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**FILED**  
DEC 28 2005

DEPARTMENT OF REAL ESTATE

By *Jean Arment*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Application of	)	No. H-7578 SF
	)	H-7280 SF
QUINCY ANTHONY VIRGILIO,	)	
	)	
	)	
	)	
Respondent.	)	

ORDER GRANTING UNRESTRICTED LICENSE

On August 27, 1998, a Decision was rendered in Case No. H-7578 SF denying the Respondent's application for real estate broker license, 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 October 31, 1998, and Respondent has operated as a restricted licensee without cause for disciplinary action against Respondent since that time.

On July 25, 2005, Respondent petitioned for the removal of restrictions attaching to Respondent's real estate broker license.

///

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

8 NOW, THEREFORE, IT IS ORDERED that Respondent's  
9 petition for removal of restrictions is granted and that a real  
10 estate broker license be issued to Respondent if Respondent  
11 satisfies the following conditions within nine (9) months from  
12 the date of this order:

- 13 (a) Submittal of a completed application and payment  
14 of the appropriate fee for a real estate broker license, and  
15 (b) Submittal of evidence satisfactory to the Real  
16 Estate Commissioner that Respondent has, since the most recent  
17 issuance of an original or renewal real estate license, taken and  
18 successfully completed the continuing education requirements of  
19 Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a  
20 real estate license.

21 This Order shall become effective immediately.

22 DATED: 12-13, 2005.

23 JEFF DAVI  
24 Real Estate Commissioner

FILED  
SEP 15 1998  
DEPARTMENT OF REAL ESTATE

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Application of )  
  ) )  
          QUINCY ANTHONY VIRGILIO,    ) )  
  ) )  
                                  Respondent.  ) )  
\_\_\_\_\_  )

By *Kathleen Contreras*

NO. H-7578 SF  
N-1998060183

DECISION

The Proposed Decision dated August 14, 1998, 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.

The application for a real estate broker license is denied, but the right to a restricted real estate broker license is granted to Respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy is attached hereto for the information of Respondent.

If and when application is made for a real estate broker license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto.

This Decision shall become effective at 12 o'clock noon  
on October 5, 1998.

IT IS SO ORDERED 8/27, 1998.

JIM ANTT, JR.  
Real Estate Commissioner

*[Handwritten Signature]*

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:	)	
	)	Case No. H-7578 SF
QUINCY ANTHONY VIRGILIO,	)	
	)	OAH No. N 1998060183
Respondent.	)	
_____	)	

**PROPOSED DECISION**

On July 16, 1998, in Oakland, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings ("OAH"), State of California, heard this matter.

Deidre L. Johnson, Staff Counsel, represented complainant.

Respondent Quincy Anthony Virgilio was present and represented himself.

The record remained open for purposes of affording respondent the opportunity to supplement the record with documentary evidence in support of his representation that he had signed the Department's Form RE214 (Salesperson's Change Application) regarding his recent association with a new sponsoring broker. The record was further kept open so that respondent might file and serve copies of certificates of membership in a professional organization as described during his testimony at the hearing of this matter. On July 17, 1998, OAH received a telefacsimile transmission of a copy of a completed Salesperson's Change Application that pertains to respondent. The form was marked as respondent's "Exhibit E" and received under Government Code section 11513, subdivision (d) as administrative hearsay. Also, on July 17, 1998, OAH received a telefacsimile transmission of five pages of copies of certifications of: (a) respondent's membership in, and his presidency of, the local chapter of the California Association of Residential Lenders, and (b) respondent's completion of courses of study at the Chamberlin Real Estate Schools. The copies of certificates were assembled and marked as respondent's group "Exhibit F," and received under Government Code section 11513, subdivision (d) as administrative hearsay.

The matter was deemed submitted and the record was closed on July 17, 1998.

## FINDINGS OF FACT

1. Les R. Bettencourt, a Deputy Real Estate Commissioner, made the statement of issues in his official capacity.

2. On December 29, 1997, respondent Quincy Anthony Virgilio ("respondent") filed with the Department of Real Estate ("the Department") an application for a license to work as a real estate broker.

The application is now pending in that the Department did not issue a license to respondent.

3. In 1995, the Department first issued respondent a real estate salesperson license. Effective from June 13, 1996, respondent has held a restricted real estate salesperson license. The Department imposed upon respondent a restricted license as a result of a determination that cause existed to revoke the salesperson license previously issued to respondent due to his violation of California Business and Professions Code sections 490, 498, 10177, subdivision (a) and 10177, subdivision (b).

Attached hereto as "Attachment A," and incorporated herein, is a copy of the Real Estate Commissioner's Decision and the Proposed Decision of Administrative Law Judge Robert Walker that affected respondent's license in 1996.

4. The Department's imposition of discipline against the salesperson license held by respondent as set forth in Finding 3, above, involves acts or conduct that warrants the denial of his application for a real estate license.

5. On January 20, 1995, in Case No. 94-335-0796, before the California Municipal Court for the Santa Clara County Judicial District, respondent was convicted, upon his plea of guilty of a violation of California Penal Code sections 484/488 (petty theft), a misdemeanor.

The crime for which respondent was convicted is a public offense involving moral turpitude. The respondent's past criminal activity bears a substantial relationship to the qualifications, functions or duties of a real estate licensee.

6. The facts and circumstances giving rise to the conviction are that on December 1, 1994, respondent attempted to steal groceries from a Lucky's Supermarket at a time when he was unemployed, without money and "almost homeless." At the time he was the sole parent for two adolescent children: a boy aged 11 years and a girl aged 13 years. When respondent attempted the theft of a carton of milk, vegetables, spaghetti and sauce for a pasta dinner he was in desperate straits. His act of attempting to steal was for the purpose of providing an evening meal for his children and himself. A

grocery store security officer arrested respondent in the parking lot of the Lucky's supermarket as respondent walked from the grocery store in that he did not then own an automobile. He cooperated fully with the arresting officers.

7. As a result of the conviction in January 1995, the court suspended the imposition of sentence upon respondent during a period of probation. The court set respondent's term of criminal conviction probation for one year. The court also imposed a two day term for February 18 and 19, 1995, upon which respondent was to serve in the county's weekend work program under Penal Code section 2900.5. The court waived imposition of a restitution fine or court fees against respondent.

8. On January 18, 1995, the Department received an application from respondent for a license as a real estate salesperson. The application set forth question numbered 26 that reads: "Are there any criminal charges pending against you at this time?" Respondent did not disclose the criminal charges then pending that eventually resulted in his conviction on January 20, 1995.

9. Respondent resumes the contention that he made at the hearing in 1996 that led to the decision, which is attached hereto. He persuasively contends that at the time that he submitted the earlier application he did not disclose the pending charges because of his perception that the arrangement of the questions on the application was confusing and ambiguous.

According to respondent when he read the application's question numbered 25, which reads: "Have you ever been convicted...?" he observed that the question directed the reader "If yes, complete #27 below." The question numbered 27 asks, in part: "... indicate whether each conviction was a misdemeanor or felony at the time the conviction occurred." Respondent read the Department's previous application question numbered 27 as restricting the inquiry into only criminal matters pertaining to actual convictions. In that he had no court convictions as of the date of the application's filing he interpreted that the application imposed no obligation on him to reveal the charges against him. He now alludes to not having properly read in the January 1995 licensure application questions numbered 26 and 27.

#### *Matters in Mitigation and Extenuation*

10. When respondent committed the petty theft in 1994 he was at a point in his life following the loss of his job in a family business that involved massive debts. That career loss was coupled with massive debts including an IRS tax lien of more than \$134,000. Also, respondent had suffered a divorce and had been pressured by local prosecutors to reimburse Santa Clara County for unpaid child support payments. In essence, respondent had little in the way of family or career stability when he violated the law by stealing groceries from a local supermarket.

*Matters in Support of Respondent's Rehabilitation*

11. Respondent's term of criminal conviction probation ended about January 19, 1996. That was nearly two years before the date of his current application for a broker license.

12. On April 12, 1996, the court that convicted respondent granted respondent's petition for early termination of probation pursuant to Penal Code section 1203.4.

13. Respondent expresses great contrition and remorse for the attempted theft of groceries in 1994.

14. Respondent is a single, sole financially supporting parent of two teenagers, now aged 15 years and 17 years. The obligation he has in providing a home for his two children instills in him a significant sense of stability and motivation to succeed. Respondent has raised his children alone for the past six years without receiving any child support from the mother of the children.

15. Respondent has sought to show his personal responsibility for debts incurred as the result of the bankruptcy of a family business. He has satisfied federal tax liens for civil penalties against a closed corporation for which he was the corporate vice-president. The tax liens against the family corporation exceeded \$134,000 that have been completely satisfied.

16. Respondent is conscientiously repaying the Santa Clara County Family Support Division on a claim for unpaid child support due to his former spouse. Respondent is required to pay one hundred (\$100) dollars per month towards a remaining balance of two thousand three hundred (\$2,300) dollars. The debt originally was at fifteen thousand (\$15,000) dollars. He attempts to pay at least two hundred (\$200) dollars per month to the county so as to accelerate the satisfaction of the debt.

17. Respondent is a homeowner. He dutifully pays a monthly mortgage on his personal dwelling house.

18. Respondent has completed more than 120 transactions as a licensed real estate salesperson. Respondent's closings of mortgage related sales and financing packages have been to the letter of the law. Respondent has no knowledge of any customer being distressed with the manner by which he has attended to the demands and needs of persons with whom he has conducted business.

19. Respondent gives assurance that he has the ability to remain knowledgeable and astute in the nuances of real estate financing developments that impact upon real estate brokers due to his involvement in courses of study and his vigorous

practical experiences. Currently, respondent is the Legislative Chair for the State Board for the California Association of Residential Lenders ("CARL"). He is able to stay attuned to developments and amendments to federal laws and regulations that govern real estate financing agreements.

20. Respondent was the president of the South Bay Chapter of CARL for the year 1997. He is the president of the state chapter of CARL for the year 1998.

21. Respondent has completed courses of study through the Chamberlin Real Estate Schools system. He has a certificate of completion, dated November 29, 1994, from Chamberlin Real Estate Schools for the course entitled "California Real Estate Principles." A certificate of completion, dated February 26, 1997, indicates that respondent has completed studies in "Real Estate Principles," "Legal Aspects of Real Estate," "Real Estate Appraisal," "Real Estate Finance," "Real Estate Practice," "Real Estate Economics," "Real Estate Property Management," and "Real Estate Office Administration."

22. Since 1994 respondent has been an active member of the Trinity Lutheran Church in San Jose. Through his affiliation with the church he devotes approximately four hours per month to the volunteer program called "Loaves and Fishes."

Respondent also volunteers about two hours per month to the City Team Mission.

23. From the spring of 1995 until late April 1998, respondent worked for Christenson Realty of Campbell. Respondent has developed significantly in his pursuits of skills as a real estate professional.

24. Respondent has informed fellow real estate professionals of the Department's past disciplinary action against his real estate salesperson license. In addition to his employer brokers possessing knowledge of the past disciplinary action, other real estate professionals who have such knowledge include Marge Nogosek, president of Cedar Mortgage of Campbell; Denise B. Perruci of Fidelity National Title; David Strauss of Christenson Mortgage and Landon Taylor of First American Title Guaranty Company of San Jose. Those individuals provide the record in this matter with letters of support regarding respondent's character for integrity and professionalism.

25. On May 1, 1998, respondent began to work for IMF Loans, Inc. of Campbell, California. The managing broker for the company is fully informed of the past discipline against respondent's license. Bruce Edward Eisenberg is the broker who signed on behalf of respondent the Department's Salesperson Change Application (RE Form 214) on May 1, 1998.



Respondent is now the leader of the sales division of IMF Loans, Inc. As Retail Sales Manager he supervises several other real estate salespersons. His team of professionals makes transactions in the area of \$50 million per month.

*Matters in Aggravation*

26. Respondent has not made application to the Department for reinstatement of an unrestricted license, although the two year period of probation for license discipline expired in mid-June 1998.

**DETERMINATION OF ISSUES**

1. Cause for disciplinary action against respondent exists pursuant to Business and Professions Code section 10177, subdivision (f), by reason of the matters set forth in Finding 4.

2. Cause for disciplinary action against respondent exists pursuant to Business and Professions Code sections 480 and 10177, subdivision (b), by reason of the matters set forth in Finding 5.

3. Cause for disciplinary action against respondent exists pursuant to Business and Professions Code sections 498 and 10177, subdivision (a), by reason of the matters set forth in Finding 8.

4. The matters set forth in Findings 10 through 26, inclusive, were considered in making the following order.

5. Respondent has apparently attained rehabilitation insofar as regaining his personal dignity and law-abiding status in the community. Most importantly, as applicable to his history, respondent has met the intent and spirit of the Department's criteria for rehabilitation as set forth in Title 10, California Code of Regulations section 2911. His progress currently warrants a determination that it would not be against the public interest to permit respondent to transact real estate business under a restricted broker license issued by the Department.

**ORDER**

Respondent's application for a real estate broker license is denied; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code. The restricted license issued to the 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 said Code:

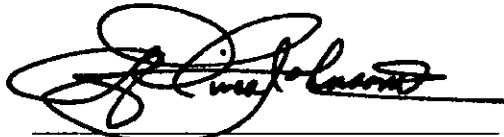
1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

(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 nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until three years has elapsed from the date of issuance of the restricted license to respondent.

DATED: August 14, 1998



PERRY O. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings

FILED  
JUN 5 1998

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE  
By Shelley Ely

In the Matter of the Application of

QUINCY ANTHONY VIRGILIO

Case No. H-7578 SF

OAH No. \_\_\_\_\_

Respondent

NOTICE OF HEARING ON APPLICATION

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, California 94612

on Thursday -- July 16, 1998, at the hour of 9:00 AM

or as soon thereafter as the matter can be heard, upon the Statement of Issues 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.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you are not present nor represented at the hearing, the Department may act upon your application without taking evidence.

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 for 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: June 5, 1998

By Deidre L. Johnson  
DEIDRE L. JOHNSON Counsel

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

FILED  
MAY 20 1998  
DEPARTMENT OF REAL ESTATE

By Jean Bunsb

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Application of )  
12 QUINCY ANTHONY VIRGILIO, ) No. H-7578 SF  
13 Respondent. ) STATEMENT OF ISSUES  
14 \_\_\_\_\_ )

15 The Complainant, Les R. Bettencourt, a Deputy Real  
16 Estate Commissioner of the State of California, for causes of  
17 Statement of Issues against QUINCY ANTHONY VIRGILIO (hereafter  
18 Respondent), alleges as follows:

19 FIRST CAUSE OF ACTION

20 I

21 Respondent made application to the State of California  
22 Department of Real Estate (hereafter Department) for a real estate  
23 broker license on or about December 29, 1997. Respondent is  
24 presently licensed and has license rights as a restricted real  
25 estate salesperson.

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II

Complainant, Les R. Bettencourt, a Deputy Real Estate Commissioner of the State of California, makes this Statement of Issues in his official capacity and not otherwise.

III

Effective June 13, 1996, in Case No. H-7280 SF before the Department, the Real Estate Commissioner revoked the real estate salesperson license of Respondent, and granted the right to a restricted salesperson license, for violation of Sections 490, 498, 10177(a), and 10177(b) of the California Business and Professions Code.

IV

The discipline imposed on Respondent's real estate salesperson license as alleged in Paragraph III above was for acts or conduct which would have warranted the denial of his application for a real estate license, and constitutes cause for denial of Respondent's application for a real estate broker license under Section 10177(f) of the Code.

SECOND CAUSE OF ACTION

V

The allegations in Paragraphs I and II of the first cause of action are incorporated herein by this reference.

VI

On or about January 20, 1995, in the Municipal Court, Santa Clara County Judicial District, State of California, Respondent was convicted of a violation of Section 484/488 of the California Penal Code (PETTY THEFT), a crime involving moral

1 turpitude, and a crime which is substantially related under  
2 Section 2910, Title 10, California Code of Regulations, to the  
3 qualifications, functions, or duties of a real estate licensee.

4 VII

5 The conviction alleged in Paragraph VI above constitutes  
6 cause for denial of Respondent's application for a real estate  
7 license under Sections 480 and 10177(b) of the California Business  
8 and Professions Code.

9 THIRD CAUSE OF ACTION

10 VIII

11 The allegations in Paragraphs I and II of the first  
12 cause of action are incorporated herein by this reference.

13 IX

14 Respondent was issued a real estate salesperson license  
15 on or about January 24, 1995, following Respondent's application  
16 to the Department for said license on or about January 18, 1995.

17 X

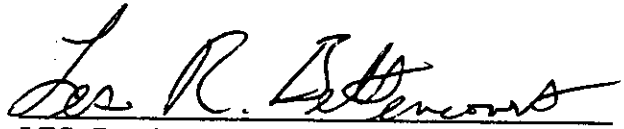
18 In response to Question 26 of said application, to wit:  
19 "Are there any criminal charges pending against you at this  
20 time?", Respondent did not disclose the criminal charges then  
21 pending which resulted in the conviction alleged in Paragraph VI  
22 of the second cause of action above.

23 XI

24 The acts and/or omissions alleged above constitute ~~cause~~  
25 for denial of Respondent's application for a real estate license  
26 under Sections 498 and 10177(a) of the California Business and  
27 Professions Code.



1           WHEREFORE, the Complainant prays that the above-entitled  
2 matter be set for hearing and, upon proof of the charges contained  
3 herein, that the Commissioner refuse to authorize the issuance of,  
4 and deny the issuance of, a real estate broker license to  
5 Respondent, and for such other and further relief as may be proper  
6 in the premises.

7  
8   
9 LES R. BETTENCOURT  
10 Deputy Real Estate Commissioner

11 Dated at San Francisco, California  
12 this 11<sup>th</sup> day of May, 1998.  
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