

1 DAVID B. SEALS, Counsel (SBN 69378)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

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FILED
MAY 05 2000

DEPARTMENT OF REAL ESTATE

By Shelly Ely

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 GILBERT VINCENT RICHARDS,)
13 Respondent.)
14

NO. H-7623 SF

15 ORDER SUSPENDING RESTRICTED REAL ESTATE LICENSE

16 TO: GILBERT VINCENT RICHARDS

17 On May 10, 1999, a restricted real estate
18 broker license was issued by the Department of Real Estate to
19 you on the terms, conditions and restrictions set forth in the
20 Real Estate Commissioner's Order of June 25, 1997 in case No.
21 H-7623 SF. This Order granted the right to the issuance of a
22 restricted real estate broker license subject to the
23 provisions of Section 10156.7 of the Business and Professions
24 Code and to enumerated additional terms, conditions and
25 restrictions imposed under authority of Section 10156.6 of
26 said Code. Among those terms, conditions and restrictions,
27 you were required to take and successfully complete the

1 continuing education requirements of Article 2.5 Chapter 3 of
2 the Real Estate Law for renewal of a real estate license
3 within nine months from the effective date of the Decision.
4 The Commissioner has determined that as of March 13, 2000, you
5 have failed to satisfy this condition, and as such, you are in
6 violation of Section 10177(k) of the Business and Professions
7 Code.

8 NOW, THEREFORE, IT IS ORDERED under authority of
9 Section 10156.7 of the Business and Professions Code of the State
10 of California that the restricted real estate broker license
11 heretofore issued to you and the exercise of any privileges
12 thereunder is hereby suspended until such time as you provide
13 proof satisfactory to the Department of compliance with the
14 "condition" referred to above, or pending final determination
15 made after hearing (see "Hearing Rights" set forth below).
16 Furthermore, you have no right to renew your restricted license
17 if this "condition" isn't satisfied by the date your restricted
18 license expires.

19 IT IS FURTHER ORDERED that all license certificates and
20 identification cards issued by the Department which are in your
21 possession be immediately surrendered by personal delivery or by
22 mailing in the enclosed, self-addressed envelope to:

23 Department of Real Estate
24 Attn: Flag Section
25 P. O. Box 187000
26 Sacramento, CA 95818-7000

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HEARING RIGHTS: Pursuant to the provisions of Section 10156.7 of the Business and Professions Code, you have the right to a hearing to contest the Commissioner's determination that you are in violation of Section 10177(k). If you desire a hearing, you must submit a written request. The request may be in any form, as long as it is in writing and indicates that you want a hearing. Unless a written request for a hearing, signed by or on behalf of you, is delivered or mailed to:

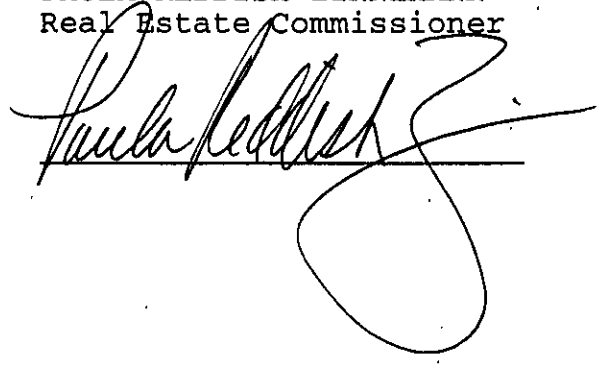
Department of Real Estate
Attn: Legal Section
P. O. Box 187000
Sacramento, CA 95818-7000

within 20 days after the date that this Order was mailed to or served on you, the Department will not be obligated or required to provide you with a hearing.

This Order shall be effective immediately.

DATED: April 11, 2000.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



FILED
APR 20 1999

DEPARTMENT OF REAL ESTATE

By Shelly Ely

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
)
GOLDEN BAY CAPITAL CORPORATION) NO. H-7623 SF
and GILBERT VINCENT RICHARDS,)
)
Respondents.) OAH NO. N 1998100387
)
_____)

DECISION

The Proposed Decision dated March 26, 1999, 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 May 10, 1999.

DATED: April 8, 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 of

**GOLDEN BAY CAPITAL CORPORATION
and GILBERT VINCENT RICHARDS,**

Respondents.

Case No. H-7623 SF

OAH No. N 1998100387

PROPOSED DECISION

Administrative Law Judge Cheryl R. Tompkin, Office of Administrative Hearings, State of California, heard this matter on March 4, 1999, in Oakland, California.

David B. Seals, Counsel, represented the Department of Real Estate.

Respondent Gilbert Vincent Richards was present and represented by Hiawatha Roberts, Attorney at Law, 576 Tenth Street, Oakland, California 94607.

The matter was submitted on March 4, 1999.

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. Gilbert Vincent Richards (Richards) and Golden Bay Capital Corporation (Golden Bay) are licensed and have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code).

At all times mentioned herein, Richards was licensed by the Department of Real Estate (Department) as an individual real estate broker and as the designated broker-officer of Golden Bay. Richards' individual license will expire on July 9, 1999.

At all times mentioned herein, Golden Bay was licensed by the Department as a real estate corporation, with Richards as its designated officer. Golden Bay's license will expire on May 14, 2000.

3. At all times mentioned herein, Richards was directly responsible for supervision and control of the activities of Golden Bay. Further, all of Richards licensed activities (loan brokerage) were conducted under Golden Bay's license.¹ Accordingly, all acts undertaken by Golden Bay are deemed attributable to Richards.

4. Within the three year period preceding the filing of the Accusation in this matter respondents Richards and Golden Bay engaged in activities on behalf of others for which a broker's license is required. Respondents, for or in the expectation of compensation, solicited borrowers or lenders for loans, negotiated loans, collected payments, or performed services for borrowers, lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity. (Bus. & Prof. Code, §10131, subd. (d).)

5. Commencing December 4, 1997, and continuing through July 31, 1998, the Department of Real Estate (Department) conducted an investigative audit of the books and records of Golden Bay for the period from July 1, 1995, through June 30, 1998. The audit covered the loan brokerage activities of Golden Bay. The audit revealed that during the period covered by the audit Golden Bay maintained the following trust fund accounts:

Union Bank of California
1145 East 14th Street
San Leandro, California 94577
Account No. 1390008240
(Trust 1)

Wells Fargo Bank
National Business Banking Center
P.O. Box 340214
Sacramento, California 95834-1419
Account No. 0359-749793
(Trust 2)

The trust accounts were used for Golden Bay's loan brokerage business. Deposits into Trust 1 consisted of credit report and appraisal fees received from potential purchasers. Disbursements included payments for credit reports and appraisals. Trust 1 replaced Trust 2 after Wells Fargo Bank used the money in Trust 2 to cover overdrafts in

¹ Golden Bay is a small family loan brokerage company operated by Richards. Its primary business activity is securing financing for potential homebuyers. As part of this process Golden Bay assesses the credit qualifications of the potential homebuyer and the value of the property to be purchased. The buyer bears the cost of this assessment by paying a credit report fee and an appraisal fee, usually totaling approximately \$350.00, at the beginning of the loan process. During the time period at issue in the subject proceeding, these fees were paid directly to Golden Bay, who was then responsible for paying the credit report agency or appraiser, as appropriate. The fees collected by Golden Bay were thus subject to the requirements of Business and Professions Code section 10145.

Richards' general operating account, which was also at Wells Fargo Bank (see Finding 10; *infra*).

6. The Department audit revealed that Golden Bay failed to maintain a record of all trust funds received and disbursed from Trust 1 and Trust 2, in violation of the requirements of section 2831 of Title 10 of the California Code of Regulations. The trust fund records provided by Golden Bay were incomplete, contained "reconstructed records," were not in chronological order and had no beginning, current, daily, periodic or ending balances. Due to the inadequacy of Golden Bay's records the Department's auditor could not verify Golden Bay's trust fund handling procedures, trust fund cash records, adjusted trust fund bank balances and the corresponding trust fund accountability.

7. The audit additionally revealed that Golden Bay failed to maintain separate records for each beneficiary or transaction, accounting for all funds received, deposited and disbursed in the trust account as required by section 2831.1 of Title 10 of the California Code of Regulations.

8. In addition Golden Bay 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. Due to the inadequacy of Golden Bay's trust records, the Department's auditor was unable to determine whether Golden Bay properly deposited trust funds into Trust 1 or Trust 2 or otherwise distributed trust funds within three business day of receipt of such funds, as required by section 2832 of Title 10 of the California Code of Regulations.

10. Golden Bay maintained a trust account at Wells Fargo Bank through March 7, 1997, when the account was closed. Richards also maintained a general operating account at Wells Fargo Bank during this time period. On March 6, 1997, Wells Fargo Bank deducted \$4,636.02 from Trust 2 to cover overdrafts in Richards' general operating account. It appears this occurred because Trust 2 was not set up as a trust account in the name of the broker (i.e., Golden Bay) as trustee as required by section 2832 of Title 10 of the California Code of Regulations.² As a result of the deduction, the trust fund balance for Trust 2 was reduced below the aggregate trust fund liability for Trust 2. Golden Bay 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.

² The bank account statements do not indicate Trust 2 was set up as such an account, and Richards failed to provide a signature card verifying the trust account status of the account despite repeated requests by the auditor.

11. Golden Bay's trust fund accountability and/or whether there was a trust fund shortage for Trust 1 and/or Trust 2 could not be determined due to Golden Bay's failure to retain and/or produce its books, accounts and records for review by the Department's auditor as required by Business and Professions Code section 10148. The inadequacy of Golden Bay's records prevented the Department's auditor from generally verifying or determining whether Richards accounted for and kept separate and distinct his and/or Golden Bay's funds from the trust funds.

12. During the period covered by the audit Golden Bay also failed to provide mortgage loan disclosure statements to various borrowers, in violation of section 10240 of the Business and Professions Code and sections 2840 and 2840.1 of Title 10 of the California Code of Regulations.

13. Richards admits that his trust fund records were inadequate and did not comply with the requirements of the Real Estate Law. He explains that during the past several years he has been suffering from multiple health conditions and that those conditions have interfered with his ability to manage Golden Bay properly. Richards has glaucoma and has been engaged in a substantive battle over the last couple of years to avoid going blind. In 1998 he had 12 laser surgeries on his eyes, including major surgery on his left eye on May 28, 1998, and major surgery on his right eye on December 4, 1998. In addition, Richards suffers from hypertension, a mild kidney problem, diabetes, high cholesterol and sleep apnea. Richards was diagnosed with and began to receive treatment for sleep apnea in June 1998, but throughout 1997 he operated on very little sleep. He feels this lack of sleep dramatically affected his mental acuity and ability to operate a business.

In an effort to continue operating while ill Richards began to increasingly rely on his then 18-year-old son, who is a licensed real estate salesperson. Richards states he tried to properly instruct his son on how to keep track of the fees received and disbursed, but he admits that he was less than diligent in his oversight of his son's work due to his various illnesses. Richards would check with his son periodically, and based on what his son told him and what he saw, Richards felt (erroneously) that things were going relatively well. Richards also explains that some of the records requested by the Department auditor were not available because his former CPA, who was a repository for many of Golden Bay and Richards' business records, misplaced the records when the CPA moved out of state.

With respect to the money taken from Trust 2 to cover Richards' operating costs, Richards acknowledges that not all of the credit agencies and appraisers who were to have been paid from the trust funds have been paid. He represents, however, that he is in the process of making such payments and notes that none of his real estate clients have complained regarding his services. He denies any misuse of funds. Richards also cooperated with the Department auditor during the audit.

14. Richards has been a real estate licensee since 1973. He has no prior discipline against his real estate licenses. Richards' real estate licenses are important to him since he supports himself, his wife and his son, who is now attending college full time, through his loan brokerage business. Despite his ongoing health problems, Richards feels his health has improved sufficiently to permit him to properly operate Golden Bay and comply with applicable rules and regulations. In order to avoid the type of trust fund record keeping problems that resulted in the subject proceeding he will not use trust accounts in the future. If he is permitted to continue operation of Golden Bay, Richards plans to have buyers write their checks directly to the credit report agency and/or appraiser. He is also willing to comply with any reasonable restrictions on his license in order to retain his real estate licenses.

15. At hearing several witnesses testified to Richards' good character, professionalism, honesty and trustworthiness. One of respondent's clients, Wilbert Lee, Jr., former Executive Director of the Oakland Neighborhood Housing Center (Center), testified to his satisfaction with Richards' services and Richards' honesty and integrity when providing financing to Center clients. Dr. Jesse Wyatt, a minister and owner of an accounting, bookkeeping and tax service, testified he has known Richards approximately 30 years and has had business associations with Richards for approximately 25 years. Wyatt has always found Richards to be honest and of excellent character. He still refers clients to Richards. Real Estate Broker Clarence Peterson, Sr. has known Richards for 20 years, and Richards worked for him for three years. Peterson characterized Richards' character traits for honesty and integrity as "superlative."

LEGAL CONCLUSIONS

1. Cause for disciplinary action against respondents Richards and Golden Bay exists pursuant to Business and Professions Code section 10177, subdivision (d), in conjunction with Business and Professions Code section 10145 and Title 10, California Code of Regulations section 2832 by reason of the matters set forth in Findings 9 and 10.

2. Cause for disciplinary action against respondents Richards and Golden Bay exists pursuant to Business and Professions Code section 10177, subdivision (d), in conjunction with Business and Professions Code section 10148 by reason of the matters set forth in Finding 11.

3. Cause for disciplinary action against respondents Richards and Golden Bay exists pursuant to Business and Professions Code section 10177, subdivision (d) in conjunction with Business and Professions Code section 10240 and sections 2840 and 2840.1 of Title 10, California Code of Regulations by reason of the matters set forth in Finding 12.

4. Cause for disciplinary action against respondents Richards and Golden Bay 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 6.

5. Cause for disciplinary action against respondents Richards and Golden Bay 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.

6. Cause for disciplinary action against respondents Richards and Golden Bay 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.

7. Cause for disciplinary action against respondents Richards and Golden Bay 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 9.

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

9. Cause for disciplinary action against respondent Richards exists pursuant to Business and Professions Code section 10177, subdivision (g) and/or subdivision (h) by reason of the matters set forth in Findings 6 through 12.

10. The evidence demonstrated that during the audit period the trust fund records for Golden Bay were not maintained in compliance with applicable law. In mitigation, the lack of adequate record keeping appeared to be the result of numerous ongoing health problems suffered by Richards, rather than theft or conversion. Those health problems now appear to be under control. In addition, there is no evidence of any complaints or loss by respondents' real estate clients, respondents are endeavoring to pay all creditors who were not timely paid due to poor management of trust funds, and respondent Richards has an excellent reputation for honesty and veracity in the community. It must also be noted that Richards has been a real estate licensee for approximately 25 years and there has been no prior discipline against his license. Respondents have also stopped using trust accounts in order to avoid similar problems in the future. Considering all of the evidence, it is determined that it would not be against the public interest to permit respondents to continue to hold broker licenses upon specific terms

and conditions. Among the conditions must be the requirement that respondents be precluded from accepting trust funds and/or maintaining a trust account during the term of the restricted license.

ORDER

All real estate licenses and licensing rights issued to respondents Golden Bay Capital Corporation and Gilbert Vincent Richards under the Real Estate Law are revoked pursuant to Legal Conclusions 1 through 9, jointly and individually; provided, however, restricted real estate broker licenses shall be issued to respondents pursuant to section 10156.5 of the Business and Professions Code if respondents make application therefor and pay 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 respondents 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 Richards' 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 respondents may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondents have 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 Richards 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. Respondents 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 respondents' 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.

5. Pursuant to section 10148 of the Business and Professions Code, respondents shall pay the Commissioner's reasonable cost for an audit to determine if respondents have corrected the trust fund violations found in paragraphs 1 through 9 of the Legal Conclusions. 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. Respondents 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 licenses issued to respondents 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 respondents and the Commissioner. The suspension shall remain in effect until payment is made in full or until respondents enter 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.
6. Respondents shall not accept trust funds and/or maintain a trust account during the term of the restricted licenses.

7. Respondents 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: 3/26/99


CHERYL R. POMPKIN
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
FEB 11 1999

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

GOLDEN BAY CAPITAL CORPORATION,
and GILBERT VINCENT RICHARDS



Case No. H-7623 SF

By Shelly Ely

OAH No. _____

Respondent

SECOND CONTINUED
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, 1515 Clay Street, Suite 206,
San Diego, CA 94612

on THURSDAY--MARCH 4, 1999, at the hour of 10:00 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: February 11, 1999

By David B. Seals
DAVID B. SEALS Counsel

FILED
DEC 4 1998

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Shelly Cly

In the Matter of the Accusation of

GOLDEN BAY CAPITAL CORPORATION and
GILBERT VINCENT RICHARDS

Case No. H-7623 SF

OAH No. N-1998100387

Respondent

**FIRST CONTINUED NOTICE
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, 1515 Clay Street, Suite 206

Oakland, California 94612

on Thursday--February 11, 1999, at the hour of 10:00 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: December 4, 1998

By

David B. Seals
DAVID B. SEALS

Counsel

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
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DEPARTMENT OF REAL ESTATE

Shelly Ely

In the Matter of the Accusation of

GOLDEN BAY CAPITAL CORPORATION and
GILBERT VINCENT RICHARDS

}

Case No. H-7623 SF

OAH No. N-1998100387

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at _____

The Office of Administrative Hearings, 1515 Clay Street, Suite 206,

Oakland, California 94612

on Friday--December 4, 1998, at the hour of 10:00 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.

Dated: November 3, 1998

DEPARTMENT OF REAL ESTATE

David B. Seals

By DAVID B. SEALS Counsel

1 DAVID B. SEALS, Counsel
State Bar No. 69378
2 Department of Real Estate
P. O. Box 187000
3 Sacramento, CA 95818-7000
4 Telephone: (916) 227-0789

FILED
SEP 25 1998
DEPARTMENT OF REAL ESTATE

By Jean B. ...

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
GOLDEN BAY CAPITAL) NO. H-7623 SF
CORPORATION and)
GILBERT VINCENT RICHARDS,) ACCUSATION
Respondents.)

The Complainant, Les R. Bettencourt, a Deputy Real Estate Commissioner of the State of California for cause of Accusation against GOLDEN BAY CAPITAL CORPORATION and GILBERT VINCENT RICHARDS, is informed and alleges as follows:

I

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

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II

Respondents are licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereinafter "Code") as follows:

(a) GOLDEN BAY CAPITAL CORPORATION (hereinafter "Respondent GOLDEN BAY"), as a corporate real estate broker, through GILBERT VINCENT RICHARDS (hereinafter "Respondent RICHARDS") as designated officer.

(b) Respondent RICHARDS as a real estate broker and as the designated officer for Respondent GOLDEN BAY.

III

At all times mentioned herein, as the designated officer of Respondent GOLDEN BAY, Respondent RICHARDS was responsible for the supervision and control of the activities conducted on behalf of Respondent GOLDEN BAY by its officers and employees as necessary to secure full compliance with the provisions of the Real Estate Law.

IV

Whenever reference is made in an allegation in this Accusation to an act or omission of Respondent GOLDEN BAY, such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with Respondent GOLDEN BAY committed such act or omissions while engaged in furtherance of the business or operation of Respondent GOLDEN BAY and while acting within the course and scope of their corporate authority and employment.

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V

That at all times herein mentioned, Respondent GOLDEN BAY and Respondent RICHARDS, and both of them, engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers in the State of California within the meaning of Section 10131 of the Code for or in expectation of compensation.

VI

That at all times mentioned herein, Respondent GOLDEN BAY and Respondent RICHARDS accepted or received funds in trust (hereafter trust funds) from and on behalf of their principals placing them in trust accounts and at times thereafter made disbursements of such funds.

VII

An investigative audit was made by the Department of the records and bank records of Respondent GOLDEN BAY for the period from July 1, 1995, to June 30, 1998, as said records related to their activities as a real estate broker.

VIII

During the period covered by the audit, Respondent GOLDEN BAY failed to provide mortgage loan disclosure statements to various borrowers, including but not limited to Kulbushaw Gusta and Bobby and Robin Williams in violation of Section 10240 of the Code in conjunction with Sections 2840 and 2840.1, Title 10, California Code of Regulations (Regulations).

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IX

Respondent GOLDEN BAY maintained two trust accounts into which trust funds were placed. One at Union Bank of California, 1145 East 14th Street, San Leandro, CA 94577, Account No. 1390008240 (hereinafter "Trust 1") and one at Wells Fargo Bank, National Business Banking Center, P.O. Box 340214, Sacramento, CA 95834-1419, Account No. 0359-749793 (hereinafter "Trust 2").

X

Respondent GOLDEN BAY failed to maintain trust account records in compliance with Section 2831 of the Regulations by failing to maintain a record of all trust funds received and disbursed.

XI

Respondent GOLDEN BAY failed to maintain separate records in compliance with Section 2831.1 of the Regulations by failing to include all records and failing to have such records in chronological order and having no beginning, current, daily, periodic or ending balances.

XII

Respondent GOLDEN BAY failed to reconcile the balance of all separate beneficiary records with the record of all trust funds received on a monthly basis in compliance with Section 2831.2 of the Regulations.

XIII

Respondent GOLDEN BAY failed to deposit trust funds into Trust 1 and/or Trust 2 or otherwise distribute such funds within

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1 three business days following receipt of said funds in compliance
2 with Section 2832 of the Regulations.

3 XIV

4 Respondents caused the disbursement of trust funds from
5 Trust 2 without the written consent of every principal who was an
6 owner of the funds, causing the balance of the funds in the
7 account to be an amount less than the existing aggregate trust
8 fund liability of Respondent GOLDEN BAY to all owners of said
9 funds in violation of Section 10145 of the Code and Section 2832.1
10 of the Regulations.

11 XV

12 An accountability or shortage could not be determined
13 for Trust 1 or Trust 2 because of Respondents failure to provide
14 records in violation of Section 10148 of the Code.

15 XVI

16 The acts and/or omissions of Respondents described above
17 are grounds for the revocation or suspension of Respondents'
18 licenses under the following sections of the Business and
19 Professions Code and the Regulations:

20 (a) As to Respondents GOLDEN BAY CAPITAL CORPORATION and GILBERT
21 VINCENT RICHARDS, and each of them under Section 10177(d) in
22 conjunction with Sections 10145, 10148 and 10240 of the Code,
23 and Sections 2831, 2831.1, 2831.2, 2832, 2832.1, 2840 and
24 2840.1 of the Regulations; and

25 (b) As to Respondent GILBERT VINCENT RICHARDS only, under Section
26 10177(g) and/or 10177(h) of the 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 Respondents, and each of them, 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

LES R. BETTENCOURT
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 21st day of September, 1998.