

1 DEPARTMENT OF REAL ESTATE
P. O. Box 187000
2 Sacramento, CA 95818-7000
3 Telephone: (916) 227-0789
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FILED
DEC 21 1995
DEPARTMENT OF REAL ESTATE

By *Kathleen Contreras*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12) NO. H-3080 SAC
13 VIRGINIA NERY BUBAN,) STIPULATION AND
14 Respondent.) AGREEMENT IN
) SETTLEMENT AND ORDER

15 It is hereby stipulated by and between VIRGINIA NERY
16 BUBAN ("Respondent") and her attorney of record, Roland Lie, and
17 the Complainant, acting by and through David B. Seals, Counsel for
18 the Department of Real Estate, as follows, for the purpose of
19 settling and disposing of the Accusation filed on January 19,
20 1995:

21 1. All issues which were to be contested and all
22 evidence which was to be presented by Complainant and Respondent
23 at a formal hearing on the Accusation, which hearing was to be
24 held in accordance with the provisions of the Administrative
25 Procedure Act (APA), shall instead and in place thereof be
26 submitted solely on the basis of the provisions of this
27 Stipulation.

h
VIRGINIA NERY BUBAN

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 February 1, 1995, 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 she
10 understands that by withdrawing said Notice of Defense she waives
11 her right to require the Commissioner to prove the allegations in
12 the Accusation at a contested hearing held in accordance with the
13 provisions of the APA and that she waives other rights afforded to
14 her in connection with the hearing such as the right to present
15 evidence in defense of the allegations in the Accusation and the
16 right to cross-examine witnesses.

17 4. Respondent, pursuant to the limitations set forth
18 below neither admits or denies, except as hereinafter set forth,
19 the factual allegations in Paragraphs I through XI of the
20 Accusation filed in this proceeding, but agrees that the Real
21 Estate Commissioner shall not be required to provide further
22 evidence to prove such allegations.

23 5. It is understood by the parties that the Real Estate
24 Commissioner may adopt the Stipulation and Agreement as his
25 decision in this matter thereby imposing the penalty and sanctions
26 on Respondent's real estate license and license rights as set
27 forth in the below "Order". In the event that the Commissioner in

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

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

13 DETERMINATION OF ISSUES

14 By reason of the foregoing stipulations, admissions and
15 waivers, and solely for the purpose of settlement of the pending
16 Accusation without a hearing, it is stipulated and agreed that the
17 following determination of issues shall be made:

18 I

19 The facts alleged above are grounds for the suspension
20 or revocation of all licenses and license rights of Respondent
21 under Sections 10176(a) and (i) of the Business and Professions
22 Code.

23 ORDER

24 All licenses and licensing rights of respondent
25 VIRGINIA NERY BUBAN under the Real Estate Law are revoked;
26 provided, however, a restricted real estate broker license shall
27 be issued to Respondent pursuant to Section 10156.5 of the

1 Business and Professions Code if Respondent makes application
2 therefor and pays to the Department of Real Estate the appropriate
3 fee for the restricted license within 180 days from the effective
4 date of this Order. The restricted license issued to Respondent
5 shall be subject to all of the provisions of Section 10156.7 of
6 the Business and Professions Code and to the following
7 limitations, conditions and restrictions imposed under authority
8 of Section 10156.6 of that Code:

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

14 2. The restricted license issued to Respondent may
15 be suspended prior to hearing by Order of the Real Estate
16 Commissioner on evidence satisfactory to the Commissioner
17 that Respondent has violated provisions of the California Real
18 Estate Law, the Subdivided Lands Law, Regulations of the Real
19 Estate Commissioner or conditions attaching to the restricted
20 license.

21 3. Respondent shall not be eligible to apply for the
22 issuance of an unrestricted real estate license nor for the
23 removal of any of the conditions, limitations or restrictions of
24 a restricted license until one (1) year has elapsed from the
25 effective date of this Order.

26 ///

27 ///


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

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

20 6. Respondent shall, prior to the issuance of the
21 restricted license and as a condition of the issuance of said
22 restricted license, submit proof satisfactory to the Commissioner
23 of payment of restitution in the amount of \$2,000.00 to Richard
24 and Jean Martindale.

25
26 12/5/95

27 DATED



DAVID B. SEALS, Counsel
DEPARTMENT OF REAL ESTATE

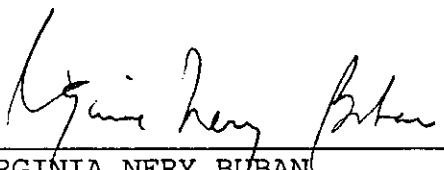
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* * *

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

November 14, 1995

DATED

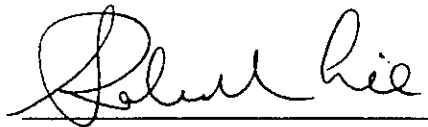


VIRGINIA NERY BUBAN
Respondent

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

November 14, 1995

DATED



ROLAND LIE
Attorney for Respondent

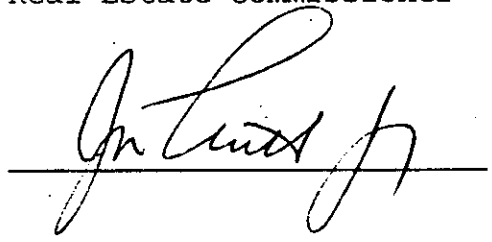
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The foregoing Stipulation and Agreement for Settlement
is hereby adopted by the Real Estate Commissioner as Decision and
Order and shall become effective at 12 o'clock noon on
January 10, 1996.

IT IS SO ORDERED 12/19/95.

JIM ANTT, JR.
Real Estate Commissioner



BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
FEB 23 1995
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of
VIRGINIA NERY BUBAN,

}

By Kathleen Contreras

Case No. H-3080 SAC
OAH No. N-9502099

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 Wednesday -- November 15, 1995, 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.

Dated: February 23, 1995

DEPARTMENT OF REAL ESTATE

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
JAN 19 1995
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 VIRGINIA NERY BUBAN,)
13 Respondent.)
14 _____)

NO. H-3080 SAC
ACCUSATION

15 The Complainant, Charles W. Koenig, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against VIRGINIA NERY BUBAN, is informed and alleges as follows:

18 I

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

23 II

24 The Complainant, Charles W. Koenig, a Deputy Real Estate
25 Commissioner of the State of California, makes this Accusation
26 against Respondent in his official capacity as such and not
27 otherwise.

1 III

2 At all times mentioned herein, Respondent VIRGINIA NERY
3 BUBAN (hereinafter Respondent) was licensed by the Department as a
4 real estate broker.

5 IV

6 On or about September 12, 1992, an offer to purchase
7 property located at 102 Bay Villas, Unit 107, in Benicia,
8 California (hereinafter the Property) was presented on behalf of
9 Respondent's client and niece, Diana Novelozo (hereinafter
10 Novelozo), to Joyce Zervas, a licensed real estate salesperson,
11 and her sellers, Richard and Jean Martindale (hereinafter the
12 Martindales).

13 V

14 The Residential Purchase Agreement and Deposit Receipt
15 (hereinafter "Purchase Agreement") evidencing the terms and
16 conditions of the offer referred to above and dated September 11,
17 1992, provided that a deposit of \$1,000 in the form of a check
18 payable to Founders Title Company-Daly City, would be held
19 uncashed until acceptance, and that an additional \$1,000 cash
20 deposit would be placed in escrow within 10 days of acceptance.

21 VI

22 On or about September 13, 1992, the Martindales accepted
23 the Purchase Agreement.

24 VII

25 The representation made by Respondent in the Purchase
26 Agreement - which was drafted by Respondent - that there was a
27 check for \$1,000 payable to Founders Title Company-Daly City was

1 false. Respondent knew at the time she prepared the offer that
2 such check did not exist. In fact, at no time mentioned herein
3 did such check exist.

4 VIII

5 On or about October 28, 1992, an addendum to the Purchase
6 Agreement was entered into by Novelozo and the Martindales to
7 extend the close of escrow to November 20, 1992, or earlier.

8 IX

9 It was not until December 8, 1992, that any attempt was
10 made to put any of the \$2,000 deposit required by the Purchase
11 Agreement into escrow. At that time, Respondent wrote a check for
12 \$2,000 to Founders Title Company. However, the check was
13 dishonored for lack of funds.

14 X

15 The Property was sold to another buyer prior to February,
16 1993.

17 XI

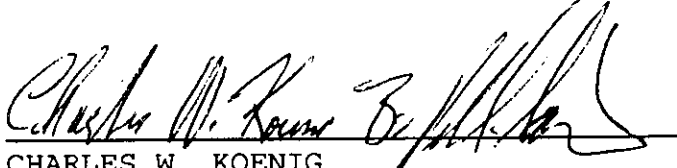
18 Respondent failed to disclose to the Martindales or their
19 agent, in a timely manner, that she: (a) did not have the \$1,000
20 initial deposit referred to in the Purchase Agreement, (b) never
21 received nor put into escrow the \$1,000 additional deposit,
22 (c) wrote a check for \$2,000 to the escrow company but such check
23 was dishonored, and (d) was the aunt of Novelozo.

24 XII

25 The facts as alleged above are grounds for the suspension
26 or revocation of the licenses of Respondent under Sections
27 10176(a) and 10176(i) of the Code.

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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.


CHARLES W. KOENIG
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 06th day of January, 1995.