

FILED
FEB 15 2001

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
EVELYN MURPHY,) NO. H-3529 SAC
Respondent.)

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On August 22, 2000, an Accusation was filed in this matter against Respondent EVELYN MURPHY.

By Declaration signed December 19, 2000, EVELYN MURPHY petitioned the Commissioner to voluntarily surrender her real estate license(s) pursuant to Section 10100.2 of the Business and Professions Code.

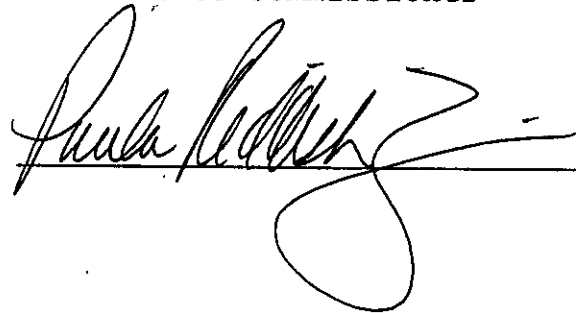
IT IS HEREBY ORDERED that the petition of EVELYN MURPHY for the voluntary surrender of her real estate license(s) is accepted as of the effective date of this Order as set forth below, based upon the understanding and agreement expressed in

1 the Declaration of EVELYN MURPHY dated December 19, 2000
2 (attached hereto as Exhibit "A").

3 This Order shall become effective at 12 o'clock noon
4 on March 7, 2001.

5 DATED: February 1, 2001.
6

7 PAULA REDDISH ZINNEMANN
8 Real Estate Commissioner
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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

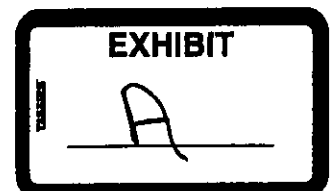
* * *

In the Matter of the Accusation of	)	No. H-3529 SAC
EVELYN MURPHY,	)	
	)	
	)	
Respondent.	)	

DECLARATION

My name is EVELYN MURPHY and I am currently licensed as a real estate broker and/or have license rights with respect to said license. I am representing myself in this matter.

In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedure Act (Sections 11400 et seq., of the Business and Professions Code) I wish to voluntarily surrender my real estate license issued by the Department of Real Estate ("Department"), pursuant to Business and Professions Code Section 10100.2.



1 I understand that, by so voluntarily surrendering my
2 license, it can only be reinstated in accordance with the
3 provisions of Section 11522 of the Government Code. I also
4 understand that by so voluntarily surrendering my license, I
5 agree to the following:

6 The filing of this Declaration shall be deemed as my
7 petition for voluntary surrender. It shall also be deemed to be
8 an understanding and agreement by me that I waive all rights I
9 have to require the Commissioner to prove the allegations
10 contained in the Accusation filed in this matter at a hearing
11 held in accordance with the provisions of the Administrative
12 Procedures Act (Government Code Sections 11400 et seq.), and that
13 I also waive other rights afforded to me in connection with the
14 hearing such as the right to discovery, the right to present
15 evidence in defense of the allegations in the Accusation, and the
16 right to cross examine witnesses. I further agree that upon
17 acceptance by the Commissioner, as evidenced by an appropriate
18 order, all affidavits and all relevant evidence obtained by the
19 Department in this matter prior to the Commissioner's acceptance,
20 and all allegations contained in the Accusation filed in the
21 Department Case No. H-3529 SAC may be considered by the Department
22 to be true and correct for the purpose of deciding whether or not
23 to grant reinstatement of my license pursuant to Government Code
24 Section 11522.

25 I declare under penalty of perjury under the laws of
26 the State of California that the above is true and correct, and
27

1 that I freely and voluntarily surrender my license and all
2 license rights attached thereto.

3
4 December 19, 2000

5 Dated at Carson City, Nevada

6
7 Evelyn Murphy
8 EVELYN MURPHY

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
OCT 12 2000

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

EVELYN MURPHY,

Case No. H-3529 SAC

OAH No. N-2000100011

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 _____

Office of Administrative Hearings, 560 J Street,

Suites 340/360, Sacramento, California 95814

on December 27, 2000, and December 28, 2000, 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: October 5, 2000

By

DEIDRE L. JOHNSON

Counsel

1 DEIDRE L. JOHNSON, Counsel
2 State Bar No. 66322
3 Department of Real Estate
4 P. O. Box 187000
5 Sacramento, CA 95818-7000
6
7 Telephone: (916) 227-0789
8

FILED
AUG 22 2000

DEPARTMENT OF REAL ESTATE

By Jean Duno

9 BEFORE THE
10 DEPARTMENT OF REAL ESTATE
11 STATE OF CALIFORNIA
12

13 * * *

14 In the Matter of the Accusation of)
15 EVELYN MURPHY)
16 Respondent.)

NO. H-3529 SAC

ACCUSATION

17 The Complainant, Charles W. Koenig, a Deputy Real
18 Estate Commissioner of the State of California, for causes of
19 Accusation against EVELYN MURPHY, is informed and alleges as
20 follows:

21 PRELIMINARY ALLEGATIONS

22 I

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

27 ///

1 II

2 Respondent EVELYN MURPHY is presently licensed and/or
3 has license rights under the Real Estate Law, Part 1 of Division
4 4 of the California Business and Professions Code (hereafter the
5 Code).

6 III

7 At all times herein mentioned, Respondent EVELYN MURPHY
8 (hereafter Respondent) was and is licensed by the Department of
9 Real Estate (hereafter the Department) as a real estate broker
10 individually and doing business as PIONEER PROPERTIES.

11 IV

12 At least within the last three years, Respondent
13 engaged in activities on behalf of others for which a real estate
14 license is required, for or in expectation of compensation,
15 including but not limited to the following:

16 (a) Under Section 10131(a) of the Code, she sold or
17 offered to sell, bought or offered to buy, solicited prospective
18 sellers or purchasers of, and/or negotiated the purchase, sale or
19 exchange of real property; and,

20 (b) Under Section 10131 (b) of the Code, she leased or
21 rented, offered to lease or rent, solicited prospective tenants,
22 collected rents on, and/or managed certain real properties in
23 California.

24 FIRST CAUSE OF ACTION

25 V

26 In April and May of 2000, the Department began to
27 conduct an audit of the business activities of Respondent.

1 During the course of the activities described in Paragraph IV
2 above, Respondent received and disbursed funds in trust on
3 behalf of others, and deposited the trust funds from time to
4 time into a bank account at Wells Fargo Bank, Sacramento,
5 California, bearing Account Number 0832-052500, in the name of
6 "Evelyn Murphy DBA Pioneer Properties Trust Account."

7 VI

8 In connection with the audit, the Department notified
9 Respondent to produce specified documents and records executed
10 or obtained by her in connection with transactions for which a
11 real estate license is required, for a period from at least
12 January 1, 1998, to March 31, 2000. Said records include but
13 are not limited to trust fund records, property management
14 records, bank statements, cancelled checks, and deposit slips
15 for the above trust account.

16 VII

17 Beginning in or about April of 2000, and continuing
18 to the present, Respondent has failed to retain any of the
19 records described in Paragraph VI above, and has failed to
20 make them available for examination and inspection by a
21 designated representative of the Real Estate Commissioner,
22 except that Respondent produced bank statements for the
23 period of September 1, 1998, through October 30, 1998. The
24 Department was not able to conduct an audit or to determine
25 Respondent's accountability for trust funds belonging to
26 others.

27 ///

VIII

In connection with the receipt and disbursement of trust funds as above alleged, Respondent:

- (a) Failed to maintain a written control record of all trust funds received and disbursed containing all information required by Section 2831 of Title 10, California Code of Regulations (hereafter the Regulations);
- (b) Failed to maintain a separate record for each beneficiary or transaction containing all information required by Section 2831.1 of the Regulations; and,
- (c) Failed to reconcile the balance of separate beneficiary or transaction records with the control records of trust funds received and disbursed at least once a month, and/or failed to maintain a record of such reconciliations as required by Section 2831.2 of the Regulations.

IX

The acts and/or omissions of Respondent as alleged above constitute grounds for disciplinary action under the following provisions:

- (a) As to Paragraph VII, under Section 10148 of the Code in conjunction with Section 10177(d) of the Code;

///

1 (b) As to Paragraph VIII(a), under Section 2831 of
2 the Regulations in conjunction with Section
3 10177(d) of the Code;

4 (c) As to Paragraph VIII(b), under Section 2831.1
5 of the Regulations in conjunction with Section
6 10177(d) of the Code;

7 (d) As to Paragraph VIII(c), under Section 2831.2
8 of the Regulations in conjunction with Section
9 10177(d) of the Code.

10 SECOND CAUSE OF ACTION

11 X

12 In or about June of 1998, in connection with the above
13 property management activities, Respondent entered into a
14 property management agreement to manage certain real property
15 owned by Yolanda and Pat Flanagan (hereafter Owners) and located
16 at 401 Crystal Springs, Woodford, California. On behalf of
17 Owners, Respondent solicited prospective tenants.

18 XI

19 On or about August 1, 1998, Respondent accepted an
20 application from Michael Johnson (hereafter Tenant) to rent the
21 above property and Respondent negotiated the rental of the
22 property to Tenant on behalf of Owners.

23 XII

24 Respondent failed to verify Tenant's financial
25 information in advance of the rental or at any time thereafter,
26 including but not limited to his credit history. Respondent
27 failed to disclose to Owners that Tenant was her son in advance

1 of the rental. On and after November 1, 1998, Tenant defaulted
2 in payment of the rent. Respondent failed to timely serve Tenant
3 with an eviction notice to mitigate the financial losses of
4 Owners.

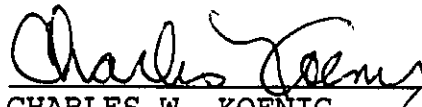
5 XIII

6 By virtue of the facts alleged in Paragraph XII above,
7 Respondent breached her fiduciary duties owed to Owners, and was
8 negligent and/or incompetent in the performance of her property
9 management duties, and knew or should have known that she acted
10 in disregard for the rights and best interests of Owners.

11 XIV

12 The acts and/or omissions of Respondent as alleged
13 above constitute cause for disciplinary action under the
14 provisions of Sections 10176(a), 10176(i) and/or 10177(g) of
15 the Code.

16 WHEREFORE, Complainant prays that a hearing be
17 conducted on the allegations of this Accusation and that upon
18 proof thereof a decision be rendered imposing disciplinary action
19 against all licenses and license rights of Respondents under the
20 Real Estate Law (Part 1 of Division 4 of the Business and
21 Professions Code), and for such other and further relief as may
22 be proper under other provisions of law.

23
24 
25 CHARLES W. KOENIG
Deputy Real Estate Commissioner

26 Dated at Sacramento, California,
27 this 17th day of August, 2000