

FILED
MAY 27 1997
DEPARTMENT OF REAL ESTATE

By *Laurie A. Zier*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
LEV PIROGOVSKY,)
Respondent.)

No. H-7247 SF

ORDER DENYING REINSTATEMENT OF LICENSE

On October 31, 1995, a Decision was rendered herein
revoking the real estate broker license of Respondent, 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 November 27, 1995.

On December 16, 1996, Respondent petitioned for
reinstatement of said 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 failed to
demonstrate to my satisfaction that Respondent has undergone

1 sufficient rehabilitation to warrant the reinstatement of
2 Respondent's real estate broker license, in that an audit
3 conducted in February 1997 indicates that Respondent has been
4 guilty of the following violations:

5 A. Respondent's accounts holding trust funds were not
6 designated as trust accounts in the name of Respondent as trustee
7 (Section 2, Title 10, California Code of Regulations, hereinafter
8 referred to as "Regulations").

9 B. Respondent failed to deposit and maintain said
10 trust funds in one trust account in such manner that as of
11 December 31, 1996, there was a shortage of \$164.00 of trust funds
12 (Section 10145, Business and Professions Code).

13 C. Respondent failed to maintain separate records for
14 each beneficiary or transaction, accounting therein for all said
15 trust funds received, deposited, and disbursed and failed to
16 maintain control records (Sections 2831 and 2831.1 of the
17 Regulations).

18 D. Respondent failed to adequately maintain and
19 perform a reconciliation with records of all trust funds received
20 and disbursed at least once per month (Section 2831.2 of the
21 Regulations).

22 E. Respondent commingled with his own money or
23 property the money or property of others which was held in trust
24 by Respondent (Business and Professions Code Section 10176(e)).

25 Additional time and evidence of correction is necessary
26 to establish that Respondent will conduct Respondent's real estate
27 brokerage business in accordance with the requirements of law.



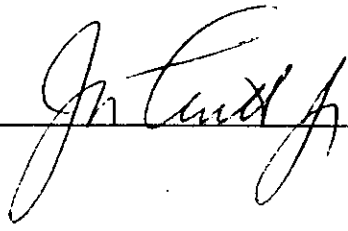
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

NOW, THEREFORE, IT IS ORDERED that Respondent's petition
for reinstatement of Respondent's real estate broker license is
denied.

This Order shall be effective at 12 o'clock noon on
June 17, 1997.

DATED: 5/21/97

JIM ANTT, JR.
Real Estate Commissioner



1 Department of Real Estate
185 Berry Street, Room 3400
2 San Francisco, CA 94107-1770

3 Telephone: (415) 904-5917

FILED
NOV 06 1995

DEPARTMENT OF REAL ESTATE

By Victoria Dillon
Victoria Dillon

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

<p>10 In the Matter of the Accusation of)</p> <p>11)</p> <p>12 LEV PIROGOVSKY,)</p> <p>13)</p> <p>14 Respondent.)</p>	<p>No. H-7247 SF</p> <p><u>STIPULATION AND AGREEMENT</u></p> <p><u>IN SETTLEMENT AND ORDER</u></p>
--	--

15 It is hereby stipulated by and between LEV PIROGOVSKY

16 (Respondent) and the Complainant, acting by and through its

17 attorneys of record, Susan M. Rossi, Counsel for the Department of

18 Real Estate, as follows for the purpose of settling and disposing

19 the Accusation filed on May 25, 1995 in this matter:

20 1. All issues which were to be contested and all

21 evidence which was to be presented by Complainant and Respondent

22 at a formal hearing on the Accusation, which hearing was to be

23 held in accordance with the provisions of the Administrative

24 Procedure Act (APA), shall instead and in place thereof be

25 submitted solely on the basis of the provisions of this

26 Stipulation and Agreement in Settlement.

27

1 2. Respondent has received, read and understands the
2 Statement to Respondent, the Discovery Provisions of the APA and
3 the Accusation filed by the Department of Real Estate in this
4 proceeding.

5 3. On June 7, 1995, Respondent filed his Notice of
6 Defense pursuant to Section 11506 of the Government Code for the
7 purpose of requesting a hearing on the allegations in the
8 Accusation. Respondent hereby freely and voluntarily withdraws
9 said Notice of Defense. Respondent acknowledges that he
10 understands that by withdrawing said Notice of Defense he will
11 thereby waive his right to require the Commissioner to prove the
12 allegations in the Accusation at a contested hearing held in
13 accordance with the provisions of the APA.

14 4. Respondent has read the Discovery Provisions of the
15 APA and is aware of his right to conduct discovery in the
16 proceeding, and by entering into this Stipulation and Agreement in
17 Settlement, freely and voluntarily waives his right to conduct
18 further discovery.

19 5. Respondent, pursuant to the limitations set forth
20 below, hereby admits that the factual allegations of the
21 Accusation are true and correct and the Real Estate Commissioner
22 shall not be required to provide further evidence of such
23 allegations. The admissions of fact made herein are made solely
24 for the purpose of establishing jurisdiction for the Commissioner
25 to take disciplinary action and are made solely in reference to
26 this proceeding and any subsequent proceeding before the
27 Commissioner and may not be used in or as a part of any other

1 civil action or criminal action now pending or which may be filed
2 against Respondent pursuant to the provisions of Section 1152 of
3 the California Evidence Code. A true copy of the Accusation is
4 attached hereto as Annex A and incorporated herein by reference.

5 6. It is understood by the parties that the Real Estate
6 Commissioner may adopt the Stipulation and Agreement in Settlement
7 as his decision in this matter thereby imposing the penalty and
8 sanctions on Respondent's real estate licenses and license rights
9 as set forth in the below "Order". In the event that the
10 Commissioner in his discretion does not adopt the Stipulation and
11 Agreement in Settlement, it shall be void and of no effect, and
12 Respondent shall retain the right to a hearing and proceeding on
13 the Accusation under all the provisions of the APA and shall not
14 be bound by any admission or waiver made herein.

15 DETERMINATION OF ISSUES

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

20 I

21 The acts and/or omissions of LEV PIROGOVSKY
22 (Respondent), as described in Paragraphs II through VI of the
23 Accusation, violate Sections 10137 and 10240 of the Code and are
24 grounds for the suspension or revocation of all of the real estate
25 licenses and license rights of Respondent under the provisions of
26 Section 10177(d) of the Code.

27 ///

ORDER

1 1. All real estate licenses and license rights of LEV
2 PIROGOVSKY (Respondent) are hereby revoked under Determination of
3 Issues I.

4 2. A restricted real estate broker license shall be issued
5 to Respondent pursuant to Section 10156.5 of the Code if
6 Respondent makes application therefor and pays to the Department
7 the appropriate fee for said license within ninety (90) days from
8 the effective date of this Decision.

9 3. The restricted license issued to Respondent shall be
10 subject to all of the provisions of Section 10156.7 and to the
11 following limitations, conditions and restrictions imposed under
12 authority of Section 10156.6 of the Code:

- 13 a. The restricted license may be suspended prior to
14 hearing by order of the Real Estate Commissioner in
15 the event of Respondent's conviction or plea of
16 nolo contendere to a crime which bears a
 significant relation to Respondent's fitness or
 capacity as a real estate licensee;
- 17 b. The restricted license may be suspended prior to
18 hearing by order of the Real Estate Commissioner on
19 evidence satisfactory to the Commissioner that
20 Respondent has violated the provisions of the
 California Real Estate Law, the Subdivided Lands
 Law, Regulations of the Real Estate Commissioner,
 and conditions attaching to the restricted license;
- 21 c. Respondent shall, within six (6) months from the
22 effective date of the restricted license, take and
23 pass the Professional Responsibility Examination
24 administered by the Department including the
25 payment of the appropriate examination fee. If
 Respondent fails to satisfy this condition, the
 Commissioner may order suspension of the restricted
 license until Respondent passes the examination;

26 ///

27 ///

1 d. Respondent shall not be eligible to apply for the
2 issuance of an unrestricted real estate license nor
3 the removal of any of the conditions, limitations
4 or restrictions attaching to the restricted license
5 until one (1) year has elapsed from the effective
6 date of the Decision.

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

22 4. Any restricted real estate license issued to Respondent
23 pursuant to this Decision shall be suspended for six (6) months
24 from the date of issuance of that restricted license; provided,
25 however, that if Respondent petitions the Department for a stay of
26 the suspension pursuant to Business and Professions Code Section
27 10175.2, thirty (30) days of said suspension shall be stayed upon
condition that:

a. Respondent pays to the Department of Real Estate a
monetary penalty in lieu of suspension at the rate
of \$100.00 for each day of the suspension for a
total monetary penalty of \$3,000.00.

b. Said payment shall be in the form of a cashier's
check or certified check made payable to the
Recovery Account of the real estate fund of the
Department. Said check must be delivered to the
Department prior to the effective date of the
Decision in this matter.

c. If Respondent fails to pay the monetary penalty in
accordance with the terms and conditions of this
stipulation, the Commissioner may, without a

hearing, order the immediate suspension of Respondent's license, in which event, Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department on the terms of this stipulation.

- d. If Respondent pays the monetary penalty and if no further cause for disciplinary action against the real estate license of Respondent occurs within one (1) year from the effective date of the Decision, the stay hereby granted shall become permanent. If the Real Estate Commissioner determines that further cause for disciplinary action against Respondent's license has occurred within one year from the effective date of the Decision, the stay of suspension hereby granted, or such portion of the stay as the Real Estate Commissioner shall deem appropriate, shall be vacated.

DATED: 10-18-95 DEPARTMENT OF REAL ESTATE
Susan M. Rossi
SUSAN M. ROSSI
Counsel for Complainant

I have read the Stipulation and Agreement in Settlement, and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act, and I willingly, intelligently, and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusation at a hearing at which I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.

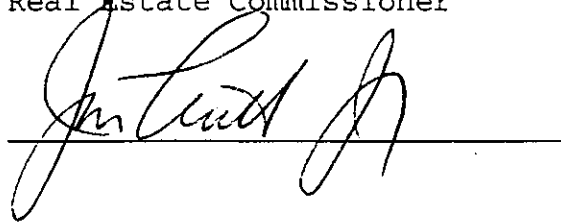
DATED: 10/12/95 By: Lev Pirogovsky
LEV PIROGOVSKY
Respondent

DECISION AND ORDER

The foregoing Stipulation and Agreement in Settlement is hereby adopted as my Decision and Order and shall become effective at 12 o'clock noon on November 27, 1995.

IT IS SO ORDERED 10/31, 1995.

JIM ANTT, JR.
Real Estate Commissioner



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

COPY

FILED
JUN 22 1995

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

LEV PIROGOVSKY,

By Victoria Dillon
Victoria Dillon

Case No. H-7247 SF

OAH No. N 9506110

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, World Savings Tower

1970 Broadway, Second Floor, Oakland, CA 94612

on Monday, November 27, 1995, ($\frac{1}{2}$ Day Hearing), at the hour of 1:30 p.m.,
or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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

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

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

DEPARTMENT OF REAL ESTATE

Dated: June 22, 1995

By Susan M. Rossi
SUSAN M. ROSSI, Counsel

COPY

Klag Inc

SUSAN M. ROSSI, Counsel
Department of Real Estate
185 Berry Street, Room 3400
San Francisco, CA 94107-1770

FILED
MAY 25 1995

Telephone: (415) 904-5917

DEPARTMENT OF REAL ESTATE

By Victoria Dillon
Victoria Dillon

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
LEV PIROGOVSKY,)
Respondent.)

NO. H-7247 SF

ACCUSATION

The Complainant, Les R. Bettencourt, a Deputy Real Estate Commissioner of the State of California for cause of Accusation against LEV PIROGOVSKY, (hereinafter "Respondent") is informed and alleges as follows:

I.

The Complainant, Les R. Bettencourt, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in his official capacity.

///

///

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

II.

Respondent is 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 broker and was so licensed at all times mentioned herein. City Bay Mortgage was a fictitious name licensed by the Department to Respondent at all times mentioned herein.

III.

At all times herein mentioned, Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker in the State of California within the meaning of Section 10131 of the Code for or in expectation of compensation.

IV.

On November 1, 1991, effective January 3, 1992, in Case No. H-6480 SF, the Real Estate Commissioner revoked outright the real estate salesperson license of MICHAIL LEONID KUSHINSKY for violation of Section 10177(j) of the Code. At all times mentioned herein MICHAIL LEONID KUSHINSKY remained unlicensed as a real estate salesperson or broker.

V.

During the time from March 18, 1993 to September 2, 1993, while in the employ of Respondent, MICHAIL LEONID KUSHINSKY negotiated 2 loans and received approximately \$4,660 in commissions in relation to those loans. One of these loans was for the borrower Yueh-hua Lee.

///

1
2 VI.

3 . At no time before the funding of the loan for Yueh-hua
4 Lee, described above in Paragraph V, did Respondent provide
5 Yueh-hua Lee with a Borrower's Loan Disclosure Statement.

6 VII.

7 By reason of the acts and/or omissions as alleged in
8 Paragraphs II through VI above, Respondent violated Sections 10137
9 and 10240 of the Code, in conjunction with Section 10177(d) of the
10 Code, and said acts and/or omissions constitute grounds for
11 disciplinary action thereunder.

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

19
20 
21 LES R. BETTENCOURT
22 Deputy Real Estate Commissioner

23 Dated at San Francisco, California,
24 this 24th day of May, 1995.
25
26
27