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DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of

ALFRED EFREN VALVERDE,

Respondent.

No. H-3406 SAC

ORDER GRANTING REINSTATEMENT OF LICENSE

On July 20, 1999, in Case No. H-3406 SAC, a Decision was rendered revoking the real estate broker license of Respondent effective January 25, 2002, 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 January 25, 2002, and Respondent has operated as a restricted licensee since that time.

On October 6, 2009, Respondent petitioned for the removal of restrictions attaching to Respondent's real estate broker license, and the Attorney General of the State of California has been given notice of the filing of the petition.

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has demonstrated to my satisfaction that Respondent meets the requirements of law for the issuance to Respondent of an unrestricted real estate broker license and that it would not be against the public interest to issue said license to Respondent.

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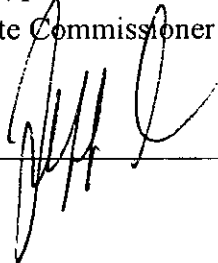
NOW, THEREFORE, IT IS ORDERED that Respondent's petition for  
reinstatement is granted and that a real estate broker license be issued to Respondent if  
Respondent satisfies the following conditions within twelve (12) months from the date of this  
order:

1. Submittal of a completed application and payment of the fee for a real  
estate broker license.
2. Submittal of proof that you have, within the 12 month period preceding  
the submittal of an application for an unrestricted license, completed the continuing education  
courses required for renewal of a license.

This Order shall become effective immediately.

DATED: 5/27/20

JEFF DAVI  
Real Estate Commissioner



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DEPARTMENT OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	No. H-3406 SAC
	)	
ALFRED EFREN VALVERDE,	)	OAH NO. N-1998120004
RAYMOND CHESTER DELAY,	)	
	)	
Respondent.	)	

ORDER STAYING EFFECTIVE DATE

On July 20, 1999, a Decision was rendered in the above-entitled matter to become effective August 11, 1999.

IT IS HEREBY ORDERED that the effective date of the Decision of the Real Estate Commissioner of July 20, 1999 as to Respondent RAYMOND CHESTER DELAY only, is stayed for a period of thirty (30) days.

The Decision of the Real Estate Commissioner of July 20, 1999 as to Respondent RAYMOND CHESTER DELAY only, shall become effective at 12 o'clock noon on September 10, 1999.

DATED: August 2, 1999

JOHN R. LIBERATOR  
Acting Real Estate Commissioner

*John R. Liberator*

FILED  
JUL 21 1999

DEPARTMENT OF REAL ESTATE

By Lucia P. Zain

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )	
ALFRED EFREN VALVERDE, )	NO. H-3406 SAC
RAYMOND CHESTER DELAY, )	
Respondents. )	OA# NO. N-1998120004
_____ )	

DECISION

The Proposed Decision dated June 24, 1999, 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 August 11, 1999.

IT IS SO ORDERED July 20, 1999.

JOHN R. LIBERATOR  
Acting Real Estate Commissioner

John R. Liberator

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

ALFRED EFREN VALVERDE, and  
RAYMOND CHESTER DELAY,

Respondents.

No. H-3406 SAC

OAH No. N 1998120004

**PROPOSED DECISION**

On April 6, April 7 and April 8, 1999, in Oakland, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

David A. Peters, Counsel, represented complainant, Charles W. Koenig, Deputy Real Estate Commissioner.

Brian D. Seibel, Esq., of Baker, Seibel, Finta & Edwards, Attorneys at Law, 1850 Mt. Diablo Blvd., Suite 650, Walnut Creek, California 94596, represented respondent Alfred Efren Valverde. Respondent Alfred Efren Valverde was present throughout all phases of the hearing.

Scott K. Zimmerman, Esq., 812 First Street, P.O. Box 1120, Brentwood, California, 94513-1120, represented respondent Raymond Chester Delay. Respondent Raymond Chester Delay was present throughout all phases of the hearing.

Complainant, through his attorney, amended the Accusation under the authority of Government Code section 11507. At page 3, line 17 of the Accusation, complainant changed the word "Ironhorse" to "Ironhouse."

The record remained open for the purpose of providing the parties with the opportunity to file closing written arguments and written rebuttal arguments. An order issued at the hearing of this matter whereby the parties were granted leave to effect the simultaneous filing of closing arguments on Friday, May 7, 1999. Thereafter, the parties could file rebuttal arguments no later than May 21, 1999, whereupon the record would be closed.

On April 15, 1999, by telefacsimile transmission, OAH received from counsel for complainant a document entitled "Motion for Admission of Evidence: Declaration of David A. Peters." The document, with its attachment, was marked as Exhibit "30." On April 19, 1999, by telefacsimile transmission, OAH received from counsel for respondent Raymond Chester Delay a document entitled: "Raymond Delay's Opposition to Motion for Admission of Evidence." The document was marked as Exhibit "F." On April 22, 1999, OAH received from counsel for respondent Alfred Efren Valverde a document entitled: "Objection to Motion For Admission of Evidence." The document was marked as Exhibit "G."

On May 6, 1999, by telefacsimile transmission, counsel for respondent Raymond Chester Delay filed with OAH a document entitled: "Raymond Chester Delay's Closing Statement and Argument in Opposition to the Accusations (sic) of the California Department of Real Estate." Respondent Delay's written closing argument was marked as Exhibit "H" and was received as argument. On May 7, 1999, by telefacsimile transmission, counsel for respondent Alfred Efren Valverde filed with OAH a document entitled: "Closing Brief." Respondent Valverde's written closing argument was marked as Exhibit "I," and was received as argument. On May 7, 1999, by telefacsimile transmission, counsel for complainant filed with OAH a document entitled: "Complainant's Closing Argument." Complainant's written closing argument was marked as Exhibit "31," and was received as argument.

On May 21, 1999, counsel for respondent Alfred Efren Valverde filed with OAH a document entitled "Reply Brief of Alfred Efren Valverde." The rebuttal written argument was marked as Exhibit "J." On May 21, 1999, counsel for respondent Raymond Chester Delay filed with OAH a document entitled "Raymond Chester Delay's Final Argument in Opposition to the Accusation of the California Department of Real Estate." The rebuttal argument was marked as Exhibit "K." On May 21, 1999, counsel for complainant filed with OAH, a document entitled "Complainant's Final Argument." The written rebuttal argument was marked as Exhibit "32."

The record was closed and the matter was deemed submitted on May 21, 1999.

## FACTUAL FINDINGS

I. Complainant, Charles W. Koenig, in his official capacity as a Deputy Real Estate Commissioner of the State of California, made the accusation against respondent Raymond Chester Delay ("respondent Delay") and respondent Alfred Efren Valverde, doing business as Mason McDuffie Quality Properties, Mason McDuffie Elite Realty, Quality Loans, Quality Properties Real Estate, Prudential California Realty-Brentwood, Quality Financial and Solar Real Estate ("respondent Valverde").

2. Respondent Valverde is currently licensed and has license rights under the Real Estate Law<sup>1</sup> as a real estate broker. Respondent Valverde's broker license will expire on March 9, 2001.

3. Respondent Delay is currently licensed and has license rights under the Real Estate Law as a real estate salesperson. Respondent Delay's real estate salesperson license will expire on July 24, 2000.

4. Since 1996, respondent Valverde has employed respondent Delay as a real estate salesperson.

*40 Broadway Lane, Oakley, California*

5. In February 1996, Household Financial Services, also known as Household Finance Corporation of California ("HFC"), owned real property, which included a dilapidated, uninhabitable single family house, known as 40 Broadway Lane, Oakley, California ("subject property").

6. In late February, 1996 a HFC agent named Ron Kirk hired real estate broker Raymond S. Isaacs, owner of Better Homes Realty/Los Medanos ("Mr. Isaacs"), to prepare a "Broker's Price Opinion" for the sale of the subject property.

Mr. Isaacs traveled to the site of the subject property on various dates. On his first inspection of the subject property, he noted that the house had been stripped of appliances, fixtures, cabinets, wiring, copper plumbing pipes and floor coverings so that the structure at best could be deemed only a "shell." Mr. Isaacs further observed a depression in the ground of the front yard of the house-shell, which he assumed was a fish pond, but later he determined the area to be above the septic tank to the house on the subject property.

7. In meeting his duty to prepare a Broker's Price Opinion, Mr. Isaacs secured the services of a general building contractor, C. E. Hill Construction, to review the house-shell and to develop an estimate of the cost to make the house habitable. C. E. Hill Construction presented Mr. Isaacs with two cost estimates to perform general building contractor services in order to make habitable the house-shell on the subject property.

8. On March 3, 1996, on behalf of HFC, Mr. Isaacs prepared a Broker's Price Opinion pertaining to the subject property. Based upon the estimate from the building contractor, and his analysis of comparable sales of other real property near the subject property, Mr. Isaacs reported to HFC the suggested list price for the unrepaired subject property as \$95,000, and a probable sale price as \$80,000. He also gave an

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<sup>1</sup> Part 1 of Division 4 of the Business and Professions Code.

opinion that the subject property, if repaired, would have a suggested list price of \$165,000 and a probable sale price of \$157,000.

9. Based upon either his experience, his personal observations, or the advice of the building contractor from whom he had sought estimates to improve the house-shell, Mr. Isaacs had concerns regarding the condition of the septic system of the subject property. On April 1, 1996, HFC authorized Mr. Isaacs to secure documents, and to gather information from the Contra Costa County Building/Permit Department regarding the subject property, including its septic tank system.

10. Mr. Isaacs never listed the subject property for sale.

11. On April 24, 1996, respondent Delay, acting as a real estate salesperson of Mason McDuffie Quality Properties, caused to be sent via telefacsimile transmission to Mr. Isaacs an offer to purchase the subject property on behalf of an individual identified as Roy Amador, Jr. The offer price was set at thirty thousand (\$30,000) dollars.

12. On April 29, 1996, HFC, through Ron Kirk, informed its agent, Mr. Isaacs, that HFC had rejected the offer of Roy Amador as made by respondent Delay.

On May 2, 1996, Mr. Isaacs telefaxed to respondent Delay the rejection by HFC of the purchase offer by Roy Amador.

At the time of the rejection by HFC of the offer by Roy Amador, neither Mr. Isaacs nor HFC were aware of either the position of County of Contra Costa officials that a policy existed to bar the use of a septic tank at the subject property or that the local sanitary district would not allow a single line connection to its sewer main.

13. On or about April 2, 1996, Mr. Isaacs informed Contra Costa County officials that the county's tax records erroneously listed the subject property under an incorrect address of 1771 West Cypress Road, as opposed to 40 Broadway Lane, Oakley.

Also on April 2, 1996, Mr. Isaacs requested that the county officials give general building contractor Chris Hill access to the county's files regarding the subject property.

14. At the very end of April 1996 or in early May 1996, Mr. Isaacs and HFC learned of a lengthy history regarding Contra Costa County official having serious concerns regarding the installation of a septic system at the subject property. The county records examined by Mr. Isaacs showed the difficulties experienced by the original builder of the house on the subject property who engaged in a protracted attempt to make a connection between the subject property and a sewer main of any of the nearby sanitation districts.

A memorandum, dated October 25, 1990, on the stationery of the county Health Services Department, Environmental Health Division, supplements and explains the grave



problems regarding the septic tank at the subject property. The memorandum, which was nearly six years old when in April 1996 Mr. Isaacs and HFS first contacted county officials regarding the septic tank, sets forth, in part:

[The previous owner] contacted this division regarding the development of ... [the] Broadway Avenue [sic] property off Cypress Road in the Oakley area. We conducted a site evaluation ... and found the water table to be too high... to allow the installation of an individual sewage disposal system to serve [the] proposed new home.... Our position is quite clear. The many structures in this area utilizing individual sewage systems are not operating well ....

15. By the first week in June 1996, the Ironhouse Sanitary District – the district closest to the subject property- informed HFC, through Ron Kirk, that the district would not permit a “single service” sewer connection to be established for the subject property.

16. By a June 12, 1996, memorandum, Ron Kirk, on behalf of HFC, wrote George Nakamura, an official within the Costa Costa County Health Service Department to express, in part:

We are once again back to the same problem, your department tells us that they will not permit a septic system on the subject property and that [HFC] must hook up to the city/county sewer system, however, the sanitary district says there is no system to hook up to .... The only other option is for the city/county to declare this an “unbuildable” lot....

17. On July 17, 1996, Salvador M. Ruiz, Senior Environmental Health Specialist for the Contra County Health Services Department, dispatched a letter to Ron Kirk of HFC pertaining to the subject property that bore a parcel number of “032-040-029.” The letter set forth in part:

Our records indicate that the property ... is not suitable for an on-site septic system due to the existing high water table. Also, when plans were submitted [by the previous owner] to this division, [the building plans] were *conditionally approved* ... to require that the new structure be connected to the Iron House Sanitary District wastewater treatment plant sewage system. [Emphasis added.]

18. On August 9, 1996, respondent Delay, acting as a salesperson employed by Mason McDuffie Quality Properties, forwarded to Mr. Isaacs a purchase offer for the

subject property by Donald Cicoletti ("Mr. Cicoletti"). The purchase offer set forth a proposed purchase price of thirty thousand dollars (\$30,000), and a recited a deposit of one hundred dollars (\$100).

19. On August 9, 1996, Mr. Isaacs, on behalf of HFC, prepared counteroffers, which were telefaxed to respondent Valverde's office to the attention of respondent Delay. The counteroffers to Mr. Cicoletti included the following:

Property is erroneously identified in the County records as 1771 W. Cypress Rd., Oakley, Ca.

Owner has been advised by Contra Costa County that it will not issue a permit for any type of septic system and the property is unbuildable until sewers are available for hookup to this property.

20. Mr. Isaacs is credible when he provides evidence that by telephone he personally conferred with respondent Delay about the impairment to the marketability of the subject property. In the conversations Mr. Isaacs informed respondent Delay of the position of the county officials on the septic tank problem that had a consequence of rendering the subject property "unbuildable." Mr. Isaacs is persuasive that by "unbuildable" respondent Delay understood that "the county would not permit [the house] to be lived in until [the house] was hooked up to a future sewer."

21. On August 9, 1996, respondent Valverde, doing business as "Mason McDuffie of 1501 Discovery Bay Blvd., (city unspecified)," and as assisted by respondent Delay, served as real estate broker for buyer Mr. Cicoletti who entered into a contract with HFC. Mr. Cicoletti signed a real estate purchase contract and a receipt of deposit to purchase from HFC the subject property. The contract specified a purchase price of thirty-five thousand dollars (\$35,000).

22. Mr. Cicoletti was unable to complete the transaction due to his lack of financial means to close escrow on the purchase of the subject property.

23. Mr. Cicoletti is not persuasive that he had the knowledge, training or any expertise to competently determine that HFC, through its employees and agents including Mr. Isaacs, had erred in their professional analysis of the worth of the subject property in August 1996. Mr. Cicoletti presents no competent evidence that HFC, or its agents, misidentified the subject property as being encumbered by county restrictions regarding "unbuildability" or habitability.

Respondents provide inadequate evidence that Mr. Cicoletti is competent to give an opinion that county restrictions on septic tank usage correctly applied to an adjacent

real estate parcel known as 1771 Cypress Road, Oakley, as opposed to the subject property.

24. Mr. Cicoletti is not credible when he asserts that his skill as a licensed plumbing contractor bestowed onto him special knowledge to advise respondent Delay, or any other person, on such matters as the rationale of County of Contra Costa officials having applied restrictions on the "buildability" or habitability for the subject property or the adjacent parcel of land.

25. Neither Mr. Cicoletti nor respondent Delay have training, knowledge or experience to give an opinion as to the relative topographical elevation of the subject property and the adjacent parcel as the land use is impacted by the underground water table.

26. Respondents provide no competent evidence that there is any appreciable difference in the elevation between the subject property and the adjoining parcel known as 1771 Cypress Road, Oakley.

Mr. Walko is credible in conveying that after he moved onto the property he paid for the placement of five hundred cubic yards of dirt so as to raise the elevation of the front yard of the subject property by approximately two feet.

27. Mr. Cicolleti falsely asserts that he "is" a licensed plumbing contractor. He is deliberately inaccurate when he testifies that he has been a plumbing contractor "since 1981" and that he was not currently active as a licensed plumbing contractor only because he had not "paid his [Contractor's State License Board license] fee this year [1999]."

28. Mr. Cicolleti is not credible that before he made an offer to purchase the subject property he had talked with an agent or employee of HFC regarding whether the then corporate owner's reference on the written counter offer regarding "unbuildability" correctly pertained to property known as 1771 Cypress Road, Oakley as opposed to the subject property.

On August 9, 1996, on Mr. Cicoletti's behalf, respondent Delay sent Mr. Isaacs a Real Estate Purchase Contract and Receipt for Deposit that describes the property as: "40 Broadway/ 1771 Cypress Rd." and has a hand-drawn arrow pointing to a single APN of "032-040-029." The disclosure form is signed by respondent Delay identifies the property as "40 Broadway/ 1771 W. Cypress Rd."

29. Mr. Cicoletti is not credible that it was his effort that prompted County of Contra Costa officials to "correct on the spot" records pertaining to the errors in incorrectly attaching an assessor's parcel number for 40 Broadway to 1771 Cypress Road in Oakley.

By a letter, dated April 2, 1996, Mr. Isaacs, on behalf of HFC, first informed the county officials of the error in the county records.

30. On August 27, 1996, on behalf of Manuel "Manny" S. Vierra ("Mr. Vierra"), respondent Delay, while acting as a real estate salesperson in the employ of respondent Valverde doing business as Mason McDuffie, submitted an offer to purchase from HFC the subject property. The offer specified a proposed purchase price of thirty five thousand dollars (\$35,000).

31. On August 29, 1996, on behalf of HFC, Mr. Isaacs prepared a counter offer regarding the sale of the subject property to respondents' client--Mr. Vierra. The counter offer contained the following:

Owner has been advised by Contra Costa County that it will not issue a permit for any type of septic system and the property is unbuildable until sewers are available for hookup to this property.

There is no Seller Warranty of any kind....

32. On September 27, 1996, the transaction closed for the sale of the subject property from HFC to Mr. Vierra. The sales price was \$35,000. Respective broker's commissions of \$1,750 were paid to Mr. Isaac's company and respondent Valverde's business- Mason McDuffie Quality Properties.

33. Respondents present no competent evidence that Mr. Vierra, with the assistance of Mr. Cicoletti as a construction manager, secured building permits during the period of the summer 1996 to make the house on the subject property habitable insofar as the waste disposal system at the subject property.

There is no evidence the Contra Costa County Health Services Department had knowledge that Mr. Vierra had purchased the subject property in August 1996, that he had made improvements to the dwelling on the subject property, or that Mr. Vierra had sold the house to Mr. and Mrs. Walko as their principal residence.

34. Mr. Cicoletti is not persuasive that he was a "partner" to Mr. Vierra in the purchase of the subject property from HFC, the refurbishment of the dwelling house, or the sale of the property to Mr. and Mrs. Walko. Respondents do not produce either a copy of a partnership agreement, a profit sharing contract, or testimony from Mr. Vierra that establishes that Mr. Cicoletti and Mr. Vierra were partners.

35. In October 1996, Mr. Michael Walko and Mrs. Dina Walko ("Mr. and Mrs. Walko") saw an advertisement that offered the subject property for sale. They

contacted Mason McDuffie Quality Properties, as owned and managed by respondent Valverde, regarding their interest in the subject real property. The real estate broker assigned Ms. Maurine Prince ("Ms. Prince") as the real estate salesperson to assist Mr. and Mrs. Walko as potential buyers of the subject property.

36. When Mr. and Mrs. Walko first inspected the subject property, the dwelling was a shell without plumbing, electrical wiring, appliances, cabinets, or floor coverings.

37. On October 14, 1996, Mr. and Mrs. Walko made an offer to purchase the subject property for a purchase price of one hundred forty five thousand dollars (\$145,000). The offer was made through respondent Valverde's real estate agent, Ms. Prince, to Mr. Vierra, who was assisted by respondent Delay.

38. As an employee of respondent Valverde, doing business as Mason McDuffie Quality Properties, respondent Delay represented Mr. Vierra in all phases of the process of selling the subject property to Mr. and Mrs. Walko.

39. At no time during any phase of the sale of the subject property to Mr. and Mrs. Walko by Mr. Vierra, through the assistance of respondent Delay, did respondent Delay inform either his fellow real estate sales colleague -Ms. Prince- or Mr. and Mrs. Walko of the matter of the problems identified by Mr. Isaacs of the county's restriction regarding a septic tank at the property and the limitations of habitability of the house on the subject property.

40. At no time during any phases of the sale of the subject property to Mr. and Mrs. Walko by Mr. Vierra, through the assistance of Macon McDuffie salesperson Delay, did respondent Valverde inform either his employee -real estate salesperson Ms. Prince- or Mr. and Mrs. Walko of the matter of the problems identified by Mr. Isaacs as to the county's restriction regarding a septic tank at the property and the limitations of habitability of the house on the subject property.

The personal broker's file maintained by respondent Valverde contained a crudely written analysis by respondent Delay or Mr. Cicoletti that incorrectly gives an opinion that the county restriction regarding septic tank placement was applicable to a real property parcel known as 1776 Cypress Road as opposed to the subject property. Yet, respondent Valverde did not seek competent expert advice on whether the county's restrictions applied to the subject property or to an adjoining parcel.

41. On January 12, 1997, respondent Delay, for respondent Valverde doing business as Mason McDuffie as seller's broker, signed a disclosure statement regarding the sale of the subject property from Mr. Vierra to Mr. and Mrs. Walko.

The disclosure statement, which was not delivered to Mr. and Mrs. Walko until January 23, 1997, did not disclose that the subject property had problems in the way of restrictions on human occupancy as imposed by Contra Costa County health department officials regarding a septic tank and its adverse impact upon a high ground water table.

42. Respondent Valverde, as broker/owner of Mason McDuffie, knew or should have known that the disclosure statement signed by respondent Delay, and delivered to Mr. and Mrs. Walko around January 23, 1997, did not disclose that the subject property had problems in the way of restrictions on human occupancy as imposed by county health department officials regarding a septic tank and its adverse impact upon a high ground water table.

43. On January 13, 1997, the escrow closed on the sale of the subject property from Mr. Vierra to Mr. and Mrs. Walko.

44. After the escrow closing and their taking occupancy, Mr. and Mrs. Walko hired a contractor to create a circular drive-way in front of the dwelling on the subject property. The contractor discovered a "soft spot" and suggested that Mr. and Mrs. Walko ascertain through county records whether or not a septic tank was in the area of the soft spot.

Not until after the closing of the sale of the subject property with Mr. Vierra, as assisted by respondent Delay through the broker's office of respondent Valverde, did Mr. and Mrs. Walko learn of the county health services department's position regarding the use of a septic tank at the subject property and the local sanitary district's refusal to make a connection between the subject property and a sewer main.

45. The Director of the Contra Costa County Health Department has granted specific, special permission to Mr. and Mrs. Walko to occupy the subject property on the condition the contents of the extant septic tank be routinely pumped out. Currently, the County of Contra Costa has a position that should Mr. and Mrs. Walko sell the subject property the special grant allowing occupancy of the house will not be extended to a future owner of the property.

Mr. George Nakamura, Supervising Environmental Health Division, is credible that Contra Costa County is allowing Mr. and Mrs. Walko to continue to reside in the house on the subject property as the homeowners "are in a situation where there is not really a repair possible unless the community sewer is extended to that property. Currently, Iron House Sanitary District ... is working to determine if sewers can be extended to the property." In 1990, a former supervisor for the appropriate county department had allowed a temporary septic tank to be installed on the express condition that the tank was to be temporary until a point in time (then thought to have been imminent) when the sanitary district would build a sewer line to the property.

46. Between October 14, 1996, when Mr. and Mrs. Walko made an offer to purchase the subject property, and January 13, 1997, the date when escrow closed on the sale, respondent Delay and respondent Valverde failed to disclose to Mr. and Mrs. Walko, as potential buyers, the following material facts, which were known or should have been known by each respondent, yet such facts were not known by Mr. and Mrs. Walko, that:

a. The Contra Costa County Environmental Health Services Department designated the subject property, as identified under Assessor's Parcel Number 032-040-029, and known as 40 Broadway, Oakley, California, as unsuitable for on-site septic system, due to the existing high water table.

b. The Ironhouse Sanitary District did not permit single sewer service connection from a dwelling house to a large force main.

c. Officials in Contra Costa County had deemed the subject property as improperly suited for rebuilding or human occupancy until a sewer system had been installed in the area of the subject property and that the dwelling house on the subject property was connected to such a sewer system.

d. The Contra Costa County Assessor's records had shown the parcel number for the subject property with the wrong address of 1771 Cypress Road, Oakley.

47. In performing services as a real estate salesperson, respondent Delay made substantial misrepresentations in failing to disclose to Mr. and Mrs. Walko the information conveyed to him by Mr. Isaccs that Contra Costa County would not issue a permit for any type of septic system and that the property was "unbuildable" until sewers were available for hookup to the property.

48. In performing services as a real estate broker, respondent Valverde made substantial misrepresentations in failing to disclose to Mr. and Mrs. Walko the information conveyed to his employee -respondent Delay- by Mr. Isaccs that Contra Costa County would not issue a permit for any type of septic system and that the property was "unbuildable" until sewers were available for hookup to the property.

49. In failing as a real estate salesperson to disclose the above mentioned material defects to the subject property so that Mr. and Mrs. Walko were not aware made of the matters, which if known by them would have dissuaded them from either entering into a contract or closing the sale on the subject property, respondent Delay exhibited conduct that constitutes dishonest dealing.

50. In failing as a real estate broker to disclose the above mentioned material defects to the subject property so that Mr. and Mrs. Walko were not made aware of the matters, which if known by them would have dissuaded them from either entering into a

contract or closing the sale on the subject property, respondent Valverde exhibited conduct that constitutes dishonest dealing.

51. Respondent Delay, at a minimum, demonstrated negligence and incompetence in performing acts as a real estate salesperson when he failed to disclose to Mr. and Mrs. Walko the condition of the subject property regarding the inadequate condition of the septic tank that prompted county health officials to deem the property not suitable for occupancy.

52. Respondent Valverde, at a minimum, demonstrated negligence and incompetence in performing acts as a real estate broker when he failed to direct respondent Delay to disclose to Mr. and Mrs. Walko the condition of the subject property regarding the inadequate septic tank that prompted county health officials to deem the property not suitable for occupancy.

53. Respondent Valverde, as a real estate broker, failed to exercise reasonable supervision over the activities of his employee -respondent Delay – who concealed information of a material nature from Mr. and Mrs. Walko regarding the inadequate waste water disposal at the subject property.

*Matters in Aggravation: Respondent Delay*

54. On April 6, 1994, in case number H-6905 SF, the Real Estate Commissioner revoked respondent Delay's real estate salesperson license and license rights effective on April 27, 1994; however, the Commissioner granted respondent Delay a restricted salesperson license. The Commissioner grounded the disciplinary action against respondent Delay's salesperson license upon his violation of Business and Professions Code sections 10176, subd. (a), 10177, subd. (d), 10177, subd. (g), and 10145, subd. (c).

In the decision adopted by the Commissioner, the assigned administrative law judge found that "Delay's representations in the Stevens offer concerning the deposit were false and Delay knew or should have known that his representations were false because the \$1,000 deposit... was never received by Delay and was never placed into a neutral escrow depository...." The administrative law judge in that matter made similar finding regarding respondent Delay having made false representations in a transaction involving a person named "Baldwin."

55. Respondent Delay signed a declaration, dated May 12, 1998, that contains deliberate false statements. Respondent Delay set forth under penalty of perjury in the declaration, in part:

I am unaware of any prior septic disclosures in any other offer....



To the best of my recollection [sic] I have never seen the counter from the previous contract sale from HFC to Manny Vierra.

*Matters in Aggravation: Respondent Valverde and Respondent Delay*

56. Neither respondent expresses any compassion or concern for the misery caused Mr. and Mrs. Walko due the gruesome discovery that the county government officials deemed their dwelling inappropriate for habitation due to an inadequate waste water disposal system from the house on the subject property.

57. Simply because of Mr. and Mrs. Walko's desire to have the seller install fixtures and make the dwelling house meet average amenities which they believed Mr. Vierra had promised, respondent Valverde characterizes Mr. and Mrs. Walko as comprising the "transaction from hell."

*Matters in Mitigation: Respondent Valverde*

58. The broker license held by respondent Valverde has not been subject to discipline since the Department issued the license to him in 1989.

**RULING ON COMPLAINANT'S MOTION TO RECEIVE DOCUMENTARY EVIDENCE AFTER THE HEARING YET BEFORE THE SUBMISSION OF THE MATTER**

The portion of complainant's Exhibit 30 that reflects the record of the California Contractors' State License Board ("CSLB"), which pertains to the status of the plumbing contractor's license issued to Donald Cicoletti, is received in evidence. The CSLB record is probative and is received as an official record prepared by a government employee and maintained by a California government department. The CSLB document impeaches the testimony of Donald Cicoletti who testified under oath that he acted as a plumbing contractor at the time he purportedly aided in refurbishing the dwelling on the subject property.

**LEGAL CONCLUSIONS**

1. The Real Estate Contract and Receipt for Deposit, dated October 14, 1996, as confirmed by its paragraph number 24, established an agency relationship between Mr. and Mrs. Walko as principals, and respondent Valverde, doing business as Macon McDuffie Quality Properties, as agent. The agency engendered a fiduciary obligation upon respondent Valverde towards Mr. and Mrs. Walko. A fiduciary obligation necessitates duties of diligence and faithful service. (*Pollack v. Lytle* (1981) 120 Cal.App.3d. 931, 940.) It is well established that a real estate broker becomes a

fiduciary in his relations with the principal and that the real estate broker assumes duties, obligations, and high standards of good faith imposed upon a person in a fiduciary relationship. (*Ward v. Taggart* (1929) 51 Cal.2d 736, 741.)

Civil Code section 2079.13, subd. (b)<sup>2</sup> imposes upon respondent Delay the same fiduciary duty to Mr. and Mrs. Walko as the common law applies upon respondent Valverde to the Walkos as principals under his broker's contract.

Business and Professions Code section 10176, subd.(a) prohibits the making of any substantial misrepresentations by "any person engaged in the business or acting in the capacity of a real estate licensee" in California. The term "misrepresentations" means more than verbal misstatements or positive assertions. "A representation may be either expressed or implied [citation omitted] and may arise from silence [citation omitted] or nondisclosure. [citation omitted]." (*Hale v. Wolfsen* (1969) 276 Cal.App.2d 285, 291.) "Deceit may be negative as well as affirmative; it may consist of suppression of that which it is one's duty to declare as well as of the declaration of that which is false." (*Lingsch v. Savage* (1963) 213 Cal.App.2d 729, 735.)

The *Lingsch* decision further sets forth: "The real estate agent or broker representing the seller is a party to the business transaction.... Where such agent or broker possesses, along with the seller, the requisite knowledge ..., whether he acquires it from, or independently of, his principal, he is under the same duty of disclosure.... No difficulty is encountered in imposing liability on an agent or broker for an affirmative and intentional misrepresentation on his part. [Citation omitted.] Similarly, no difficulty should be found in imposing liability on him for ... nondisclosure since his conduct in the transaction amounts to a representation of the nonexistence of the facts which he has failed to disclose. [Emphasis included.] [Citation omitted.] His fraud is of a different type; it is "negative" rather than "affirmative" [Citation omitted]; but it is fraud nonetheless. (*Lingsch v. Savage, supra*, 213 Cal.App.2d 729, 736-737.)

A real estate licensee has a duty to be honest and truthful in dealings with principals. A paramount purpose of the Real Estate Law<sup>3</sup> is to require real estate brokers and salesperson to be truthful, honest and of good reputation. (*Nguyen v. Scott* (1988) 206 Cal.App.3d 725, 735.)

Respondent Delay had an absolute obligation to disclose the material facts known to him but unknown to Mr. and Mrs. Walko concerning the septic system on the subject property. As a result of respondent Delay's silence, Mr. and Mrs. Walko were not

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<sup>2</sup> Civil Code section 2079.13, subd.(b), in part, reads: "The agent in the real property transaction bears responsibility for his or her associate licensees who perform as agents of the agent. When an associate licensee owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions...."

<sup>3</sup> Business and Professions Code section 10000, et seq.

afforded the opportunity to make an informed decision as to the value and desirability of the subject property. Consequently, the acts and omissions of respondent Delay and respondent Valverde have significantly damaged Mr. and Mrs. Walko.

Respondent Valverde knew or had reason to know of the septic tank problem on the subject property. The file maintained by respondent Valverde contains a crudely written analysis of a supposed error by either HFC and/or Contra Costa County officials as to purportedly misidentifying the subject property with an adjoining parcel of land known as 1771 Cypress Road, Oakley. Respondent Valverde had direct contact with Mr. and Mrs. Walko in attempting to mediate complaints they had against respondent Delay and the seller -Mr. Vierra- in not meeting the buyers' expectations of the quality of the materials to be installed onto the refurbished house on the subject property. Before the closing on the sale, respondent Valverde deemed the Walkos as the buyers who created the "transaction from hell." It is reasonable to infer that respondent Valverde deliberately withheld from the Walkos the material information regarding the septic tank problems at the subject property.

A broker has a duty to disclose material facts to his principal. This duty is closely related to the broker's duty to exercise skill, care, and diligence in the performance of his agency duties. "The broker's standard of care requires that he investigate and discover material facts and advise and consult with the principal regarding the effects that the material facts may have on the principal's decision. A failure to satisfy this duty is negligence; however, ... it may also constitute constructive fraud even though there is no fraudulent intent." (2 Miller & Starr, *California Real Estate 2<sup>nd</sup>* (1989) § 3:18, pp. 104-105; see also *Hartong v. Partake, Inc.* (1968) 266 Cal.App.2d 942, 963; *Montoya v. McLeon* (1985) 176 Cal.App.3d 57, 64-65.)

2. Cause for disciplinary action against the license and license rights of respondent Delay exists under Business and Professions Code section 10176, subd. (a), by reason of the matters set forth in Findings 39, 41, 46 and 47.

3. Cause for disciplinary action against the license and license rights of respondent Valverde exists under Business and Professions Code section 10176, subd. (a), by reason of the matters set forth in Findings 40, 41, 42, 46 and 48.

4. Cause for disciplinary action against the license and license rights of respondent Delay exists under Business and Professions Code section 10176, subd. (i), by reason of the matters set forth in Findings 46 and 49.

5. Cause for disciplinary action against the license and license rights of respondent Valverde exists under Business and Professions Code section 10176, subd. (i), by reason of the matters set forth in Findings 46 and 50.

6. Cause for disciplinary action against the license and license rights of respondent Delay exists under Business and Professions Code section 10177, subd. (g), by reason of the matters set forth in Findings 46 and 51.

7. Cause for disciplinary action against the license and license rights of respondent Valverde exists under Business and Professions Code section 10177, subd. (g), by reason of the matters set forth in Findings 46 and 52.

8. Cause for disciplinary action against the license and license rights of respondent Valverde exists under Business and Professions Code section 10177, subd. (h), by reason of the matters set forth in Finding 53.

9. Respondent Delay offers no competent or persuasive evidence in support of mitigation and extenuation that would support a conclusion that it would be in the public interest to grant respondent Delay a restricted license under probationary terms and conditions.

10. Respondent Valverde has had no past disciplinary action against his license. His culpable acts although serious do not establish that he poses a threat to the public so that he must be denied a probationary license.

### ORDER

1. All licenses and licensing rights of respondent Alfred Efren Valverde under the Real Estate Law are revoked, pursuant to Legal Conclusions 1, 3, 5, 7 and 8 singly and collectively. However, a restricted real estate broker license shall be issued to respondent Valverde pursuant to Business and Profession Code section 10156.5 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 Valverde shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under the authority of Code section 10156.6:

- a. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California.
- b. The restricted license issued to respondent Valverde may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent Valverde'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.

- c. The restricted license issued to respondent Valverde may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent Valverde 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.
- d. Respondent Valverde 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 four years have elapsed from the effective date of this Decision.
- e. Respondent Valverde shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent Valverde 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 Valverde fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until respondent Valverde presents such evidence. The Commissioner shall afford respondent Valverde the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

2. All licenses and licensing rights of respondent Raymond Chester Delay under the Real Estate Law are revoked, pursuant to Legal Conclusions 1, 2, 4 and 6, singly and collectively.

DATED: June 24, 1999



PERRY O. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings

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DEPARTMENT OF REAL ESTATE

By *Laurie A. Zain*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	No. H-3406 SAC
	)	
ALFRED EFREN VALVERDE,	)	OAH NO. N-1998120004
RAYMOND CHESTER DELAY,	)	
	)	
Respondents.	)	

ORDER DENYING RECONSIDERATION

On July 20, 1999, a Decision was rendered in the above-entitled matter. The Decision as to Respondent RAYMOND CHESTER DELAY only is to become effective September 10, 1999.

On August 6, 1999, Respondent RAYMOND CHESTER DELAY petitioned for reconsideration of the Decision of July 20, 1999.

I have given due consideration to the petition of Respondent RAYMOND CHESTER DELAY. I find no good cause to reconsider the Decision of July 20, 1999 as to Respondent RAYMOND CHESTER DELAY, and reconsideration is hereby denied.

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IT IS HEREBY ORDERED September 8, 1999.

JOHN R. LIBERATOR  
Acting Real Estate Commissioner

John R Liberator

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Lauriel Zain

In the Matter of the Accusation of

ALFRED EFREN VALVERDE,  
RAYMOND CHESTER DELAY

}

Case No. H-3406 SAC

OAH No. N-1998120004

Respondent

FIRST AMENDED  
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, 1515 Clay Street, Suite 206,  
Oakland, CA 94612

on April 6, 7 & 8, 1999, 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: February 10, 1999

By David A. Peters  
DAVID A. PETERS Counsel



BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE  
By Laurie A. Zain

In the Matter of the Accusation of

ALFRED EFREN VALVERDE,  
RAYMOND CHESTER DELAY

Case No. H-3406 SAC

OAH No. N-1998120004

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, 1515 Clay Street, Suite 206,  
Oakland, CA 94612

on Monday and Tuesday, January 25th and 26th, 1999, 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: December 9, 1998

By David A. Peters  
DAVID A. PETERS *Counsel*

1 DAVID A. PETERS, Counsel (SBN 99528)  
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  
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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 ) No. H-3406 SAC  
12 ALFRED EFREN VALVERDE, ) ACCUSATION  
13 RAYMOND CHESTER DELAY, )  
14 Respondents. )

15 The Complainant, Charles W. Koenig, a Deputy Real Estate  
16 Commissioner of the State of California, for cause of Accusation  
17 against ALFRED EFREN VALVERDE dba Mason McDuffie/Quality  
18 Properties, Mason-McDuffie/Elite Realty, Quality Loans, Quality  
19 Properties Real Estate, and Solar Real Estate (hereinafter  
20 "Respondent VALVERDE") and RAYMOND CHESTER DELAY (hereinafter  
21 "Respondent DELAY"), is informed and alleges as follows:  
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23 I

24 The Complainant, Charles W. Koenig, a Deputy Real Estate  
25 Commissioner of the State of California, makes this Accusation  
26 against Respondents in his official capacity.  
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II

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

ALFRED EFREN VALVERDE - at all times herein mentioned as a real estate broker.

RAYMOND CHESTER DELAY - at all times herein mentioned as a real estate salesperson in the employ of Respondent VALVERDE.

III

Whenever reference is made in an allegation in this Accusation to an act or omission of "Respondents", such allegation shall be deemed to mean the act or omission of each of the Respondents named in the caption hereof, acting individually, jointly, and severally.

IV

On or before October 14, 1996, Respondent DELAY, while in the employ of Respondent VALVERDE, negotiated the sale of certain real property owned by Manual S. Vierra (hereinafter "the Seller") and commonly known as 40 Broadway Lane, Oakley, California (hereinafter "the Subject Property") to Michael P. and Dena K. Walko (hereinafter "the Buyers").

V

In order to induce the Buyers into purchasing the Subject Property, Respondents represented to the Buyers that there were no problems associated with the use of the existing on-site

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1 septic system on the Subject Property, a material fact which  
2 Respondents knew or should have known was not true.

3 VI

4 On or about October 14, 1996, the Buyers agreed to  
5 purchase the Subject Property for a total purchase price of  
6 \$145,000.00.

7 VII

8 On or about January 13, 1997, escrow closed on the sale  
9 of the Subject Property.

10 VIII

11 Beginning on or before October 14, 1996 and continuing  
12 through the close of escrow on the purchase of the Subject  
13 Property by the Buyers, Respondents failed to disclose to the  
14 Buyers the following material facts which were known or should  
15 have been known to Respondents, but were unknown to the Buyers  
16 that:

17 1) The Ironhorse Sanitary District policy did not  
18 permit single sewer service to connect to a large force main.

19 2) The Contra Costa County Environmental Health  
20 Department considered the Subject Property unsuitable for an on-  
21 site septic system because of the existing high water table.

22 3) The Subject Property could not be rebuilt and  
23 occupied until a sewer system was installed in the area of the  
24 Subject Property and the home on the Subject Property was  
25 connected to said sewer system.

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IX

After escrow closed on the sale of the Subject Property, the Buyers discovered the facts described in Paragraph VIII above.

X

The acts and omissions as set forth above are cause under Sections 10176(a) and 10176(i) of the Code for suspension or revocation of all licenses and license rights of the Respondents under the Real Estate Law.

XI

The acts and omissions as set forth above are cause under Section 10177(g) of the Code for suspension or revocation of all licenses and license rights of Respondents under the Real Estate Law.

XII

The acts and omissions as set forth above are cause under Section 10177(h) of the Code for suspension or revocation of all licenses and license rights of Respondent VALVERDE under the Real Estate Law.

PRIOR DISCIPLINARY ACTION

On April 6, 1994, effective April 27, 1994 in case No. H-6905 SF, the Real Estate Commissioner revoked the real estate salesperson license of RAYMOND CHESTER DELAY and granted the right to a restricted salesperson license for violations of Sections 10176(a), 10177(d), 10177(g), and 10145(c) of the 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 Respondents 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 CHARLES W. KOENIG  
11 Deputy Real Estate Commissioner

11 Dated at Sacramento, California,  
12 this 5<sup>th</sup> day of November, 1998.

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