding any personal check from the buyer, neither for \$5,000 nor for any other amount.

IV

Respondent Kinchen met with her client (the buyer) at her office on December 12, 1990. The buyer spoke directly on the telephone speaker with Freeman and negotiated terms of the sale, which included a \$5,000 deposit. Respondent Kinchen completed the real estate purchase contract and receipt for deposit during the telephone call. After the call was completed, the buyer determined his checkbook was in his car and he would get it after he and respondent Kinchen completed their meeting. After the meeting, the buyer then left respondents' office to go out of town on some family matter. Both he and respondent Kinchen had forgotten about getting the check.

On the buyer's return to Sacramento, soon thereafter, he went to the property, and on further investigation learned the immediate area had been the site for a shooting and probable drug activity. The sellers had not disclosed any kind of particular crime

problem. The buyer then advised respondent Kinchen that he would not go through with the purchase. The evidence is unclear as to how soon the sellers were notified, but the house was sold to another buyer on January 17, 1991, for \$59,500.

The evidence was also unclear as to when the offer was accepted. The purchase contract called for delivery of the acceptance within one day of December 13, 1990. The signatures of the sellers were not dated and no evidence was offered as to when the purchase contract was delivered to respondent Kinchen. The evidence does not establish that the acceptance was timely.

V

There was no evidence that the error in the trust accounting by respondent Larry was done to defraud or to benefit respondent Larry. He admitted his errors. There was no evidence of any prior discipline against respondent Larry.

VI

The failure of respondent Kinchen to obtain a deposit from the buyer prior to delivering the offer to purchase was by error, not design. There was no evidence of any prior discipline against respondent Kinchen.

DETERMINATION OF ISSUES

I

Cause for discipline of respondent Larry's license for violation of Business and Professions Code sections 10177(d) and 10145(a) and Title 10, California Code of Regulations sections 2830 and 2831.2 was established by Finding II.

II

Cause for discipline of respondent Kinchen's license for violation of Business and Professions Code section 10176(a) was established by Finding III.

ORDER

I

All licenses and licensing rights of respondent Roy Lee Larry 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 one year has 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.

II

All licenses and licensing rights of respondent Linda Fay Kinchen under the Real Estate Law 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 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 one year has elapsed from the effective date of this Decision.
4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:
 - a. That the employing broker has read the Decision of the Commissioner which granted the right to a restricted 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 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.

Dated: September 15, 1992



MURIEL EVENS
Administrative Law Judge
Office of Administrative Hearings

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

By Kathleen Contreras

In the Matter of the Accusation of

ROY LEE LARRY,
LINDA FAY KINCHEN,

Case No. H-2753 SAC

OAH No. N-40691

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, 501 J Street, Suite 220,
Second Floor Hearing Rooms, Sacramento, California 95814

on August 17, 1992, at the hour of 9:00 AM,
or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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

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

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

DEPARTMENT OF REAL ESTATE

Dated: April 27, 1992

By Roland Adickes
ROLAND ADICKES
Counsel

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

5 Telephone: (916) 739-3607.

FILED
MAR 17 1992
DEPARTMENT OF REAL ESTATE

6 By *Kathleen Contreras*

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
13 ROY LEE LARRY,)
14 LINDA FAY KINCHEN,)
15 Respondents.)

NO. H-2753 SAC

ACCUSATION

16 The Complainant, Charles W. Koenig, a Deputy Real Estate
17 Commissioner of the State of California for cause of Accusation
18 against ROY LEE LARRY and LINDA FAY KINCHEN (hereinafter
19 "Respondents") is informed and alleges as follows:

20 1.

21 The Complainant, Charles W. Koenig, a Deputy Real Estate
22 Commissioner of the State of California, makes this Accusation in
23 his official capacity.

24 2.

25 Respondents are licensed and/or have license rights
26 under the Real Estate Law, Part 1 of Division 4 of the California
27 Business and Professions Code (hereinafter "Code") as follows:

- 1 (a) ROY LEE LARRY as a real estate broker.
2 (b) LINDA FAY KINCHEN as a real estate salesperson.

3 Respondents were so licensed in 1990 and 1991.

4 TRUST FUND
5 RECORD
6 DEFICIENCIES

7 3.

8 From time to time during 1990 and 1991, respondent LARRY
9 received funds belonging to others (trust funds) in the course of
10 the real estate brokerage business he conducted in Sacramento,
11 California. Respondent LARRY failed to maintain records as
12 required by law, so that as of October 31, 1991, the trust bank
13 account of respondent LARRY's brokerage firm contained \$279.76 of
14 funds whose owner could not be identified.

15 In particular, respondent LARRY did not reconcile at
16 least once a month, the records kept for each beneficiary or
17 transaction with the records kept of the overall inflow and
18 outflow of trust funds as required by Regulation 2831.2, Title 10,
19 California Code of Regulations.

20 While the trust bank account was in the fictitious
21 business name of respondent LARRY, the account was not "in the
22 name of the broker as trustee" as required by Regulation 2830,
23 Title 10, California Code of Regulations.

24 4.

25 The acts and/or omissions described above are grounds
26 for the suspension or revocation of respondent LARRY's license
27 pursuant to Section 10177(d) of the Code in conjunction with

1 Section 10145(a) of the Code and in conjunction with Regulations
2 2830 and 2831.2.

3 MISREPRESENTATION

4 REGARDING

5 DEPOSIT CHECK

6 5.

7 On or about December 13, 1990, respondent KINCHEN
8 presented or caused to be presented to Jeffrey D. Freeman and Tony
9 Jones an offer to purchase a property known as 2279 Babette Way,
10 Sacramento, California, then owned by Freeman and Jones. The
11 offer recited that the brokerage firm had received from the buyer
12 a personal check for \$5,000.00 to be deposited into the firm's
13 bank trust account upon acceptance of the offer. Freeman and
14 Jones accepted the offer in reliance on this representation.
15 Respondent KINCHEN did not tell Freeman or Jones at any time
16 before they accepted the offer that KINCHEN had not received and
17 was not holding any personal check from the buyer, neither for
18 \$5,000.00 nor for any other amount.

19 6.

20 The acts and/or omissions of respondent KINCHEN
21 described above are grounds for the revocation or suspension of
22 respondent KINCHEN's license pursuant to Section 10176(a) of the
23 Code.

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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, 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 the
7 provisions of law.

8
9 
10 CHARLES W. KOENIG
11 Deputy Real Estate Commissioner

11 Dated at Sacramento, California,
12 this 17th day of March, 1992.
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