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DEPARTMENT OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	No. H-7260 SF
	)	
FRANCISCO CASTILLO,	)	
	)	
	)	
Respondent.	)	

ORDER GRANTING REINSTATEMENT OF LICENSE

On September 30, 1996, a Decision was rendered herein revoking the real estate salesperson license of Respondent.

On August 16, 1999, an Order was rendered herein denying Respondent's petition for reinstatement of said real estate salesperson license but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on September 23, 1999.

On February 25, 2004, an Order was rendered herein granting Respondent's petition for reinstatement of said real estate salesperson license. Respondent failed to apply for said real estate salesperson license.

1 On January 18, 2008, Respondent petitioned for  
2 reinstatement of said real estate salesperson license, and the  
3 Attorney General of the State of California has been given notice  
4 of the filing of said petition.

5 I have considered the petition of Respondent and the  
6 evidence and arguments in support thereof including Respondent's  
7 record as a restricted licensee. Respondent has demonstrated to  
8 my satisfaction that Respondent meets the requirements of law for  
9 the issuance to Respondent of an unrestricted real estate  
10 salesperson license and that it would not be against the public  
11 interest to issue said license to Respondent.

12 NOW, THEREFORE, IT IS ORDERED that Respondent's  
13 petition for reinstatement is granted and that a real estate  
14 salesperson license be issued to Respondent if Respondent  
15 satisfies the following condition within nine months from the  
16 date of this Order:

17 Submittal of a completed application and payment of the  
18 fee for a real estate salesperson license.

19 This Order shall become effective immediately.

20 DATED: 2/3/08

21 JEFF DAVIS  
22 Real Estate Commissioner  
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JAN 31 2006

DEPARTMENT OF REAL ESTATE

By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE  
OF THE STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of ) No. H-7260 SF  
 )  
WILLIAM ERNESTO MIRANDA, )  
 )  
Respondent. )  
 )

ORDER DENYING REINSTATEMENT OF LICENSE

On September 30, 1996, a Decision was rendered herein revoking the real estate broker license of Respondent effective October 24, 1996, but granting Respondent the right to the issuance of a real estate salesperson license, subject to specified conditions. No restricted salesperson license was ever issued to Respondent.

On May 9, 2003, Respondent petitioned for reinstatement of said real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

The burden of proving rehabilitation rests with the petitioner (Feinstein v. State Bar (1952) 39 Cal. 2d 541). A

1 petitioner is required to show greater proof of honesty and  
2 integrity than an applicant for first time licensure.

3 The proof must be sufficient to overcome the prior  
4 adverse judgment on the applicant's character (Tardiff v. State  
5 Bar (1980) 27 Cal. 3d 395).

6 Respondent's petition is attended by the following  
7 facts and circumstances:

8 1. In July, 1992, Respondent solicited Osmin Martinez  
9 to make a \$10,000 loan to be secured by a lien on property at 405  
10 Precita Avenue, San Francisco. Respondent represented that the  
11 Cesar and Angela Delgado were the owners of the residence, were  
12 the borrowers on the loan, would use the loan to upgrade the  
13 property, and the loan was secured by substantial equity. In  
14 fact, as Miranda knew, the Delgados had conveyed the property to  
15 Francisco Castillo (Respondent's employee), the money was to be  
16 used by Castillo to make up mortgage arrears, there was little  
17 equity in the property, and Respondent had notarized the  
18 Delgados' signature on the mortgage in their absence.

19 2. Consequently, on April 13, 1995, in the United  
20 States Bankruptcy Court, Northern District of California, Osmin  
21 Martinez obtained a \$6,093.33 non-dischargeable judgment against  
22 Respondent based on mishandling of trust funds and fraud.

23 3. In another transaction, in March, 1994, Respondent  
24 commingled trust funds with his own funds.

25 4. Effective October 24, 1996 in Case No. H-7260 SF  
26 before the Department of Real Estate, Respondent's license as a  
27 real estate broker was revoked pursuant to the provisions of

1 Sections 10176(a), 10176(i), 10177(d), and 10177(j) of the  
2 California Business and Professions Code and Section 2830 of  
3 Chapter 6, Title 10, California Code of Regulations based on the  
4 transactions described above, but Respondent was granted the  
5 right to the issuance of a restricted real estate salesperson  
6 license, but only if, prior to the issuance of the license,  
7 Respondent provided the Commissioner proof of full satisfaction  
8 of the Osmin Martinez judgment. The restricted salesperson  
9 license was never issued to Respondent.

10           5. On September 24, 1997, the sum of \$6,000.00 was  
11 paid from the Recovery Account of the Real Estate Fund in case  
12 No. R-3039 and Respondent's licenses and license rights were  
13 indefinitely suspended.

14           6. On March 10, 2005, Respondent filed a "Petition  
15 Application Supplement." In that form he disclosed the  
16 California Secretary of State had denied his application to renew  
17 his notary license.

18           7. As of March 17, 2005, Respondent owed the Recovery  
19 Account of the Real Estate Fund in Case No. R-3039 \$10,489.32  
20 including principal and accrued interest.

21           I have considered Respondent's petition and the  
22 evidence and arguments in support thereof. Respondent has failed  
23 to demonstrate to my satisfaction that Respondent has undergone  
24 sufficient rehabilitation to warrant the reinstatement of  
25 Respondent's real estate broker license.

26           The Department has developed criteria in Section 2911  
27 of Title 10, California Code of Regulations ("Regulations") to

1 assist in evaluating the rehabilitation of an applicant for  
2 reinstatement of a license. Among the criteria relevant in this  
3 proceeding are:

4 Section 2911(b). Restitution to any person who has  
5 suffered monetary losses through "substantially related" acts or  
6 omissions of the applicant. The revocation of Respondent's  
7 license resulted in part because from Respondent obtained a loan  
8 by Osmin Martinez to Francisco Castillo by means of  
9 misrepresentation, fraud and dishonest dealing. The Decision  
10 revoking Respondent's license made satisfaction of Osmin  
11 Martinez' judgment against Respondent a condition precedent to  
12 issuance of a restricted license to Respondent, but Respondent  
13 failed to satisfy the judgment. Respondent's license rights were  
14 suspended indefinitely until Respondent repays the Recovery  
15 Account of the Real Estate Fund the amount it paid on the Osmin  
16 Martinez judgment plus accrued interest. Respondent has failed  
17 to repay the Recovery Account, and now owes it more than \$10,000.  
18 Consequently, Respondent has failed to make restitution to  
19 persons who have suffered monetary losses as a result of  
20 Respondent's "substantially related" acts.

21 Section 2911(j). Discharge of, or bona fide efforts  
22 toward discharging, adjudicated debts or monetary obligations to  
23 others. As of March 17, 2005, Respondent owed the Recovery  
24 Account of the Real Estate Fund in Case No. R-3039 \$10,489.32  
25 including principal and accrued interest.

26 Section 2911(k) Correction of business practices  
27 resulting in injury to others or with the potential to cause such

1 injury. Respondent has not engaged as a broker in the operation  
2 of a real estate brokerage business since the Decision in this  
3 matter. Therefore, Respondent has not established that he has  
4 complied with Section 2911 (k), Title 10, California Code of  
5 Regulations.

6 Consequently, I am not satisfied that Respondent is  
7 sufficiently rehabilitated to justify reinstatement of  
8 Respondent's real estate broker license. I am satisfied,  
9 however, that it will not be against the public interest to issue  
10 a restricted real estate salesperson license to Respondent,  
11 provided that, prior to the issuance thereof, Respondent provides  
12 proof satisfactory to the Real Estate Commissioner that  
13 Respondent has fully satisfies the amount owed the Recovery  
14 Account in Case No. R-3039.

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

18 A restricted real estate salesperson license shall be  
19 issued to Respondent pursuant to Section 10156.5 of the Business  
20 and Professions Code, if Respondent satisfies the following  
21 conditions prior to and as a condition of obtaining a restricted  
22 real estate salesperson license within nine (9) months from the  
23 date of this Order:

24 1. Respondent shall take and pass the real estate  
25 salesperson license examination.

26 2. Submittal of a completed application and payment of  
27 the fee for a real estate salesperson license.

1           3.    Submittal of proof proof satisfactory to the Real  
2 Estate Commissioner that Respondent has fully satisfied the  
3 amount owed the Recovery Account of the Real Estate Fund in Case  
4 No. R-3039.

5           The restricted license issued to Respondent shall be  
6 subject to all of the provisions of Section 10156.7 of the  
7 Business and Professions Code and to the following limitations,  
8 conditions and restrictions imposed under authority of Section  
9 10156.6 of that Code:

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

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

21           C.   Respondent shall not be eligible to apply for the  
22 issuance of an unrestricted real estate license or the removal of  
23 any of the limitations, conditions or restrictions of a  
24 restricted license until two (2) years have elapsed from the date  
25 of the issuance of the restricted license to Respondent.

26           D.   Respondent shall submit with any application for  
27 license under an employing broker, or any application for



1 transfer to a new employing broker, a statement signed by the  
2 prospective employing real estate broker on a form approved by  
3 the Department of Real Estate which shall certify:

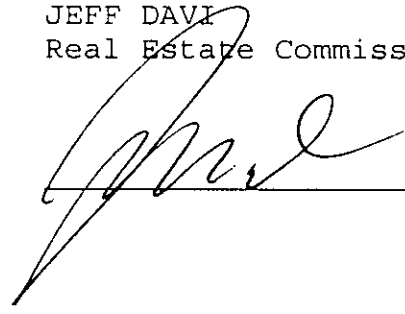
4 1. That the employing broker has read the Decision of  
5 the Commissioner which granted the right to a restricted license;  
6 and

7 2. That the employing broker will exercise close  
8 supervision over the performance by the restricted licensee  
9 relating to activities for which a real estate license is  
10 required.

11 This Order shall become effective at 12 o'clock  
12 noon on February 20, 2006.

13 DATED: 1-14-06, 2006.

14 JEFF DAVIS  
15 Real Estate Commissioner

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FILED  
MAR - 1 2004

DEPARTMENT OF REAL ESTATE  
By Kathleen Conners

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of     )  
  )  
                    FRANCISCO CASTILLO,         )     NO. H-7260 SF  
  )  
  )  
  Respondent.     )  
  )

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ORDER GRANTING REINSTATEMENT OF LICENSE

On September 30, 1996, a Decision was rendered herein  
revoking the real estate salesperson license of Respondent.

On September 25, 1998, Respondent petitioned for  
reinstatement of said license. On August 16, 1999, an Order was  
rendered herein denying reinstatement of Respondent's real estate  
salesperson license, but granting Respondent the right to the  
issuance of a restricted real estate salesperson license. A  
restricted real estate salesperson license was issued to  
Respondent on September 23, 1999, and Respondent has operated as  
a restricted licensee without cause for disciplinary action  
against Respondent.

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On January 24, 2003, Respondent petitioned for reinstatement of said real estate salesperson license, and the Attorney General of the State of California has been given notice of the filing of said petition.

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

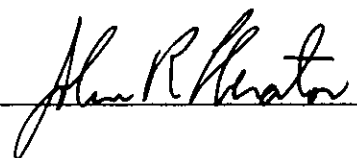
NOW, THEREFORE, IT IS ORDERED that Respondent's petition for reinstatement is granted and that a real estate salesperson license be issued to Respondent, if Respondent satisfies the following condition within nine months from the date of this Order:

- 1. Submittal of a completed application and payment of the fee for a real estate salesperson license.

This Order shall be effective immediately.

DATED: February 25, 2004.

JOHN R. LIBERATOR  
Acting Real Estate Commissioner

  
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**FILED**  
AUG 27 1999

DEPARTMENT OF REAL ESTATE

By Shelly Ely

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )	
FRANCISCO CASTILLO, )	No. H-7260 SF
Respondent. )	

ORDER DENYING REINSTATEMENT OF LICENSE

On September 30, 1996, a Decision was rendered herein revoking the real estate salesperson license of Respondent.

On September 25, 1998, Respondent petitioned for reinstatement of said real estate salesperson license, and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered the petition of Respondent and the evidence and arguments in support. Respondent has failed to demonstrate to my satisfaction that Respondent has undergone sufficient rehabilitation to warrant the reinstatement of Respondent's real estate salesperson license, in that Respondent has no experience acting in a fiduciary capacity since the

1 effective date of the Decision in this matter. Consequently,  
2 Respondent is not able to present any evidence of correction of  
3 practices which led to the disciplinary action in this matter.  
4 Respondent, therefore, has not demonstrated compliance with  
5 Section 2911(j), Title 10, California Code of Regulations.  
6 Further, the acts of Respondent which led to the disciplinary  
7 action in this matter are relatively recent and involve  
8 substantial dishonesty. Additional time in a supervised setting  
9 is required to establish that Respondent is rehabilitated.

10 I am satisfied, however, that it will not be against  
11 the public interest to issue a restricted real estate salesperson  
12 license to Respondent.

13 NOW, THEREFORE, IT IS ORDERED that Respondent's  
14 petition for reinstatement of his real estate salesperson license  
15 is denied.

16 A restricted real estate salesperson license shall be  
17 issued to Respondent pursuant to Section 10156.5 of the Business  
18 and Professions Code, if Respondent satisfies the following  
19 conditions within nine (9) months from the date of this Order:

20 1. Submittal of a completed application and payment of  
21 the fee for a restricted real estate salesperson license.

22 2. Submittal of evidence of having, since the most  
23 recent issuance of an original or renewal real estate license,  
24 taken and successfully completed the continuing education  
25 requirements of Article 2.5 of Chapter 3 of the Real Estate Law  
26 for renewal of a real estate license.

27 ///

1           The restricted license issued to Respondent shall be  
2           subject to all of the provisions of Section 10156.7 of the  
3           Business and Professions Code and to the following limitations,  
4           conditions and restrictions imposed under authority of Section  
5           10156.6 of that Code.

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

11          B.   The restricted license issued to Respondent may be  
12          suspended prior to hearing by Order of the Real Estate  
13          Commissioner on evidence satisfactory to the Commissioner that  
14          Respondent has violated provisions of the California Real Estate  
15          Law; the Subdivided Lands Law, Regulations of the Real Estate  
16          Commissioner or conditions attaching to the restricted license.

17          C.   Respondent shall submit with any application for  
18          license under an employing broker, or any application for  
19          transfer to a new employing broker, a statement signed by the  
20          prospective employing broker on a form approved by the Department  
21          of Real Estate which shall certify:

- 22               (1)   That the employing broker has read the Decision of  
23               the Commissioner which granted the right to a  
24               restricted license; and
- 25               (2)   That the employing broker will exercise close  
26               supervision over the performance by the restricted

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licensee relating to activities for which a real estate license is required.

D. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the limitations, conditions or restrictions of a restricted license until one (1) year has elapsed from the date of the issuance of the restricted license to respondent.

This Order shall be effective at 12 o'clock noon on September 16, 1999.

DATED: August 16, 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 )  
Against: )  
 ) No. H-7260 SF  
WILLIAM ERNESTO MIRANDA and )  
FRANCISCO CASTILLO, ) OAH NO. N 9509007  
 )  
Respondents. )  
\_\_\_\_\_ )

PROPOSED DECISION

This matter was heard before Robert Walker, Administrative Law Judge, Office of Administrative Hearings, State of California, on July 12 and 31, 1996, at Oakland, California.

James L. Beaver, Counsel, represented the Department of Real Estate ("Department").

Milton Katz, Attorney at Law, represented one of the respondents, William Ernesto Miranda ("Respondent Miranda"). Respondent Francisco Castillo ("Respondent Castillo") did not appear.

FINDINGS OF FACT

1. Les R. Bettencourt filed the accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California.

2. With regard to Respondent Castillo, on proof of compliance with Government Code section 11505 and 11509, this matter proceeded as a default pursuant to Government Code section 11520.

3. Respondent Miranda is licensed as a real estate broker, and Respondent Castillo is licensed as a real estate salesperson. Both have license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code<sup>1</sup>.

4. This case concerns two real estate transactions, one having to do with property on Precita Avenue in San Francisco and the other having to do with property on El Cortez Avenue in South San Francisco. Both Respondent Miranda and Respondent

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<sup>1</sup>Unless otherwise specified, all references to the Code are to the Business and Professions Code.

Castillo were involved in the matter having to do with the Precita Avenue property. In 1992 they arranged and documented a loan secured by a second deed of trust on that property. Only Respondent Miranda was involved in the matter having to do with the El Cortez Avenue property. In 1994 he represented the buyers, Carlos Martinez and Maria Aguayo, in their purchase of that property.

5. In 1992 Respondent Castillo's sister, a Mrs. Delgado, and her husband owned the Precita Avenue property. The Delgados had a bank loan that was secured by a deed of trust against the property. Because they were experiencing financial difficulties they entered into an agreement with Respondent Castillo. He agreed to make the payments on the loan and to pay them a certain sum in the future. They conveyed the title to him. Because he would not have qualified for a loan and because he anticipated that the bank would exercise the due on sale clause and not allow him to assume the existing loan, Respondent Castillo did not record the deed. That is, he allowed the record title to continue to indicate that the Delgados owned the property.

6. Within a few months Respondent Castillo, also, experienced financial difficulties and fell behind in the loan payments. He worked as an insurance salesman for Respondent Miranda, who also was a real estate broker and notary public. At that time Respondent Castillo had an insurance salesperson license but not a license to sell real estate. Respondent Castillo asked Respondent Miranda whether he knew of anyone who might lend him some money. Respondent Miranda called Osmin Martinez, the cousin of Respondent Miranda's former wife.

7. On a few occasions Respondent Miranda had borrowed money from Osmin Martinez and on a few occasions had arranged for him to lend to others. Osmin Martinez trusted Respondent Miranda and relied on his advice.

8. Respondent Miranda knew about the conveyance from the Delgados to Respondent Castillo. Nevertheless, when he called Osmin Martinez and suggested that he make a loan of \$10,000 secured by a second deed of trust on the Precita Avenue property, Respondent Miranda did not tell him about the conveyance. Rather, Respondent Miranda told him, falsely, that the loan would be to Mr. and Mrs. Delgado. Respondent Miranda also misrepresented the use to which the borrower expected to put the proceeds of the loan. Instead of telling him the truth -- that Respondent Castillo would use the proceeds to cure a default on the loan secured by the first deed of trust -- Respondent Miranda represented that Mr. and Mrs. Delgado would be using the proceeds to take a vacation and to upgrade the kitchen in the Precita Avenue property. He also represented that a loan secured by a second deed of trust on the Precita Avenue property would be well secured because the owners had a very large equity in the property.

9. Osmin Martinez took a few days to think about the proposed loan. During that time both of the respondents called him to ask whether he had decided to go forward with it. Finally, Osmin Martinez agreed to make the loan, and on July 23, 1992, he and his wife went to Respondent Miranda's office. Both of the respondents were there. One of the respondents had prepared a promissory note and a deed of trust. The purported makers of the note and the purported trustors on the deed of trust were the Delgados. In fact, Respondent Castillo had forged their signatures on both documents, and Respondent Miranda had notarized the signatures on the deed of trust. Respondent Miranda believed that Respondent Castillo had obtained the signatures from the Delgados and that they were authentic. Respondent Miranda told Osmin Martinez that, because Respondent Castillo was Mrs. Delgado's brother and associated with the Delgados, he should make the check for the loan proceeds payable to Respondent Castillo, and Osmin Martinez did that.

10. A few months after the transaction was concluded, Osmin Martinez noticed that the date on the note contained only a day and a year. He went to see Respondent Miranda about that, and Respondent Miranda wrote in, "July".

11. The check for the loan proceeds had been for a discounted amount so that the borrower would be prepaying interest for two months. Other than that prepaid interest, no payments were ever made on the loan.

12. When he received no payments on the loan, Osmin Martinez called Respondent Miranda, who promised to talk with Mr. Delgado about the payments.

13. The bank that held the first deed of trust obtained a sale of the property pursuant to its deed of trust, and Osmin Martinez lost his security.

14. In 1994 Respondent Miranda filed a proceeding in bankruptcy, and Osmin Martinez filed an adversary proceeding in which he objected to Respondent Miranda's being discharged from liability on any obligation growing out of the loan. Osmin Martinez alleged that Respondent Miranda was liable to him and that that liability was based on fraud. The bankruptcy court entered judgment in favor of Osmin Martinez and against Respondent Miranda in the amount of \$6,093.33 and held that that judgment was not dischargeable. Respondent Miranda has not paid that judgment.

15. Two of the bankruptcy court's findings of fact are difficult to reconcile. Osmin Martinez pled two code sections in support of his claim that Respondent Miranda's liability to him should be held to be non dischargeable. He pled 11 U.S.C. section 523(a)(2)(A) and section 523(a)(4). Section 523(a)(2)(A) provides for non dischargeability of debts incurred through fraud. Section 523(a)(4) provides for non dischargeability of debts incurred through either fraud or defalcation if the debt

was incurred while the debtor was acting in a fiduciary capacity. The court found that Osmin Martinez had failed to prove that Respondent Miranda had acted with intent to deceive and that, therefore, section 523(a)(2)(A), which depends on a proof of fraud, would not apply. With regard to section 523(a)(4) the court found that Respondent Miranda had been acting in a fiduciary capacity and that he was responsible for a defalcation; therefore, the debt was not dischargeable. However, in a finding that appears to be irreconcilable with its finding concerning section 523(a)(2)(A), the court found that the fraud provision of section 523(a)(4) also was sufficient to cause the debt to be non dischargeable, because Respondent Martinez was responsible for Respondent Castillo's conduct, which did involve an intent to deceive.

16. As noted above, the El Cortez Avenue transaction involved only Respondent Miranda and concerned a 1994 sale in which he represented the buyers, Carlos Martinez and Maria Aguayo. They gave Respondent Miranda \$10,000 which was to be used as part of their down payment. However, they authorized Respondent Miranda to make personal use of their money until it was needed to close the escrow, and he deposited it in his personal account. Respondent Miranda believed that, because of their authorization, he had a right to commingle or use their funds. While the funds were in his account one of his creditors levied on the account and obtained the funds. It was at that point that Respondent Miranda filed a petition in bankruptcy. In spite of the loss of those funds, Carlos Martinez and Maria Aguayo were able to complete their purchase of the property. However, they were able to do that only because they were able to borrow the necessary funds from a third party. Subsequently, Respondent Miranda reimbursed them for their loss. Thus, they were made whole.

17. In connection with its investigation concerning both of the transactions, the Department notified Respondent Miranda that he was required to produce certain books, accounts, and records. He failed to produce them. However, at that time the records in question, to the extent they existed, were not in Respondent Miranda's possession. He had turned them over to his bankruptcy attorney for her review before they were turned over to the trustee in bankruptcy. Respondent Miranda did try to reach his bankruptcy attorney to arrange for the Department's representative to examine the files; however, his attorney did not return his repeated calls.

18. Respondent Miranda denies that he knew anything about or had anything to do with negotiating or documenting the loan from Osmin Martinez -- other than notarizing the signatures on the deed of trust. Osmin Martinez's testimony regarding those events was more credible than Respondent Miranda's and more consistent with the undisputed facts. Apparently it is because he denies any wrongdoing -- other than notarizing the signatures -- that Respondent Miranda presented no evidence of rehabilitation and no evidence in mitigation regarding the Precita Avenue

transaction. He did acknowledge that it was wrong of him to notarize the signatures without the signatories being present, but, he points out, he believed Respondent Castillo when he said that he had obtained the signatures from the Delgados.

19. There are no other known complaints against Respondent Miranda.

#### DETERMINATION OF ISSUES

1. The issues presented concerning Respondent Miranda that grow out of the Precita Avenue transaction are as follows:

- a. Did Respondent Miranda, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of Chapter 3 of Part 1 of Division 4 of the Code, make a substantial misrepresentation?
- b. Did Respondent Miranda, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of Chapter 3 of Part 1 of Division 4 of the Code, engage in conduct that constitutes fraud or dishonest dealing?
- c. Did Respondent Miranda engage in conduct that constitutes fraud or dishonest dealing?
- d. Was a final judgment obtained against Respondent Miranda on grounds of fraud, misrepresentation, or deceit with reference to a transaction for which a license is required under Division 4 of the Code?

2. The issue presented concerning Respondent Castillo is whether, in the Precita Avenue transaction, he engaged in conduct that constitutes fraud or dishonest dealing.

3. The issues presented concerning Respondent Miranda that grow out of the El Cortez Avenue transaction are as follows:

- a. Did Respondent Miranda willfully disregard or violate the real estate law or the regulations of the commissioner for the administration and enforcement of the real estate law by failing to handle trust funds according to the requirements of section 10145 of the Code or section 2830 of Title 10 of the California Code of Regulations ("Regulations")?
- b. Did Respondent Miranda, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of Chapter 3 of Part 1 of Division 4 of the

Code, engage in conduct that constitutes fraud or dishonest dealing?

4. The Department also presents an issue concerning Respondent Miranda that has to do with either or both of the transactions. Did he willfully disregard or violate the real estate law by failing to produce records in violation of section 10148 of the Code?

5. Respondent Miranda raised an issue of collateral estoppel. He contends that, because of the decision of the bankruptcy court, the Department is estopped from proving that he acted with intent to deceive Osmin Martinez.

6. By reason of the matters set forth in Findings 5, 6, 8, and 9 it is determined that Respondent Miranda, while a real estate licensee, in performing acts within the scope of Chapter 3 of Part 1 of Division 4 of the Code, made substantial misrepresentations to Osmin Martinez. Therefore, cause to suspend or revoke his license exists pursuant to Code section 10176(a).

7. By reason of the matters set forth in Findings 5, 6, 8, and 9 it is determined that Respondent Miranda, while a real estate licensee, in performing acts within the scope of Chapter 3 of Part 1 of Division 4 of the Code, engaged in conduct that constitutes fraud or dishonest dealing. Therefore, cause to suspend or revoke his license exists pursuant to Code section 10176(i).

8. By reason of the matters set forth in Findings 5, 6, 8, and 9 it is determined that Respondent Miranda engaged in conduct that constitutes fraud or dishonest dealing. Therefore, cause to suspend or revoke his license exists pursuant to Code section 10177(j).

9. By reason of the matters set forth in Findings 14 and 15, it is determined that the Department failed to prove that the judgment that was entered against Respondent Miranda was obtained on the grounds of fraud, misrepresentation, or deceit as required in order to support a suspension or revocation pursuant to Code section 10177.5. As noted in Finding 15, it is true that the bankruptcy court found that the fraud provision of 11 U.S.C. section 523(a)(4) was sufficient to cause Respondent Miranda's debt to Osmin Martinez to be non dischargeable because Respondent Martinez was responsible for Respondent Castillo's conduct, which did involve an intent to deceive. Nevertheless, the court also expressly found that there had been a failure to prove an intent to deceive on the part of Respondent Miranda.

10. By reason of the matters set forth in Findings 5, 6, 8, and 9, it is determined that Respondent Castillo engaged in conduct that constitutes fraud or dishonest dealing. Therefore, cause to suspend or revoke his license exists pursuant to Code section 10177(j).

11. Counsel for the Department, making a concession, took the position that the requirements of the Code and the Regulations concerning the handling of client funds are for the benefit of the client and can be waived. By reason of the matters set forth in Finding 16, it is determined that Carlos Martinez and Maria Aguayo intended to waive their right to have Respondent Miranda handle their funds according to the requirements of section 10145 of the Code and section 2830 of Title 10 of the California Code of Regulations. However, it is unnecessary to determine whether they can waive that right, because those provisions are for the benefit of sellers as well as buyers, and there was no evidence that the sellers waived their right to have the funds handled without commingling. One of the purposes of section 10145 of the Code and section 2830 of Title 10 of the Regulations is to prevent precisely what happened here. When a broker accepts funds from a buyer in connection with a real estate transaction subject to Part 1 of Division 4 of the Code, the seller as well as the buyer, has a right to have those funds held in an account that is not subject to levy for the broker's personal debts. Here, if it were not for the fact that the Delgados were able to borrow additional funds, the seller would have lost the sale -- all because of Respondent Miranda's commingling. It is determined that Respondent Miranda commingled funds in violation of the requirements of section 10145 of the Code and section 2830 of Title 10 of the California Code of Regulations. Therefore, cause to suspend or revoke his license exists pursuant to section 10177(d) of the Code.

12. By reason of the matters set forth in Finding 16, as discussed above, it is determined that Respondent Miranda commingled funds in violation of the requirements of section 10145 of the Code and section 2830 of Title 10 of the California Code of Regulations. Therefore, cause to suspend or revoke his license exists pursuant to section 10176(i) of the Code.

13. By reason of the matters set forth in Finding 17, it is determined that Respondent's failure to produce records as required by section 10148 of the Code was not willful. Therefore, with regard to that matter, it is determined that there are no grounds for disciplining Respondent Miranda's license pursuant to section 10177(d) of the Code.

14. The bankruptcy court's finding that Osmin Martinez failed to prove that Respondent acted with intent to deceive and the court's ruling that, therefore, 11 U.S.C. section 523(a)(2)(A) did not apply do not create a collateral estoppel as against the Department. While it is true that Osmin Martinez litigated that issue, his interests were not similar to the interests of the Department, and the Department was not a party to that litigation.

15. Respondent Miranda's participation in the Precita Avenue transaction raises serious and disturbing questions concerning his commitment to high professional standards. However, he has no other known violations, and reimbursing the

buyers in the El Cortez transaction, in spite of his own bankruptcy, suggests that he is a person of principle. Also, it is significant that four years have passed since the Precita Avenue transaction. Regarding the commingling of funds in the El Cortez transaction, Respondent Miranda's failure to understand the law is no excuse; however, the fact that he honestly believed that he had a right to use the funds is a significant factor in mitigation. Further, as noted above, he did reimburse the buyers. If appropriate safeguards, such as requiring him to pass the professional responsibility examination, are built in, it would not be contrary to the public interest to make it possible for Respondent Miranda to hold a restricted salesperson license -- not a broker license but a restricted salesperson license.

ORDER

1. By reason of Determination of Issues number 10, all licenses and licensing rights of Respondent Francisco Castillo under the Real Estate Law are revoked.

2. By reason of Determination of Issues numbers 6, 7, 8, 11, and 12, all licenses and licensing rights of Respondent William Ernesto Miranda under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Code if he 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 shall be subject to all of the provisions of Section 10156.7 of the Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of the Code:

- a. The restricted license issued to Respondent may be suspended prior to hearing by order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime that is substantially related to Respondent's fitness or capacity as a real estate licensee.
- b. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner 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 the restricted license.



c. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or for the removal of any of the conditions, limitations or restrictions of a restricted license until three years have elapsed from the effective date of this decision.

d. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate, which shall certify:

(a) That the employing broker has read the decision of the Commissioner that granted the right to a restricted license; and

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

e. 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.


f. Respondent shall, within six months from the effective date of this decision, take and pass the Professional Responsibility Examination administered by the Department and shall

pay 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.

- g. Respondent shall, prior to the issuance of the restricted license and as a condition of the issuance of said restricted license, submit proof satisfactory to the Commissioner of full satisfaction of the judgment of April 13, 1995, of the United States Bankruptcy Court in case number 94-32192 TDM in favor of Osmin Martinez.
- h. Any restricted real estate license issued to Respondent pursuant to this decision shall be suspended for two years from the date of issuance of said restricted license provided, however, that the suspension shall be stayed on the following terms and conditions: Pursuant to section 10148 of the Code, Respondent shall pay the Commissioner's reasonable cost for an audit to determine if Respondent is commingling any funds or is committing any other trust fund violation. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel costs, including mileage, time to and from the auditor's place of work and per diem. Respondent shall pay such cost within 45 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may, in his discretion, vacate and set aside the stay order, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the Respondent and the Commissioner. The vacation and the set aside of the stay shall remain in effect until payment is made in full, or until Respondent enters into an agreement satisfac-

tory to the Commissioner to provide for payment. Should no order vacating the stay be issued the stay imposed herein shall become permanent.

DATED: August 30, 1976

  
ROBERT WALKER  
Administrative Law Judge

FILED  
JUN 19 1996

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE  
By *Laurie A. Zain*

In the Matter of the Accusation of

WILLIAM ERNESTO MIRANDA  
AND FRANCISCO CASTILLO,

Case No. H-7260 SF  
OAH No. N-9509007

Respondent

SECOND 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, World Savings Tower, 1970 Broadway,  
Second Floor, Oakland, CA 94612

on Friday, July 12th, 1996, at the hour of 9:00 AM,  
or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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

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

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

Dated: June 19, 1996

DEPARTMENT OF REAL ESTATE  
By *James L. Beaver*  
JAMES L. BEAVER Counsel

1 JAMES L. BEAVER, Counsel  
2 Department of Real Estate  
2201 Broadway, P. O. Box 187000  
3 Sacramento, CA 95818-7000  
4 Telephone: (916) 227-0789  
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FILED  
MAY 23 1996  
DEPARTMENT OF REAL ESTATE  
By Laurie A. Zyan

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of ) NO. H-7260 SF  
12 )  
12 WILLIAM ERNESTO MIRANDA and ) OAH NO. N-9509007  
13 FRANCISCO CASTILLO, )  
14 Respondents. ) SECOND AMENDED  
 ) ACCUSATION

15 The Complainant, Les R. Bettencourt, a Deputy Real  
16 Estate Commissioner of the State of California, for cause of  
17 Accusation against WILLIAM ERNESTO MIRANDA, also known as Ernesto  
18 William Miranda (hereinafter "Respondent MIRANDA"), and FRANCISCO  
19 CASTILLO (hereinafter "Respondent CASTILLO"), is informed and  
20 alleges as follows:

21 FIRST CAUSE OF ACCUSATION

22 I

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

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II

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

III

Respondent CASTILLO is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code, as a real estate salesperson subject to Section 10153.4 of the Code.

IV

In or about July, 1992, Respondents, for or in expectation of a compensation, solicited Osmin Martinez to make a loan in the amount of \$10,000.00 to be secured by a lien on real property located at 405 Precita Avenue, San Francisco, California (hereinafter "the Precito property"). Respondents represented to Osmin Martinez that the loan would be made to Cesar and Angela Delgado (hereinafter "the Delgados"), as borrowers and owners of the Precita property. Respondents also represented to Osmin Martinez that the Delgados would give a deed of trust on the Precito property to Osmin Martinez to secure the loan.

V

In reliance upon the representations described above, Osmin Martinez agreed to make the \$10,000.00 loan.

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VI

On or about July 23, 1992, Respondents gave Martinez a note and deed of trust and represented to Martinez that the note and deed of trust had been signed by the Delgados.

VII

The representations of Respondents described above were false or misleading and were known by Respondents to be false or misleading when made or were made by Respondents with no reasonable grounds for believing said representations to be true.

In truth and in fact, Respondents had forged the signatures of the Delgados on the note and deed of trust without the knowledge or approval of the Delgados.

VIII

In reliance on the representations described in Paragraphs IV and VI above, Osmin Martinez delivered to Respondents the sum of \$9,150.00 as and for the proceeds of the purported loan to the Delgados. Respondents converted the \$9,150.00 proceeds of the purported loan to the Delgados to their own purposes or uses or to purposes or uses not authorized by the rightful owner of those funds.

IX

The acts and/or omissions of Respondent MIRANDA alleged above constitute cause for the suspension or revocation of all licenses and license rights of Respondent MIRANDA under the Real Estate Law pursuant to the provisions of Sections 10176(a) and 10176(i), or in the alternative 10177(j) of the Code.

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X

The acts and/or omissions of Respondent CASTILLO alleged above constitute cause for the suspension or revocation of all licenses and license rights of Respondent CASTILLO under the Real Estate Law pursuant to the provisions of Section 10177(j) of the Code.

SECOND CAUSE OF ACCUSATION

XI

There is hereby incorporated in this second, separate and distinct Cause of Accusation, all of the allegations contained in Paragraphs I and II of the First Cause of Accusation with the same force and effect as if herein fully set forth.

XII

On or about April 13, 1995, in the United States Bankruptcy Court for the Northern District of California, San Francisco Division, in Case No. 94-32192 TDM, a final judgment was entered against Respondent MIRANDA based on grounds of fraud, misrepresentation, or deceit with reference to a transaction for which a real estate license is required.

XIII

The facts set forth in Paragraph XII above, constitute cause under Section 10177.5 of the Code for the suspension or revocation of all licenses and license rights of Respondent MIRANDA under the Real Estate Law.

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THIRD CAUSE OF ACCUSATION

XIV

There is hereby incorporated in this third, separate and distinct Cause of Accusation, all of the allegations contain in Paragraphs I and II of the First Cause of Accusation with the same force and effect as if herein fully set forth.

XV

In or about June of 1995, in the course of the investigation of matters alleged in all of the Causes of Accusation of this Accusation, and in the course of an audit of Respondent MIRANDA by the California Department of Real Estate (hereinafter "the Department"), the Department gave notice to Respondent MIRANDA to produce books, accounts and records in connection with his real estate transactions for examination, inspection and audit.

XVI

Respondent MIRANDA failed to produce any books, accounts, or records requested by the Department as required by Section 10148 of the Code.

XVII

The acts and/or omissions of Respondent MIRANDA described in Paragraphs XIV through XVI, inclusive, above, violated Section 10148 of the Code and are cause for the suspension or revocation of all licenses and license rights of Respondent MIRANDA under the Real Estate Law pursuant to the provisions of Section 10177(d) of the Code.

///

1 FOURTH CAUSE OF ACCUSATION

2 XVIII

3 There is hereby incorporated in this fourth, separate  
4 and distinct Cause of Accusation, all of the allegations contain  
5 in Paragraphs I and II of the First Cause of Accusation with the  
6 same force and effect as if herein fully set forth.

7 XIX

8 At all times herein mentioned, Respondent MIRANDA  
9 engaged in the business of; acted in the capacity of, advertised  
10 and assumed to act as a real estate broker in the State of  
11 California within the meaning of Section 10131(a) of the Code,  
12 including the operation and conduct of a real estate resale  
13 brokerage with the public wherein, on behalf of others, for  
14 compensation or in expectation of compensation, Respondent MIRANDA  
15 negotiated the sale of real property commonly known as 348 El  
16 Cortez Avenue, South San Francisco, California, to Carlos Martinez  
17 and Maria Aguayo (hereinafter "Buyers").

18 XX

19 On or about March 30, 1994, in the course of the real  
20 estate resale brokerage activities described in Paragraph XIX  
21 above, the sum of approximately \$10,000.00 was entrusted to  
22 Respondent MIRANDA by the Buyers.

23 XXI

24 Respondent failed to deposit the trust funds described  
25 in Paragraph XX above into a trust fund account in the name of  
26 Respondent MIRANDA as trustee at a bank or other financial  
27 institution, in conformance with Section 2830 of Title 10,

1 California Code of Regulations (hereinafter "the Regulations"), in  
2 that Respondent MIRANDA deposited such trust funds into the  
3 "William E. Miranda Insurance Agency" account, Account Number  
4 02772-12132, maintained by Respondent at the Mission-23rd Street  
5 Branch of the San Francisco, California offices of the Bank of  
6 America, which account was not maintained in the name of  
7 Respondent MIRANDA as trustee.

8 XXII

9 On or about March 30, 1994, Respondent MIRANDA converted  
10 the trust funds described in Paragraph XX above to his own  
11 purposes or uses or to purposes or uses not authorized by the  
12 rightful owner of those funds.

13 XXIII

14 The acts and/or omissions of Respondent MIRANDA  
15 described in Paragraph XXI above, violated Section 10145 of the  
16 Code and Section 2830 of the Regulations, and are cause for the  
17 suspension or revocation of all licenses and license rights of  
18 Respondent MIRANDA under the Real Estate Law pursuant to the  
19 provisions of Section 10177(d) of the Code.

20 XXIV

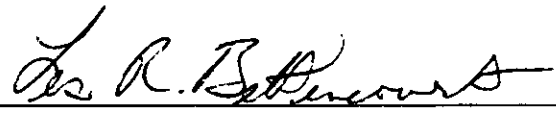
21 The acts and/or omissions of Respondent MIRANDA  
22 described in Paragraph XXII above, constitute fraud or dishonest  
23 dealing and are cause for the suspension or revocation of all  
24 licenses and license rights of Respondent MIRANDA under the Real  
25 Estate Law pursuant to the provisions of Section 10176(i) of the  
26 Code.

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



LES R. BETTENCOURT  
Deputy Real Estate Commissioner

Dated at San Francisco, California,  
this 20th day of May, 1996.

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

By *Lauriel A. Ziss*

*In the Matter of the Accusation of*

WILLIAM ERNESTO MIRANDA  
AND FRANCISCO CASTILLO,

Case No. H-7260 SF

OAH No. N-9509007

*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, World Savings Tower, 1970 Broadway,  
Second Floor, Oakland, CA 94612

on Thursday, June 20th, 1996, at the hour of 11:00 AM,  
or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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

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

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

DEPARTMENT OF REAL ESTATE

Dated: May 7, 1996

By *James L. Beaver*  
JAMES L. BEAVER *Counsel*

*Inlag Sac*

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

Telephone: (415) 904-5917

**FILED**  
NOV 30 1995

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 )	No. H-7260 SF
WILLIAM ERNESTO MIRANDA )	<u>AMENDED</u>
and )	<u>ACCUSATION</u>
FRANCISCO CASTILLO, )	
Respondents. )	

The Complainant, LES R. BETTENCOURT, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against WILLIAM ERNESTO MIRANDA (hereinafter, "Respondent MIRANDA") and FRANCISCO CASTILLO (hereinafter, "Respondent CASTILLO") is informed and alleges as follows:

FIRST CAUSE OF ACCUSATION

I

The Complainant, LES R. BETTENCOURT, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in his official capacity and not otherwise.

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II

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

III

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

IV

In or about July 1992, Respondents, for or in expectation of a compensation, solicited Osmin Martinez ("Martinez") to make a loan in the amount of \$10,000 to be secured by a lien on real property located at 405 Precita Ave, San Francisco, California ("Precita property"). Respondents represented to Martinez that the loan would be made to Cesar and Angela Delgado ("the Delgados"), as borrowers and owners of the Precita property. Respondents also represented to Martinez that the Delgados would give a deed of trust on the Precita property to Martinez to secure the loan.

V

In reliance upon the representations described above, Martinez agreed to make the \$10,000 loan.

VI

On or about July 23, 1992, Respondents gave Martinez a note and deed of trust and represented to Martinez that the note and deed of trust had been signed by the Delgados.

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VII

The representations of Respondents described above were false or misleading and were known by Respondents to be false or misleading when made or were made by Respondents with no reasonable grounds for believing said representations to be true.

In truth and in fact, Respondents had forged the signatures of the Delgados on the note and deed of trust without the knowledge or approval of the Delgados.

VIII

Respondents converted the funds described in Paragraph V to their own purposes or uses or to purposes or uses not authorized by the rightful owner of those funds.

IX

The acts and/or omissions of Respondent MIRANDA alleged above constitute grounds for disciplinary action under the provisions of Sections 10176(a), and 10176(i), or in the alternative 10177(j) of the Code.

X

The acts and/or omissions of Respondent CASTILLO alleged above constitute grounds for disciplinary action under the provisions of Section 10177(j) of the Code.

SECOND CAUSE OF ACCUSATION

XI

There is hereby incorporated in this Second, separate and distinct Cause of Accusation, all of the allegations contained in Paragraphs I, and II of the First Cause of Accusation with the same force and effect as if herein fully set forth.



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XII

On or about April 13, 1995, in the United States Bankruptcy Court for the Northern District of California, San Francisco Division, in Case No. 94-32192 TDM, a final judgment was entered against Respondent MIRANDA, based on grounds of fraud, misrepresentation, or deceit with reference to a transaction for which a real estate license is required.

XIII

The facts set forth in Paragraph XII, above, constitute cause under Section 10177.5 of the Code for the suspension or revocation of all licenses and license rights of Respondent MIRANDA under the Real Estate Law.

THIRD CAUSE OF ACCUSATION

XIV

There is hereby incorporated in this third, separate and distinct cause of Accusation, all of the allegations contained in Paragraphs I and II of the First Cause of Accusation with the same force and effect as if fully set forth herein.

XV

In or about June of 1995, in the course of investigation of matters alleged in all of the Causes of Accusation of this Accusation, and in the course of an Audit of Respondent MIRANDA by the Department, the Department gave notice to Respondent to produce books, accounts and records in connection with his real estate transactions for examination, inspection and audit.

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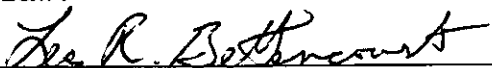
XVI

Respondent MIRANDA failed to produce any books, accounts and records as requested by the Department as required by Section 10148 of the Code.

XVII

Respondent MIRANDA's acts and/or omissions alleged in Paragraphs XIV, XV and XVI violate Section 10148 of the Code and are grounds for discipline pursuant to Section 10177(d).

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

  
LES R. BETTENCOURT  
Deputy Real Estate Commissioner

Dated at San Francisco, California,  
this 30th day of November, 1995.

COPY

FILED  
SEP 13 1995

*Flag Sac*

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

By *Victoria Dillon*  
Victoria Dillon

In the Matter of the Accusation of

WILLIAM ERNESTO MIRANDA and  
FRANCISCO J. CASTILLO,

}

Case No. H-7260 SF

OAH No. N 9509007

Respondent s

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 Wednesday, March 27, 1996 (1 Day Hearing), at the hour of 9:00 a.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.

Dated: September 13, 1995

DEPARTMENT OF REAL ESTATE

By *Susan M. Rossi*  
SUSAN M. ROSSI, Counsel

*Sub*

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FILED  
JUN 27 1995

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

DEPARTMENT OF REAL ESTATE

4 Telephone: (415) 904-5917  
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By Victoria Dillon  
Victoria Dillon

9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 \* \* \*

12 In the Matter of the Accusation of ) No. H-7260 SF  
13 WILLIAM ERNESTO MIRANDA ) ACCUSATION  
and )  
14 FRANCISCO J. CASTILLO, )  
15 Respondents. )

16  
17 The Complainant, LES R. BETTENCOURT, a Deputy Real  
18 Estate Commissioner of the State of California, for cause of  
19 Accusation against WILLIAM ERNESTO MIRANDA (hereinafter,  
20 "Respondent MIRANDA") and FRANCISCO J. CASTILLO (hereinafter,  
21 "Respondent CASTILLO") is informed and alleges as follows:

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23 The Complainant, LES R. BETTENCOURT, a Deputy Real  
24 Estate Commissioner of the State of California, makes this  
25 Accusation in his official capacity and not otherwise.

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II

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

III

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

IV

In or about July 1992, Respondents, for or in expectation of a compensation, solicited Osmin Martinez ("Martinez") to make a loan in the amount of \$10,000 to be secured by a lien on real property located at 405 Precita Ave, San Francisco, California ("Precita property"). Respondents represented to Martinez that the loan would be made to Cesar and Angela Delgado ("the Delgados"), as borrowers and owners of the Precita property. Respondents also represented to Martinez that the Delgados would give a deed of trust on the Precita property to Martinez to secure the loan.

V

In reliance upon the representations described above, Martinez agreed to make the \$10,000 loan.

VI

On or about July 23, 1992, Respondents gave Martinez a note and deed of trust and represented to Martinez that the note and deed of trust had been signed by the Delgados.

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VII

The representations of Respondents described above were false or misleading and were known by Respondents to be false or misleading when made or were made by Respondents with no reasonable grounds for believing said representations to be true.

In truth and in fact, Respondents had forged the signatures of the Delgados on the note and deed of trust without the knowledge or approval of the Delgados.

VIII

Respondents converted the funds described in Paragraph V to their own purposes or uses or to purposes or uses not authorized by the rightful owner of those funds.

IX

The acts and/or omissions of Respondent MIRANDA alleged above constitute grounds for disciplinary action under the provisions of Sections 10176(a), and 10176(i), or in the alternative 10177(j) of the Code.

X

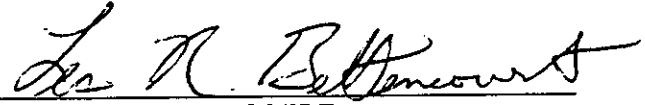
The acts and/or omissions of Respondent CASTILLO alleged above constitute grounds for disciplinary action under the provisions of Section 10177(j) of the Code.

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

  
LES R. BETTENCOURT  
Deputy Real Estate Commissioner

Dated at San Francisco, California,  
this 27<sup>th</sup> day of JUNE, 1995.