

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED  
JUL 03 2003

DEPARTMENT OF REAL ESTATE

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*Shelly Ely*

In the Matter of the Accusation of )  
DEMETRE PARIS PARASKEVAS, )  
Respondent. )

NO. H-3741 SAC  
OAH NO. N2003010115

**DECISION**

The Proposed Decision dated June 10, 2003, 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 JULY 23, 2003.

DATED: June 23, 2003.

PAULA REDDISH ZINNEMANN  
Real Estate Commissioner

*Paula Reddish Zinnemann*

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

DEMETRE PARIS PARASKEVAS,

Respondent.

CASE No. H-3741 SAC

OAH No: N2003010115

**PROPOSED DECISION**

This matter came on regularly for hearing before Jaime René Román, Administrative Law Judge, Office of Administrative Hearings, in Sacramento, California, on May 27, 2003.

Michael Rich, Staff Counsel, Department of Real Estate, State of California, represented Complainant.

Respondent Demetre Paris Paraskevas ("respondent") appeared and was represented by William Schmidt, Esq.

Evidence was received and the matter deemed submitted on May 27, 2003.

**FACTUAL FINDINGS**

1. On November 18, 2002, Charles W. Koenig, Deputy Real Estate Commissioner, Department of Real Estate ("Department"), State of California, filed the Accusation against respondent in his official capacity.

2. On December 16, 1999, the Department issued real estate salesperson license number 01270624 to respondent. Said license is in full force and effect.

3. On February 16, 2001, having decided to devote himself to full-time real estate sales activities, respondent undertook employment with Diez & Leis Real Estate Group, Inc. Notwithstanding his late-1999 licensure, respondent's prior limited real estate activities characterized him as a new agent with Diez & Leis Real Estate Group, Inc.

4. In April 2001, Michael and Coral Hilder listed their residence for sale with Juan Carlos Kozlowski, a Department licensee employed with and by Coldwell Banker.

5. In July 2001, respondent showed the Hilder residence to Rosario Hampsch who displayed a particular interest in the residence and, using respondent, placed an offer on the residence on July 26, 2001. The terms of the offer included, inter alia:

- A. Close of Escrow 21 days after acceptance.
- B. A representation that Ms. Hampsch tendered "a deposit to the agent submitting the offer" [respondent] in the sum of \$3,000.

While engaged in drafting the offer on behalf of his client, Ms. Hampsch, going through her checkbook, related that she did not presently possess a check. Respondent advised her that without a check he could not present the offer. Ms. Hampsch, ostensibly fearing the loss of the Hilder residence, entreated respondent to make the offer and assured him that she both possessed the resources and the ability to tender the deposit within two days. Respondent relented.

6. Respondent, following Ms. Hampsch's execution of the contract, contacted Mr. Kozlowski and advised him of the offer. Respondent did not advise Mr. Kozlowski, notwithstanding the offer's terms, that he did not in fact possess any check as an earnest money deposit. Mr. Kozlowski, upon receiving the offer, notified the Hilders and, at their residence, reviewed the offer. Ms. Hilder competently and candidly testified that she considered the deposit represented in the offer in her decision to sell the property to Ms. Hampsch and open an escrow. Ms. Hilder further competently and candidly testified that had she known that no deposit had in fact been tendered, she would not have entered into any agreement with Ms. Hampsch. In any event, with some minor modifications to the offer reflected in a counter-offer, accepted by Ms. Hampsch, the parties entered escrow. The Hilders, having now entered escrow with Ms. Hampsch, undertook efforts to close escrow on their new home acquisition.

7. Respondent, now in escrow and with a looming close of escrow deadline of August 17, 2001, undertook to obtain the deposit from Ms. Hampsch. Using various excuses (including delays in responding to his telephone calls), Ms. Hampsch put off respondent and his repeated efforts to obtain a deposit. Notwithstanding his efforts throughout a period that encompassed several weeks, respondent, reposing particular trust in his client's representations, never apprised his broker or the Hilders' listing agent, Mr. Kozlowski.

8. On August 17, 2001, the parties having executed documents and despite the lack of any funding, escrow closed.<sup>1</sup>

9. On August 20, 2001, Mr. Kozlowski, inquiring as to the funds due his clients from escrow, was first advised that no funds had transferred. His reaction, understandably

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<sup>1</sup> It is readily acknowledged that an escrow officer erred and inappropriately permitted escrow to close and the transfer of title from the Mr. and Ms. Hilder to Ms. Hampsch.

uncomprehending, inquired as to how title could pass. The title company advised him that an error had occurred. He telephoned respondent who apologetically advised him that his client had never tendered a deposit. Mr. Kozlowski dutifully contacted Ms. Hilder whose immediate (but understandable) reaction was less than restrained. Respondent's subsequent action, upon discovery, was to apologize—repeatedly—and explain the various efforts made to obtain the necessary funds and cooperation of his client. Ascribing his failure to either advise the listing agent or his broker to lack of experience, respondent, who did not profit from this transaction, repeatedly acknowledged his errors in judgment and client trust.

10. The Hilders, having now been compelled to move from their residence, were nevertheless required to continue making payments to the lender on their residence and, having borrowed \$83,000 in funds (at 8% interest) from family members sufficient to both acquire and close escrow, on their new acquisition. In addition, the Hilders were compelled to retain counsel who initiated action that resulted in a resolution whereby their former residence was acquired by the title company (with equity paid to the Hilders), attorney fees paid, and the remaining lender payments assumed.

#### *Circumstances in Mitigation*

11. Respondent, recognizing his lack of judgment in reposing too much trust in his client, readily and repeatedly acknowledges his errant conduct.<sup>2</sup>

12. Respondent continues to remain employed by Diez and Leis Real Estate Group. His broker, Ronald Leis, testified that respondent, at the time of this transaction, was a new agent<sup>3</sup> who failed to follow company guidelines. Notwithstanding such failure, he was retained in his position and has proven, in the intervening period, to be both a competent and responsible real estate salesperson.

13. Respondent, clearly duped by Ms. Hampsch, has gained significant insight into the impropriety of his errant conduct. As a consequence of his conduct, he suffered significant personal stress and vitiated self-confidence. He seeks continued licensure—even restricted licensure—to continue to provide for himself and his family in a profession he appears to otherwise enjoy and competently undertake.

#### *Circumstances in Aggravation*

14. Respondent, at various intervals, possessed the opportunity to competently and timely relate to his broker or the listing agent that he lacked any deposit. He did not do so.

15. The Hilders suffered economic loss as a result of respondent's errant conduct. Specifically, they incurred (unreimbursed) lender costs for a period of two months totaling

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<sup>2</sup> Candor and cooperation with the Department and during the instant proceeding may be mitigating. See *In the Matter of Spaith* (1996) 3 Cal. State Bar Ct. Rptr. 511.

<sup>3</sup> A new agent, the lack of any prior disciplinary history, despite respondent's counsel's claim, is not dispositive.

\$2,400) and paid interest for six months (until receipt of their equity) on their new acquisition (totaling \$3,320).

## LEGAL CONCLUSIONS

1. At issue, initially, is whether respondent has engaged in a substantial misrepresentation,<sup>4</sup> dishonest dealing, or fraud.<sup>5</sup>

It is established that respondent, on behalf of his client, completed the original offer that referenced both receipt of a deposit and its amount. In a real estate transaction, the import of a deposit is not questioned. In the context of the real estate professional, misrepresentation, dishonest dealing or fraud, involve breaches of a legal or equitable duty, trust or confidence that results in injury to one who justifiably relies thereon.<sup>6</sup> The sellers' agent and the seller relied upon respondent's representation as to deposit receipt and amount. Respondent possessed an affirmative legal or equitable duty to properly advise either the sellers, their agent, or, at the very least, his broker, of the lack of any deposit tendered with the offer. He did not do so.

Cause accordingly exists to revoke or suspend the real estate salesperson license of respondent for a substantial misrepresentation or dishonest dealing or fraud pursuant to the provisions of Business and Professions Code §§10176(a) and 10176(i), and as set forth in Findings 2 – 10.<sup>7</sup>

2. Respondent's conduct, having breached a duty owed the sellers, demonstrated negligence; moreover, his repeated failure to advise either his broker or the seller's agent constituted incompetence in the practice of his profession. Cause therefore exists to revoke or suspend the real estate salesperson license of respondent for negligence or incompetence pursuant to the provisions of Business and Professions Code §10177(g), and as set forth in Findings 2 – 10.

3. The objective of a disciplinary proceeding is to protect the public, the licensed occupation, maintain integrity, high standards, and preserve public confidence in Department licensure.<sup>8</sup> In particular, the statutes relating to Department licensure are designed to protect the public from any potential risk of harm.<sup>9</sup>

Respondent poses particular difficulty. Having newly undertaken real estate professional activities, he permitted events to overtake him and engaged in conduct involving both fraud and incompetence. Real estate licensure does not merely rest on knowledge as

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<sup>4</sup> Business and Professions Code §10176(a).

<sup>5</sup> Business and Professions Code §10176(i).

<sup>6</sup> See *Ach v. Finkelstein* (1968) 264 Cal.App.2d 667; *Small v. Smith* (1971) 16 Cal.App.3d 450; *Hogg v. Real Estate Comm'r* (1942) 54 Cal.App.2d 712.

<sup>7</sup> See also *Chodur v. Edmonds* (1985) 174 Cal.App.3d 565.

<sup>8</sup> Cf. *Marks v. Watson* (1952) 112 Cal.App.2d 196; *Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 816.

<sup>9</sup> See *Lopez v. McMahon* (1988) 205 Cal.App.3d 1510, 1516; *Arneson v. Fox* (1980) 28 Cal.3d 440.

both fraud and incompetence. Real estate licensure does not merely rest on knowledge as evinced by the passage of an examination or self-motivation but also character. To his credit, it is readily demonstrated that respondent's errant conduct arose not from a scienter predicated on moral depravity but on omission to duty, lack of attention to detail, and inappropriately reposed trust. To that end, respondent presents as one who has learned from his lapse in judgment but whose success, if any, should not be permitted to overtake his capacity for prudence. In other words, respondent, while a Department licensee, must not be permitted to supervise others, obtain a real estate broker's license, or engage in solo practice until a period sufficient in duration has elapsed wherein he can establish proficiency in practice and knowledge.

Accordingly, giving due consideration to the facts and circumstances underlying the Accusation (Legal Conclusions 1 – 2, and each of them) and the circumstances in mitigation (Findings 11 – 13) and aggravation (Findings 14 - 15), the public interest will not be harmed by the issuance of a properly conditioned real estate salesperson's license to respondent.

### ORDER

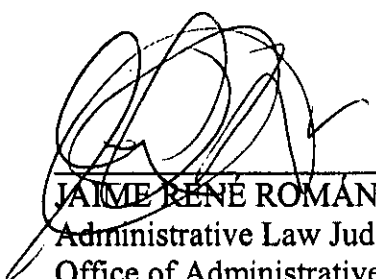
All license and licensing rights of respondent Demetre Paris Paraskevas are revoked; provided, however, upon payment of any applicable fees within 90 days from the effective date of this Decision, a restricted real estate salesperson license shall be issued to him pursuant to Section 10156.5 of the Business and Professions Code. 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 license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:
  - (a) The conviction of Respondent (including a plea of nolo contendere) of a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee; or
  - (b) The receipt of evidence 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 this restricted license.
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license, or a real estate broker license, nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until six years have elapsed from the date of issuance of the restricted license to him.
3. With the application for license, or with the application for transfer to a new employing broker, Respondent shall submit a statement signed by the

prospective employing real estate broker on a form RE 552 (Rev. 4/88)  
approved by the Department of Real Estate which shall certify as follows:

- (a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and
  - (b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.
4. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of Respondent's license until Respondent passes the examination.
  5. Respondent shall, within six (6) months of the issuance of the restricted real estate salesperson license under the provisions of Section 10153.4 of the Business and Professions Code, submit evidence satisfactory to the Commissioner of having effected restitution in the amount of \$5,720 to Michael and Coral Hilder. If respondent fails to present satisfactory evidence of successful completion of said restitution, the restricted license shall be automatically suspended effective six (6) months after issuance of respondent's restricted real estate salesperson license. Said suspension shall not be lifted until respondent has submitted the required evidence of restitution and the Commissioner has given written notice to the respondent of lifting of the suspension prior to the issuance of the restricted license.
  6. 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: 6-10-03

  
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JAIME RENÉ ROMAN  
Administrative Law Judge  
Office of Administrative Hearings

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

**FILED**  
**APR 10 2003**

DEPARTMENT OF REAL ESTATE

*In the Matter of the Accusation of*

DEMETRE PARIS PARASKEVAS,

Case No. H-3741 SAC

OAH No.

*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, 560 J STREET, SUITE 340/360, SACRAMENTO, CALIFORNIA 95814** on **TUESDAY--MAY 27, 2003**, 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:* APRIL 10, 2003

By

*Michael B. Rich*  
MICHAEL B. RICH, Counsel



MICHAEL B. RICH, Counsel  
State Bar No. 84257  
DEPARTMENT OF REAL ESTATE  
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FILED  
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DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of )	
DEMETRE PARIS PARASKEVAS, )	NO. H-3741 SAC
Respondent. )	<u>ACCUSATION</u>

The Complainant, CHARLES W. KOENIG, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against DEMETRE PARIS PARASKEVAS (hereinafter "Respondent"), is informed and alleges as follows:

I

The Complainant, CHARLES W. KOENIG, a Deputy Real Estate Commissioner of the State of California, makes this Accusation against Respondent in his official capacity.

II

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

1 III

2 At all times herein mentioned, Diez & Leis Real Estate  
3 Group, Inc., a licensed corporate real estate broker, employed  
4 Respondent in the capacity of a licensed real estate salesperson.

5 IV

6 Between on or about July 26, 2001, and August 1, 2001,  
7 on behalf of Rosario Hampsch (hereinafter "Buyer"), Respondent  
8 submitted via facsimile transmission, a RESIDENTIAL PURCHASE  
9 AGREEMENT AND JOINT ESCROW INSTRUCTIONS (AND RECEIPT FOR DEPOSIT)  
10 (hereinafter "Agreement") to Carlos Kozlowski (hereinafter  
11 "Sellers' Agent") on behalf of Coral and Mark Hilder (hereinafter  
12 "Sellers") relating to the real property located at 3836 Esperanza  
13 Drive, Sacramento, California (hereinafter "property").

14 V

15 On or about July 26, 2001, the Sellers signed the  
16 Agreement accepting the offer on the Property.

17 VI

18 The Agreement provided, in pertinent part, that "...  
19 Buyer has given a deposit to the agent submitting the offer  
20 \$3,000 made payable to Title by personal check which shall be  
21 held uncashed until acceptance and then deposited within 3  
22 business days after acceptance." However, Respondent had not  
23 received a deposit from the Buyer in any amount at the time the  
24 Agreement was presented or accepted.

25 VII

26 Respondent also failed to place a \$3,000 deposit with  
27 the subsequently designated title company or any other title or

1 escrow company within three (3) business days of acceptance of  
2 the offer in favor of the Sellers.

3 VIII

4 Respondent's representation that he was in receipt of  
5 the \$3,000 deposit was false, and was known by Respondent to be  
6 false at the time he made it.

7 IX

8 The acts and/or omissions of Respondent described  
9 above are grounds for the revocation or suspension of all  
10 Respondent's licenses under Sections 10176(a) and (i) and/or  
11 10177(g) of the Code.

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

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23 CHARLES W. KOENIG  
24 Deputy Real Estate Commissioner  
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26 Dated at Sacramento, California,  
27 this 18<sup>th</sup> day of November, 2002.