

FILED  
OCT 21 2003

DEPARTMENT OF REAL ESTATE

By Lauriel J. Jiri

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	No. H-7720 SF
	)	
ROBERT J. FERNANDEZ,	)	
	)	
Respondent.	)	
	)	

ORDER SUSPENDING RESTRICTED REAL ESTATE LICENSE

TO: Respondent ROBERT J. FERNANDEZ (herein "Respondent"):

At all times mentioned herein since May 11, 2000, Respondent has been and now is licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (hereinafter "Code") as real estate broker whose broker license was and now is restricted subject to the provisions of Section 10156.7 of the Code and to enumerated additional terms, conditions and restrictions imposed under authority of Section 10156.6 of the Code.

On October 3, 2003, in Case No. H-8544 SF, an Accusation (hereinafter "Accusation") by a Deputy Real Estate

1 Commissioner of the State of California was filed alleging cause  
2 as to Respondent under Sections 10159.2, 10177(d), 10177(g), and  
3 10177(h) of the California Business and Professions Code (herein  
4 "the Code") for the suspension or revocation of all licenses and  
5 license rights of Respondent under the Real Estate Law.

6 NOW, THEREFORE, IT IS ORDERED under authority of  
7 Section 10156.7 of the Business and Professions Code of the State  
8 of California that any restricted real estate broker license  
9 heretofore issued to Respondent ROBERT J. FERNANDEZ, and the  
10 exercise of any privileges thereunder, be and hereby is suspended  
11 pending final determination made after the hearing on the  
12 aforsaid Accusation.

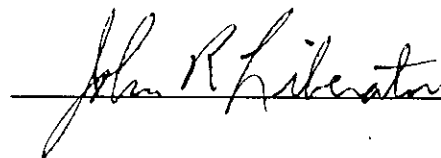
13 IT IS FURTHER ORDERED that all license certificates and  
14 identification cards issued by the Department of Real Estate  
15 which are in the possession of Respondent be immediately  
16 surrendered by personal delivery or by mailing in the enclosed  
17 self-addressed envelope to:

18 DEPARTMENT OF REAL ESTATE  
19 Attention: Flag Section  
20 P. O. Box 187000  
21 Sacramento, CA 95818-7000

22 This Order shall be effective immediately.

23 DATED: October 15, 2003

24 PAULA REDDISH ZINNEMANN  
25 Real Estate Commissioner

26   
27

1 DEPARTMENT OF REAL ESTATE  
2 P. O. Box 187000  
3 Sacramento, CA 95818-7000  
4  
5 Telephone: (916) 227-0789  
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FILED  
APR 20 2000

DEPARTMENT OF REAL ESTATE

*Laurie A. Zain*

9 BEFORE THE DEPARTMENT OF REAL ESTATE  
10 STATE OF CALIFORNIA

11 \* \* \*

12 In the Matter of the Accusation of ) DRE No. H-7720 SF  
13 ROBERT J. FERNANDEZ, ) OAH No. N-1999100081  
14 Respondents. ) STIPULATION AND AGREEMENT

15 It is hereby stipulated by and between Respondent  
16 ROBERT J. FERNANDEZ (hereinafter "FERNANDEZ"), individually and  
17 by and through Daniel V. Hernandez, Esq., attorney of record  
18 herein for Respondent FERNANDEZ, and the Complainant, acting by  
19 and through James L. Beaver, Counsel for the Department of Real  
20 Estate, as follows for the purpose of settling and disposing of  
21 the Accusation filed on July 7, 1999 in this matter (hereinafter  
22 "the Accusation"):

23 1. All issues which were to be contested and all  
24 evidence which was to be presented by Complainant and Respondent  
25 at a formal hearing on the Accusation, which hearing was to be  
26 held in accordance with the provisions of the Administrative

27 DRE No. H-7720 SF

ROBERT J. FERNANDEZ

1 Procedure Act (APA), shall instead and in place thereof be  
2 submitted solely on the basis of the provisions of this  
3 Stipulation and Agreement.

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

8 3. On September 29, 1999, Respondent filed a Notice  
9 of Defense pursuant to Section 11505 of the Government Code for  
10 the purpose of requesting a hearing on the allegations in the  
11 Accusation. Respondent hereby freely and voluntarily withdraws  
12 said Notice of Defense. Respondent acknowledges that Respondent  
13 understand that by withdrawing said Notice of Defense Respondent  
14 will thereby waive Respondent's right to require the Commissioner  
15 to prove the allegations in the Accusation at a contested hearing  
16 held in accordance with the provisions of the APA and that  
17 Respondent will waive other rights afforded to Respondent in  
18 connection with the hearing such as the right to present evidence  
19 in defense of the allegations in the Accusation and the right to  
20 cross-examine witnesses.

21 4. Respondent, pursuant to the limitations set forth  
22 below, solely for the purposes of this stipulation, hereby admits  
23 that the factual allegations pertaining to Respondent in the  
24 Accusation are true and correct and agrees that the Real Estate  
25 Commissioner shall not be required to provide further evidence of  
26 such allegations.

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

11           6.    The Order or any subsequent Order of the Real  
12 Estate Commissioner made pursuant to this Stipulation and  
13 Agreement shall not constitute an estoppel, merger or bar to any  
14 further administrative or civil proceedings by the Department of  
15 Real Estate with respect to any matters which were not  
16 specifically alleged to be causes for accusation in this  
17 proceeding.

18                           DETERMINATION OF ISSUES

19           By reason of the foregoing stipulations, admissions and  
20 waivers and solely for the purpose of settlement of the pending  
21 Accusation without hearing, it is stipulated and agreed that the  
22 following Determination of Issues shall be made:

23                           I

24           The acts and omissions of Respondent as described in the  
25 Accusation are grounds for the suspension or revocation of the  
26 licenses and license rights of Respondent under Section 10177.5 of

1 the California Business and Professions Code (hereinafter "the  
2 Code").

3 ORDER

4 I

5 All licenses and licensing rights of Respondent ROBERT  
6 J. FERNANDEZ under the Real Estate Law are revoked; provided,  
7 however, a restricted real estate broker license shall be issued to  
8 said Respondent pursuant to Section 10156.5 of the Business and  
9 Professions Code if Respondent makes application therefor and pays  
10 to the Department of Real Estate the appropriate fee for the  
11 restricted license within 90 days from the effective date of this  
12 Decision. The restricted license issued to Respondent shall be  
13 subject to all of the provisions of Section 10156.7 of the Business  
14 and Professions Code and to the following limitations, conditions  
15 and restrictions imposed under authority of Section 10156.6 of that  
16 Code:

17 1. Respondent shall pay restitution to Delbert and  
18 Dorothy Seals in the total sum of \$166,579.45 (less only payments  
19 made by Respondent on said sum between November 1, 1999 and the  
20 effective date hereof) in the following installments:

- 21 (a) \$3,000 per month on the fifteenth day of each and  
22 every month commencing on the effective date hereof  
23 and continuing thereafter until December 31, 2000;  
24 and  
25 (b) \$5,000 per month on the fifteenth day of each and  
26 every month commencing January 1, 2001 and

1 continuing thereafter until the total sum has been  
2 fully paid.

3 If Respondent fails to comply with this condition, the Commissioner  
4 may order the suspension of the restricted license until the  
5 Respondent presents evidence that Respondent is in compliance with  
6 this condition. The Commissioner shall afford Respondent the  
7 opportunity for a hearing pursuant to the Administrative Procedure  
8 Act to present such evidence.

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

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

20 4. Respondent shall not be eligible to apply for the  
21 issuance of an unrestricted real estate license nor for the  
22 removal of any of the conditions, limitations or restrictions of  
23 a restricted license until one (1) year has elapsed from the  
24 effective date of this Decision.

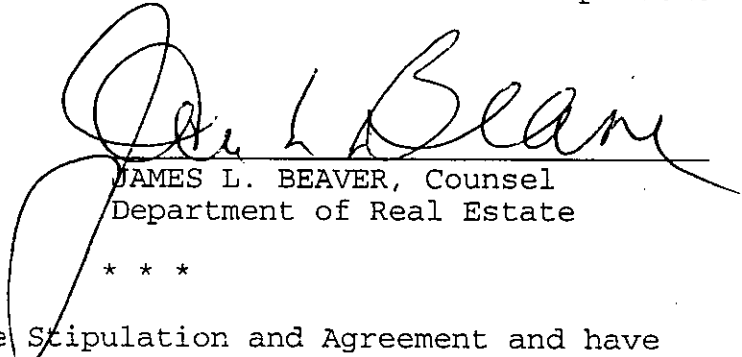
25 5. Respondent shall, within nine months from the  
26 effective date of the Decision, present evidence satisfactory to  
27 the Real Estate Commissioner that Respondent has, since the most

1 recent issuance of an original or renewal real estate license,  
2 taken and successfully completed the continuing education  
3 requirements of Article 2.5 of Chapter 3 of the Real Estate Law  
4 for renewal of a real estate license. If Respondent fails to  
5 satisfy this condition, the Commissioner may order the suspension  
6 of the restricted license until the Respondent presents such  
7 evidence. The Commissioner shall afford Respondent the  
8 opportunity for a hearing pursuant to the Administrative  
9 Procedure Act to present such evidence.

10 6. Respondent shall, within six (6) months from the  
11 issuance of the restricted license, take and pass the Professional  
12 Responsibility Examination administered by the Department  
13 including the payment of the appropriate examination fee. If  
14 Respondent fails to satisfy this condition, the Commissioner may  
15 order the suspension of the restricted license until Respondent  
16 passes the examination.

17 March 27, 2000

18 DATED

18   
19 JAMES L. BEAVER, Counsel  
20 Department of Real Estate

19 \* \* \*

20 I have read the Stipulation and Agreement and have  
21 discussed its terms with my attorney and its terms are understood  
22 by me and are agreeable and acceptable to me. I understand that  
23 I am waiving rights given to me by the California Administrative  
24 Procedure Act (including but not limited to Sections 11506,  
25 11508, 11509, and 11513 of the Government Code), and I willingly,  
26 intelligently, and voluntarily waive those rights, including the

27 DRE No. H-7720 SF

ROBERT J. FERNANDEZ



1 right of requiring the Commissioner to prove the allegations in  
2 the Accusation at a hearing at which I would have the right to  
3 cross-examine witnesses against me and to present evidence in  
4 defense and mitigation of the charges.

5 3/21/2000

6 DATED



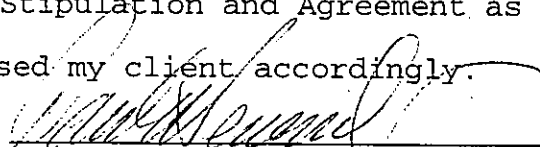
7 ROBERT J. FERNANDEZ  
8 Respondent

9 \* \* \*

10 I have reviewed the Stipulation and Agreement as to  
11 form and content and have advised my client accordingly.

12 3/21/2000

13 DATED

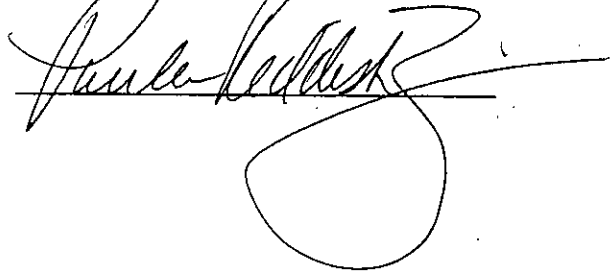
14   
15 DANIEL V. HERNANDEZ  
16 Attorney for Respondent

17 \* \* \*

18 The foregoing Stipulation and Agreement is hereby  
19 adopted by as my Decision in this matter and shall become  
20 effective at 12 o'clock noon on May 11, 2000.

21 IT IS SO ORDERED April 10, 2000.

22 PAULA REDDISH ZINNEMANN  
23 Real Estate Commissioner

24 

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED  
JAN 21 2000

DEPARTMENT OF REAL ESTATE

*Laurie A. Zain*

In the Matter of the Accusation of

ROBERT J. FERNANDEZ,

Case No. H-7720 SF

OAH No. N1999100081

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

on Wednesday, April 12, 2000, at the hour of 1:30 PM,  
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: January 21, 2000

By James L. Beaver  
JAMES L. BEAVER  
Counsel  
(12)

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED  
OCT 01 1999

DEPARTMENT OF REAL ESTATE

By Shelly Ely

In the Matter of the Accusation of

ROBERT J. FERNANDEZ,

Case No. H-7720 SF

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

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 WEDNESDAY--JANUARY 12, 2000, at the hour of 1:30 PM,

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.

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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 1, 1999

By David A. Peters  
DAVID A. PETERS *D.A.P.* Counsel

1 LARRY A. ALAMAO, Counsel  
2 State Bar No. 47379  
3 Department of Real Estate  
4 P. O. Box 187000  
5 Sacramento, CA 95818-7000  
6 Telephone: (916) 227-0789

FILED  
JUL 07 1999  
DEPARTMENT OF REAL ESTATE  
By Shelly King

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of) No. H-7720 SF  
12 ROBERT J. FERNANDEZ, )  
13 Respondent. ) ACCUSATION

14  
15 The Complainant, LES R. BETTENCOURT, a Deputy Real  
16 Estate Commissioner of the State of California, for cause of  
17 Accusation against ROBERT J. FERNANDEZ (hereinafter  
18 "Respondent"), is informed and alleges as follows:

19 I

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

24 II

25 The Complainant, LES R. BETTENCOURT, a Deputy Real  
26 Estate Commissioner of the State of California, makes this

1 Accusation against Respondent in his official capacity and not  
2 otherwise.

3 III

4 On or about March 20, 1998, in the Superior Court,  
5 County of Santa Clara, State of California, in Case No. 734027, a  
6 final judgment was entered against Respondent based on grounds of  
7 fraud, misrepresentation, or deceit with reference to a  
8 transaction for which a real estate license is required.

9 IV

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

14 PRIOR ADMINISTRATIVE ACTION

15 On September 4, 1997, in Case No. H-7494 SF, the Real  
16 Estate Commissioner issued an Order To Desist and Refrain to  
17 Respondent, among others, pursuant to the provisions of Section  
18 10086 of the Code, determining that such Respondent violated  
19 Section 10177(f) of the Code, and requiring Respondent to desist  
20 and refrain from engaging in any activity for which a real estate  
21 license is required on the part of QAL Affiliates, Inc.

22 WHEREFORE, Complainant prays that a hearing be  
23 conducted on the allegations of this Accusation and that upon  
24 proof thereof, a decision be rendered imposing disciplinary  
25 action against all licenses and license rights of Respondent,  
26 under the Real Estate Law (Part 1 of Division 4 of the Business  
27

1 and Professions Code) and for such other and further relief as  
2 may be proper under other provisions of law.

3  
4 

5 LES R. BETTENCOURT  
6 Deputy Real Estate Commissioner

7 Dated at Oakland, California,  
8 this 15th day of June, 1999.

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