

FILED
JAN 24 2002

DEPARTMENT OF REAL ESTATE

By *Kathleen Contreras*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
RAYMOND RICHARD AVILES,) NO. H-7608 SF
Respondent.)

ORDER GRANTING REINSTATEMENT OF LICENSE

On January 6, 1999, a Decision was rendered herein revoking the real estate broker license of Respondent, but granting Respondent the right to the issuance of a restricted real estate broker license. A restricted real estate broker license was issued to Respondent on February 1, 1999.

On March 30, 2001, 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.

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

1 my satisfaction that Respondent meets the requirements of law for
2 the issuance to Respondent of an unrestricted real estate broker
3 license and that it would not be against the public interest to
4 issue said license to Respondent.

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

10 1. Submittal of a completed application and payment of
11 the fee for a real estate broker license.

12 2. Submittal of evidence of having, since the most
13 recent issuance of an original or renewal real estate license,
14 taken and successfully completed the continuing education
15 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
16 for renewal of a real estate license.

17 This Order shall be effective immediately.

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19 DATED: January 4, 2002

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21 PAULA REDDISH ZINNEBANN
22 Real Estate Commissioner
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FILED

JAN 11 1999

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

* * *

In the Matter of the Accusation of)
RAYMOND RICHARD AVILES,)
Respondent.)

NO. H-7608 SF

OAH NO. N-1998090347

DECISION

The Proposed Decision dated December 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.

This Decision shall become effective at 12 o'clock noon
on February 1, 1999.

IT IS SO ORDERED

January 6, 1999

Real Estate Commissioner

John R. Liberator

BY: John R. Liberator
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of	)	
	)	OAH No. N1998090347
RAYMOND RICHARD AVILES	)	
	)	Case No. H-7608 SF
Respondent.	)	
_____	)	

PROPOSED DECISION

Cheryl R. Tompkin, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 13, 1998, in Oakland, California.

Thomas C. Lasken, Counsel, represented the Department of Real Estate.

Respondent Raymond Richard Aviles was present and represented by Stephen W. Thomas, Attorney at Law, 279 Front Street, Danville, California 94526-0218.

FACTUAL FINDINGS

1. Complainant Les R. Bettencourt made the Accusation in his official capacity as Deputy Real Estate Commissioner of the State of California.
2. At all times pertinent hereto, Raymond Richard Aviles (respondent), individually and doing business as Laurel Properties and Laurel Property Management, was licensed and had license rights as a real estate broker under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code). Respondent's license is scheduled to expire on December 26, 1998, unless renewed.
3. Within the three year period preceding the filing of the Accusation in this matter respondent engaged in activities on behalf of others for which a real estate license is required, including operation of a real estate property management business. Respondent leased or rented, offered to lease or rent, solicited listings of places for rent, solicited prospective tenants, negotiated rental agreements, collected rents on, and/or managed real properties owned by others for or in expectation of compensation in his property management business.

4. Commencing May 11, 1998, and continuing through May 13, 1998, the Department of Real Estate (Department) conducted an investigative audit of respondent's books and records for the period of May 1, 1995, through March 31, 1998. The audit covered the property management and activities of respondent's business. The audit revealed that during the period covered by the audit respondent maintained the following trust fund account:

Laurel Properties Client Trust Account
Wells Fargo Bank
3431 California Street
San Francisco, California.

Respondent held the trust account under his fictitious business name and not in the name of respondent as trustee at a bank or other financial institution, in violation of the requirements of section 2832 of Title 10 of the California Code of Regulations.

5. The trust account was used for property management. Deposits consisted of rents and security deposits received from tenants. Disbursements included payments for expenses incurred by the properties being managed, remittances to the property owners, and management fees to respondent. The signatories on the trust account were respondent and his wife Julie Aviles, an unlicensed, unbonded employee. Respondent violated section 2834 of Title 10 of the California Code of Regulations by permitting an unlicensed person who did not have fidelity bond coverage to make withdrawals from the trust account. According to respondent, his wife was previously bonded but her bond coverage was allowed to lapse through inadvertence.

6. The Department audit revealed that as of March 31, 1998, the adjusted trust account balance was minus \$11,241.81 and the ending balances on the March owner statements totaled \$83,491.74, resulting in a shortage of at least \$90,000.00 in respondent's client trust account. However, due to the inadequacy of respondent's trust records the balances could not be substantiated. In addition, the Department auditor was unable to identify the cause of the shortage, primarily due to respondent's inadequate records, although she apparently determined that there was no diversion of trust funds by respondent.

7. The audit additionally revealed that respondent failed to maintain separate records for each beneficiary or transaction, accounting for all trust funds received, deposited and disbursed in the trust account as required by section 2831.1 of Title 10 of the California Code of Regulations. Respondent also failed to maintain columnar records of all trust funds received and disbursed as required by section 2831 of Title 10 of the California Code of Regulations. Respondent explained that he had maintained computerized beneficiary records up to December 31, 1997, when his computer crashed. Respondent failed to maintain beneficiary records after January 1, 1998. Instead, respondent maintained owner statements that did not have dates of when trust funds were received or disbursed.

8. In addition, the audit found that respondent had failed to reconcile the balances of all separate beneficiary or transaction records to the ending balance of the control record of all trust funds received and disbursed at least once a month, in violation of section 2831.2 of Title 10 of the California Code of Regulations.

9. Respondent also failed to get the prior written consent of each owner of funds in the trust account to reduce the trust account balance below the existing aggregate trust fund liability, as required by section 2832.1 of Title 10 of the California Code of Regulations.

10. Respondent does not know what caused the shortage. He believes it resulted from inaccurate bookkeeping. He denies any misuse of funds. Respondent received notice of the shortage upon completion of the audit. He immediately contacted his own accountant who confirmed a trust fund shortage of \$90,421.79. Funds in that amount were promptly placed in the trust account to address the issue and eliminate the shortage. Respondent obtained the necessary funds by refinancing his home. Respondent also cooperated fully with the Department auditor during the audit.

11. Respondent's real estate license is important to him since he supports his family through his real estate sales business. Following the audit respondent divested himself of the property management aspect of his real estate business and closed his trust account. Respondent has no current plans to reenter the property management business or to use trust accounts, and expressed remorse regarding the trust fund shortages. If respondent is permitted to continue the real estate sales portion of his business, he plans to have buyers place earnest money and other necessary deposits into an escrow account.

12. At hearing respondent submitted several letters from clients attesting to his professionalism, trustworthiness, honesty and dependability. One of respondent's current clients, Raymond Chan, also testified to his satisfaction with respondent's services and respondent's honesty. Respondent's accountant Anthony Rizzo testified to respondent's good character and honesty.

LEGAL CONCLUSIONS

1. Cause for disciplinary action against respondent exists pursuant to Business and Professions Code section 10177, subdivision (d), in conjunction with Title 10, California Code of Regulations section 2832.1 by reason of the matters set forth in Finding 9.

2. Cause for disciplinary action against respondent exists pursuant to Business and Professions Code sections 10177, subdivision (d), in conjunction with Business and Professions Code section 10145 by reason of the matters set forth in Findings 6 and 9.

3. Cause for disciplinary action against respondent exists pursuant to Business and Professions Code section 10177, subdivision (d) in conjunction with section 2831 of Title 10, California Code of Regulations by reason of the matters set forth in Finding 7.

4. Cause for disciplinary action against respondent exists pursuant to Business and Professions Code section 10177, subdivision (d) in conjunction with section 2831.1 of Title 10, California Code of Regulations by reason of the matters set forth in Finding 7.

5. Cause for disciplinary action against respondent exists pursuant to Business and Professions Code section 10177, subdivision (d) in conjunction with section 2831.2 of Title 10, California Code of Regulations by reason of the matters set forth in Finding 8.

6. Cause for disciplinary action against respondent exists pursuant to Business and Professions Code section 10177, subdivision (d) in conjunction with section 2834 of Title 10, California Code of Regulations by reason of the matters set forth in Finding 5.

7. Cause for disciplinary action against respondent exists pursuant to Business and Professions Code section 10177, subdivision (d) in conjunction with section 2832 of Title 10, California Code of Regulations by reason of the matters set forth in Finding 4.

8. The evidence demonstrated that during the audit period respondent had a trust fund shortage and that his trust fund records were not maintained in compliance with applicable law. In mitigation, the shortage appeared to be the result of poor accounting and/or poor record keeping rather than theft or conversion. In addition, once the issue of a shortage was brought to respondent's attention he promptly corrected it. Respondent has also divested the property management portion of his real estate business and no longer uses a trust account. Considering all of the evidence, it is determined that it would not be against the public interest to permit respondent to continue to hold a broker license upon specific terms and conditions. Among the conditions must be the requirement that respondent be precluded from owning or operating a property management business during the term of the restricted license.

ORDER

All real estate licenses and licensing rights issued to respondent Raymond Richard Aviles under the Real Estate Law are revoked pursuant to Conclusions 1 through 7, jointly and individually; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fees for the restricted license within 90 days from the effective date of this Decision. The restricted licenses issued to respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

1. The restricted licenses issued to respondents 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 which is substantially related to Respondent's fitness or capacity as a real estate licensee.

2. The restricted licenses 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.
3. 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.
4. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of respondent's license until Respondent passes the examination.
5. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning Respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

Such reports may include, but shall not be limited to, periodic independent accounting of trust funds in the custody and control of respondent and periodic summaries of salient information concerning each real estate transaction in which Respondent engaged during the period covered by the report.

6. In the event the Commissioner determines that an audit is necessary to verify that Respondent has corrected the trust fund violations found herein, Respondent shall pay the Commissioner's reasonable cost for said audit, pursuant to section 10148 of the Business and Professions Code. 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 time to and from the auditor's place of work. 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 suspend the restricted license issued to Respondent pending a hearing held in accordance with section 11500, et seq. of the Government Code, if payment is not timely made as provided herein, or as provided in a subsequent agreement between respondent and the Commissioner. The suspension shall remain in effect until payment is made in full or until Respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

7. Respondent shall not own or operate a property management business during the term of the restricted license.

8. Respondent shall not be eligible to apply for the issuance of unrestricted real estate licenses nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two (2) years have elapsed from the effective date of this Decision.

DATED: 12/14/98


CHERYL R. TOMPKIN
Administrative Law Judge

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
OCT 9 1998
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

RAYMOND RICHARD AVILES,

Respondent

Case No. H-7608 SF

OAH No. N-1998090347

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, The Elihu Harris State

Building, 1515 Clay Street, Suite 206, Oakland, CA 94612

on November 13, 1998, at the hour of 9:00 AM, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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

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

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: October 8, 1998

By

THOMAS C. LASKEN

Counsel

1 THOMAS C. LASKEN, Counsel
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789

FILED
AUG 14 1993
DEPARTMENT OF REAL ESTATE

By Jean Annob

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13 RAYMOND RICHARD AVILES,) NO. H-7608 SF
14 Respondent.) ACCUSATION
15 _____)

16 The Complainant, Les R. Bettencourt, a Deputy Real
17 Estate Commissioner of the State of California, for cause of
18 Accusation against RAYMOND RICHARD AVILES, is informed and
19 alleges as follows:

20 I

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

24 II

25 At all times herein mentioned, Respondent RAYMOND
26 RICHARD AVILES (hereinafter "Respondent"), individually and doing
27 business as Laurel Properties and as Laurel Property Management,



1 was licensed and/or had license rights under the Real Estate Law,
2 Part 1 of Division 4 of the Business and Professions Code
3 (hereinafter "Code") as a real estate broker.

4 III

5 At all times mentioned herein, Respondent engaged in
6 the business of, acted in the capacity of, advertised or assumed
7 to act as real estate broker within the State of California,
8 within the meaning of Section 10131(b) of the Code, including
9 the operation and conduct of a real estate property management
10 business with the public, wherein Respondent, for or in
11 expectation of a compensation, leased or rented or offered to
12 lease or rent, or solicited listings of, places for rent;
13 solicited prospective tenants for, negotiated rental agreements
14 for, and collected rents from, real properties owned by
15 another or others; and otherwise managed real properties in
16 California.

17 IV

18 During the course of the property management activities
19 described in Paragraph III above, Respondent received and
20 disbursed funds held in trust on behalf of another or others.

21 V

22 Within the three-year period immediately preceding the
23 filing of this Accusation, Respondent maintained the following
24 trust account:

25	<u>Account Name and Number</u>	<u>Bank</u>
26	Laurel Properties Client Trust Acct	Wells Fargo Bank
27	#0019-046846	3431 California Street San Francisco, CA 94118.



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VI

Commencing on May 11, 1998, and continuing through May 13, 1998, an investigative audit ("Audit") was made by the Department of Real Estate ("Department") of Respondent's records for the period May 1, 1995, through March 31, 1998, as those records relate to Respondent's licensed activities in his real estate business.

VII

In connection with the collection and disbursement of trust funds, Respondent failed to deposit and maintain trust funds in the trust account in such manner that as of March 31, 1998, there was a shortage of at least \$90,000 of trust funds.

VIII

In connection with the collection and disbursement of trust funds, Respondent disbursed or caused or permitted the disbursement of trust funds from the trust account, without the prior written consent of every principal who was an owner of the funds in the account, where the disbursement reduced the balance of funds in the accounts to an amount which was at least \$90,000 less than the existing aggregate trust fund liability of Respondent to all owners of said funds, in violation of Section 2832.1 of Title 10, California Code of Regulations (hereinafter "Regulations").

IX

In connection with the receipt and disbursement of trust funds, Respondent failed to maintain columnar records of



1 all the trust funds received and disbursed, in conformance with
2 Section 2831 of the Regulations.

3 X

4 In connection with the receipt and disbursement of
5 trust funds, Respondent failed to maintain separate records
6 for each beneficiary or transaction, accounting for all trust
7 funds received, deposited, and disbursed, in conformance with
8 Section 2831.1 of the Regulations.

9 XI

10 In connection with the receipt and disbursement of trust
11 funds, Respondent failed to reconcile the balances of all separate
12 beneficiary or transaction records maintained with the record of
13 all trust funds received and disbursed at least once a month, in
14 violation of Section 2831.2 of the Regulations.

15 XII

16 In connection with the receipt and disbursement of trust
17 funds, the trust account was not in the name of Respondent as
18 trustee at a bank or other financial institution, in violation of
19 Section 2832 of the Regulations.

20 XIII

21 In connection with the receipt and disbursement of trust
22 funds, Respondent allowed withdrawal from his trust account by an
23 unlicensed person who did not have fidelity bond coverage, in
24 violation of Section 2834 of the Regulations.

25 XIV

26 Respondent's acts and omissions alleged above in
27 Paragraphs VII and VIII constitute cause for discipline under



1 Section 10177(d) of the Code in conjunction with Section 10145
2 of the Code and Section 2832.1 of the Regulations.

3 XV

4 Respondent's acts and omissions alleged above in
5 Paragraphs IX through XIII constitute cause for discipline under
6 the provisions of Section 10177(d) of the Code.

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

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17 
18 LES R. BETTENCOURT
19 Deputy Real Estate Commissioner
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22 Dated at San Francisco, California,
23 this 6th day of August, 1998.
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