

FILED

JAN - 4 2011

DEPARTMENT OF REAL ESTATE

By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

FRANK E. MONTENEGRO,

Respondent.

No. H-7741 SF

ORDER DENYING REINSTATEMENT OF LICENSE

On March 10, 2000, in Case No. H-7741 SF, a Decision was rendered revoking the real estate salesperson license of Respondent effective April 6, 2000.

On May 3, 2002, Respondent petitioned for reinstatement of said real estate salesperson license. On April 28, 2003, an order was entered herein denying Respondent's petition for reinstatement of said license.

On February 15, 2006, Respondent petitioned for reinstatement of said real estate salesperson license. On July 9, 2007 an order was entered herein denying Respondent's petition for reinstatement of Respondent's real estate salesperson license, but granting Respondent the right to issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on October 16, 2007, and Respondent has operated as a restricted licensee since that time.

1 The burden of proving rehabilitation rests with the petitioner (*Feinstein v. State*
2 *Bar* (1952) 39 Cal. 2d 541). A petitioner is required to show greater proof of honesty and
3 integrity than an applicant for first time licensure. The proof must be sufficient to overcome the
4 prior adverse judgment on the applicant's character (*Tardiff v. State Bar* (1980) 27 Cal. 3d 395).

5 I have considered the petition of Respondent and the evidence submitted in
6 support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has
7 undergone sufficient rehabilitation to warrant the reinstatement of Respondent's real estate
8 salesperson license at this time.

9 The Department has developed criteria in Section 2911 of Title 10, California
10 Code of Regulations (Regulations) to assist in evaluating the rehabilitation of an applicant for
11 reinstatement of a license. Among the criteria relevant in this proceeding are:

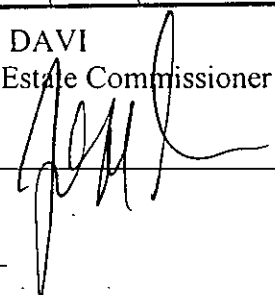
12 Regulation 2911(a) The passage of not less than two years since the most recent
13 criminal conviction or act of the applicant that is a basis to deny the departmental action sought.
14 (A longer period will be required if there is a history of acts or conduct substantially related to
15 the qualifications, functions or duties of a licensee of the department.)

16 Respondent's convictions are very serious and involve a breach of trust by taking
17 sexual advantage of a fourteen year old girl, and dishonesty by attempting to dissuade a witness
18 from reporting a crime. Notwithstanding the fact that Respondent has completed the terms of his
19 sentence, I am not satisfied that Respondent has satisfied Regulation 2911(a), and is sufficiently
20 rehabilitated to receive an unrestricted real estate salesperson license.

21 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for
22 reinstatement of Respondent's real estate salesperson license is denied.

23 This Order shall become effective at 12 o'clock noon on **JAN 25 2011**

24 IT IS SO ORDERED

25 JEFF DAVI
26 Real Estate Commissioner
27 

JUL 25 2007

By Jean Armat

* * *

1 provided information and statements from many associates
2 suggesting that Respondent has made significant progress toward
3 rehabilitation. Respondent now professes insight into and
4 remorse for the conduct resulting in revocation of Respondent's
5 license. But the following information suggests that particular
6 care should be taken in deciding this matter:

7 A. Prior to the conviction that resulted in the
8 revocation of Respondent's real estate salesperson license,
9 Respondent had a lengthy history of criminal convictions for acts
10 which are substantially related to the qualifications, functions
11 and duties of a real estate licensee.

12 1. On February 1, 1983, in the Municipal Court of the
13 State of California, County of Santa Clara, Case No. C3101345,
14 Respondent was convicted of the crime of Driving Under The
15 Influence in violation of Vehicle Code Section 23152(a), a
16 misdemeanor. The conviction was expunged May 11, 2007.

17 2. On May 16, 1983, in the Municipal Court of the
18 State of California, County of Santa Clara, Case No. C3105935,
19 Respondent was convicted of the crime of Offensive Words In A
20 Public Place in violation of Penal Code Section 415.3. The
21 conviction was expunged May 11, 2007.

22 3. On November 3, 1986, in the Municipal Court of the
23 State of California, County of Santa Clara, Case No. C8646423,
24 Respondent was convicted of the crime of Driving With Blood
25 Alcohol Over .08% in violation of Vehicle Code Section 23152(b),
26 a misdemeanor. The conviction was expunged May 11, 2007.

27 ///

1 4. On September 26, 1989, in the Municipal Court of
2 the State of California, County of Santa Clara, Case No.
3 C8908898, Respondent was convicted of the crime of Driving With
4 Blood Alcohol Over .08% in violation of Vehicle Code Section
5 23152(b), a misdemeanor. The conviction was expunged May 11,
6 2007.

7 5. On May 30, 1991, in the Municipal Court of the
8 State of California, County of Santa Clara, Case No. C9136434,
9 Respondent was convicted of the crime of Driving With Blood
10 Alcohol Over .08% in violation of Vehicle Code Section 23152(b),
11 and the crime of Driving With Suspended License in violation of
12 Vehicle Code Section 14601.2, each a misdemeanor. The conviction
13 was expunged May 11, 2007.

14 6. On November 10, 1993, in the Municipal Court of
15 the State of California, County of Santa Clara, Case No. 9358731,
16 Respondent was convicted of the crime of Driving With Suspended
17 License in violation of Vehicle Code Section 14601.2), a
18 misdemeanor. The conviction was expunged December 29, 2006.

19 7. On January 11, 1994, in the Municipal Court of the
20 State of California, County of Santa Clara, Case No. C9368138,
21 Respondent was convicted of the crime of Driving With Blood
22 Alcohol Over .08% in violation of Vehicle Code Section 23152(b),
23 and the crime of Driving With Suspended License in violation of
24 Vehicle Code Section 14601.2, each a misdemeanor. The conviction
25 was expunged May 11, 2007.

26 8. On January 22, 1997, in the Municipal Court of the
27 State of California, County of Santa Clara, Case No. C9619173,

1 Respondent was convicted of the crime of Driving While Unlicensed
2 in violation of Vehicle Code Section 12500), a misdemeanor. The
3 conviction was expunged May 11, 2007.

4 B. On March 10, 2000, in Case No. H-7741 SF, a
5 Decision was rendered herein revoking Respondent's real estate
6 salesperson license pursuant to the provisions of Sections 490
7 and 10177(b) of the Code on the ground, among others, that on
8 February 18, 1999, Respondent was convicted of the crime of
9 Attempt To Dissuade Witness in violation of Penal Code Section
10 136.1, a misdemeanor, and of the crime of Disorderly Conduct -
11 Lewd Conduct In Public in violation of Penal Code Section 647(a).

12 C. In the context of Respondent's lengthy history of
13 alcohol - related convictions, the circumstances attending the
14 revocation of Respondent's license are particularly troubling.

15 1. Thelma Gonzalez, a family friend, and her 14 year
16 old daughter visited Respondent's home one evening and joined the
17 family for dinner with some of Respondent's real estate clients.
18 Respondent had drinks during dinner. When Respondent found
19 himself alone with the daughter, Respondent kissed the daughter
20 and fondled her breasts and thigh. Subsequently, in a telephone
21 conversation with Thelma Gonzales monitored by authorities,
22 Respondent denied touching the child and attempted to persuade
23 Thelma Gonzales not to report the incident.

24 2. Respondent was placed on probation for two years,
25 fined and assessed \$1800.00, and ordered to participate in
26 therapy. Respondent participated in weekly group therapy
27 sessions and a series of private counseling sessions with Lucia

1 Valverde at the Bill Wilson Center in San Jose. Valverde reported
2 that throughout counseling Respondent consistently refused to
3 acknowledge misconduct or responsibility for the events leading
4 to his conviction. On September 22, 1999, Valverde noted "Mr. M.
5 continues in denial of the situation, doesn't believe his
6 behavior is that of a sex offender and does not seem remorseful -
7 he does worry he may be liable financially for the girl's therapy
8 and feels he will pay." Valverde concluded: "Mr. M. will not
9 benefit from further counseling. He may not repeat his behavior
10 but only due to the heavy consequences for repeated behavior."

11 D. The information submitted by Respondent in support
12 of the petition is received with a degree of circumspection,
13 because even before revocation Respondent had established a
14 history of providing false and/or insufficient information to the
15 Department:

16 1. On June 22, 1992, Respondent applied for a real
17 estate salesperson license. In response to item 25 in said
18 application ("Have you ever been convicted of any violation of
19 law....", Respondent answered "No". This was incorrect. In fact,
20 Respondent had suffered the convictions on February 1, 1983,
21 May 16, 1983, November 3, 1986, September 26, 1989, and May 30,
22 1991, each of which involved a grant of probation and/or a fine
23 in excess of \$100.00, and should have been disclosed in the
24 application. On July 7, 1992, Respondent was originally licensed
25 as a real estate salesperson in reliance on Respondent's
26 application.

27 ///

1 2. The Administrative Law Judge found, based upon
2 Respondent's testimony at the hearing in this matter, that
3 Respondent had never suffered any criminal conviction prior to
4 the convictions that served as the basis for disciplinary action
5 in this matter. Respondent's testimony was false in that, as
6 described above, Respondent had sustained eight criminal
7 convictions during the period between 1983 and 1997.

8 E. Since revocation of Respondent's license,
9 Respondent has not engaged as a salesperson in the conduct of a
10 real estate business or otherwise acted in a fiduciary capacity.

11 The burden of proving rehabilitation rests with the
12 petitioner (Feinstein v. State Bar (1952) 39 Cal. 2d 541). A
13 petitioner is required to show greater proof of honesty and
14 integrity than an applicant for first time licensure. The proof
15 must be sufficient to overcome the prior adverse judgment on the
16 applicant's character (Tardiff v. State Bar (1980) 27 Cal. 3d
17 395).

18 Respondent has failed to demonstrate to my satisfaction
19 that Respondent has undergone sufficient rehabilitation to
20 warrant the reinstatement of Respondent's unrestricted real
21 estate salesperson license. Additional time and evidence of
22 correction is necessary to establish that Respondent is
23 rehabilitated. Notwithstanding the above, I am satisfied that it
24 will not be against the public interest to issue a restricted
25 real estate salesperson license to Respondent.

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1 NOW, THEREFORE, IT IS ORDERED that Respondent's
2 petition for reinstatement of Respondent's real estate
3 salesperson license is denied.

4 A restricted real estate salesperson license shall be
5 issued to Respondent pursuant to Section 10156.5 of the Business
6 and Professions Code, if Respondent satisfies the following
7 conditions prior to and as a condition of obtaining a restricted
8 real estate salesperson license within nine (9) months from the
9 date of this Order:

10 1. Respondent shall take and pass the real estate
11 salesperson license examination.

12 2. Respondent shall submit a completed application and
13 pay the fee for a real estate salesperson license.

14 The restricted license issued to Respondent shall be
15 subject to all of the provisions of Section 10156.7 of the
16 Business and Professions Code and to the following limitations,
17 conditions and restrictions imposed under authority of Section
18 10156.6 of that Code:

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

24 B. The restricted license issued to Respondent may be
25 suspended prior to hearing by Order of the Real Estate
26 Commissioner on evidence satisfactory to the Commissioner that
27 Respondent has violated provisions of the California Real Estate

1 Law, the Subdivided Lands Law, Regulations of the Real Estate
2 Commissioner or conditions attaching to the restricted license.

3 C. Respondent shall not be eligible to apply for the
4 issuance of an unrestricted real estate license nor the removal
5 of any of the limitations, conditions or restrictions of a
6 restricted license until two (2) years have elapsed from the date
7 of the issuance of the restricted license to respondent.

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

13 1. That the employing broker has read the Decision of
14 the Commissioner which granted the right to a restricted license;
15 and

16 2. That the employing broker will exercise close
17 supervision over the performance by the restricted licensee
18 relating to activities for which a real estate license is
19 required.

20 This Order shall become effective at 12 o'clock
21 noon on AUG 15 2007, 2007.

22 DATED: 7-9-07, 2007.

23 JEFF DAVI
24 Real Estate Commissioner
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FILED

MAY 23 2003

DEPARTMENT OF REAL ESTATE

By

Jean A. ...

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
FRANK E. MONTENEGRO,)
Respondent.)

NO. H-7741 SF

ORDER DENYING REINSTATEMENT OF LICENSE

On March 10, 2000, a Decision was rendered revoking the real estate salesperson license of Respondent.

On May 3, 2002, Respondent petitioned for reinstatement of said real estate salesperson license, and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered the petition of Respondent and the evidence submitted in support thereof. Respondent has failed to demonstrate to my satisfaction that he has undergone sufficient rehabilitation to warrant the reinstatement of his real estate salesperson license at this time.

The burden of proving rehabilitation rests with the petitioner (Feinstein v. State Bar (1952) 39 Cal. 2d 541). A petitioner is required to show greater proof of honesty and

1 integrity than an applicant for first time licensure. The proof
2 must be sufficient to overcome the prior adverse judgment on the
3 applicant's character (Tardiff v. State Bar (1980) 27 Cal. 3d
4 395).

5 The disciplinary action in this matter was based on
6 Respondent's criminal convictions for disorderly and lewd conduct
7 involving a fourteen year old girl and Respondent's attempts to
8 prevent the victim from testifying about the crime.

9 The Administrative Law Judge, based upon Respondent's
10 testimony at the hearing in this matter, found that
11 Respondent had never suffered any criminal conviction prior
12 to the convictions that served as the basis for disciplinary
13 action in this matter. Respondent's testimony was false in
14 that Respondent had sustained the following criminal
15 convictions:

- 16 1. October 11, 1994 - Driving Under the Influence -
17 Santa Clara County Municipal Court;
- 18 2. November 30, 1993 - Driving Under the Influence -
19 Santa Clara County Municipal Court;
- 20 3. May 30, 1991 - Driving Under the Influence -
21 Santa Clara County Municipal Court;
- 22 4. September 26, 1989 - Driving Under the Influence -
23 Santa Clara County Municipal Court;
- 24 5. November 3, 1986 - Driving Under the Influence -
25 Santa Clara County Municipal Court;
- 26 6. February 1, 1983 - Driving Under the Influence -
27 Santa Clara County Municipal Court.

1 Therefore, Respondent has testified falsely under oath
2 at an administrative proceeding. In addition, Respondent has
3 a history of acts or conduct substantially related to the
4 qualifications, functions, or duties of a licensee of the
5 department (Griffiths v. California Medical Board (2002) 96 Cal.
6 App. 4th 757).

7 The Department has developed criteria to assist in
8 evaluating the rehabilitation of an applicant for reinstatement
9 of a license. Among the criteria relevant in this proceeding are:

10 (a) The passage of not less than two years since the most
11 recent criminal conviction or act of the applicant that is a
12 basis to deny the departmental action sought. (A longer period
13 will be required if there is a history of acts or conduct
14 substantially related to the qualifications, functions, or duties
15 of a licensee of the department.) Slightly more than four years
16 have elapsed since the two most recent convictions in this
17 matter. However, Respondent has a long history of criminal
18 convictions and additional time is necessary to establish
19 Respondent's rehabilitation.

20 c) Expungement of criminal convictions resulting from immoral or
21 antisocial acts. Respondent has not obtained an expungement of
22 his criminal convictions.

23 (i) Completion of, or sustained enrollment in, formal
24 educational or vocational training courses for economic self-
25 improvement. Respondent has submitted no evidence of completion
26 of, or sustained enrollment in, formal educational or vocational
27 training courses.

1 Given the nature of the violations found and the fact that
2 Respondent has not established that he has complied with
3 Sections 2911 (a), (c), and (i) of Title 10, California Code of
4 Regulations, I am not satisfied that Respondent is sufficiently
5 rehabilitated to receive a real estate salesperson license.

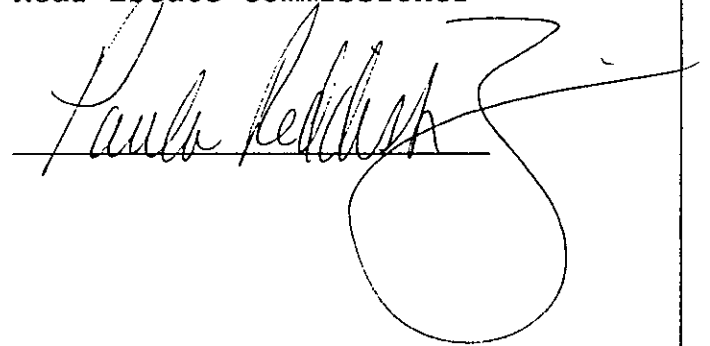
6 NOW, THEREFORE, IT IS ORDERED that Respondent's
7 petition for reinstatement of his real estate salesperson
8 license is denied.

9 This Order shall be effective at 12 o'clock noon on

10 June 13, 2003.

11 DATED: April 28, 2003.

12
13 PAULA REDDISH ZINNEBANN
14 Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
MAR 17 2000

DEPARTMENT OF REAL ESTATE

* * *

In the Matter of the Accusation of)
FRANK E. MONTENEGRO,)
Respondent.)

NO. H-7741 SF

OAH NO. N 1999100266

By Shelly Ely

DECISION

The Proposed Decision dated March 1, 2000, 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 Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon
on April 6, 2000.

IT IS SO ORDERED March 10, 2000.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish Zinnemann

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

FRANK E. MONTENEGRO,

Respondent.

No. H-7741 SF

OAH No. N 1999100266

PROPOSED DECISION

On February 9, 2000, in Oakland, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

David B. Seals, Counsel, represented complainant Deputy Real Estate Commissioner Les R. Bettencourt.

Respondent Frank E. Montenegro appeared at the hearing of this matter, but was not otherwise represented.

The record remained open for the purpose of affording respondent the opportunity to file documentary evidence in support of representations made at the hearing of this matter. On February 10, 2000, the Office of Administrative Hearings ("OAH") received a telefacsimile transmission from respondent that included four pages. The material was marked as Exhibit "B,"¹ and was received under Government Code section 11513, subdivision (d) as administrative hearsay. On February 14, 2000, OAH received a letter, dated February 10, 2000, by Robert Stewart, broker/owner of Referral Realty. The letter by Robert Stewart was marked as Exhibit "C," and was received as administrative hearsay. On February 14, 2000, OAH received a letter, dated February 11, 2000, by Lucy Teo, Intake Counselor, of the Bill Wilson Center. The letter by Lucy Teo was marked as Exhibit "D," and was received as administrative hearsay. At the

¹ Exhibit "B" consists of a telefax cover page, dated February 10, 2000; a copy of a letter, dated February 10, 2000, by Robert Stewart on stationery of Referral Realty; a computer data print-out captioned "Compressed Ranked Summary; and a letter, dated September 28, 1999, on the stationery of the Bill Wilson Center.

hearing, complainant was given until February 18, 2000, to file a written response to the documents, if any, as filed by respondent. By the prescribed date, complainant elected not to file any written response or argument relative to the material filed by respondent.

The record was closed and the matter was deemed submitted on February 18, 2000.

FACTUAL FINDINGS

1. Complainant Les R. Bettencourt ("complainant"), in his official capacity as a Deputy Real Estate Commissioner of the State of California, made the accusation against respondent. Complainant signed the accusation on August 10, 1999.

2. Respondent Frank E. Montenegro ("respondent") is currently licensed and has license rights under the Real Estate Law, Part 1 of Division 4 of the Code as a real estate salesperson.

3. On February 18, 1999, the California Municipal Court in and for Santa Clara County, Santa Clara Judicial District, convicted respondent, on his plea of no contest, of violating Penal Code section 136.1, subdivision (b) paragraph (1) [Knowingly and Maliciously Attempting to Prevent or Dissuade a Witness/Victim from Reporting Crime] and section 647, subdivision (a) [Disorderly Conduct – Solicitation of Another Person to Engage in Lewd or Dissolute Conduct in a Place Exposed to Public View]. The statutes constitute misdemeanors.

The crimes for which respondent was convicted involve moral turpitude and are substantially related to the qualifications, functions and duties of a real estate licensee.

4. The facts and circumstances revolving around respondent's conviction for disorderly and lewd conduct pertain to respondent's acts on and before September 11, 1998, when he imposed a sexual battery upon a 14-year-old girl by licking the child's face while he fondled the girl's breasts and rubbed her thigh from her knee up to an area "almost to her crotch."

The facts and circumstances regarding respondent's conviction for the offense of attempting to dissuade a witness/victim from giving a police report revolve around his acts on October 15, 1998. On that date, after receiving a report of respondent's misconduct with the 14-year-old girl, San Jose Police Department police officers surreptitiously tape-recorded a telephone call made by the girl's mother to respondent. Upon being confronted with the girl's mother's warning that the girl had purportedly told a school counselor of respondent's sexual overtures, respondent advised the woman that she should tell the school counselor, and any other authority figure, that the angry girl was lying so as to retaliate against the mother's strict rules that limited the girl's

venturing from the home. Respondent also threatened that if he were investigated that the mother's background would be investigated and that the girl and the mother would be embarrassed by the investigation.

5. As a result of the conviction, the municipal court stayed sentencing respondent, during a period of probation, regarding the conviction for attempting to dissuade a victim from making a police report. The court admitted respondent to formal probation for a period of two years.

Under the conviction of disorderly and lewd misconduct, the court directed respondent to pay a fine to the California restitution fund in an amount of \$100, plus a penalty assessment of \$1,700. Also, the court sentenced respondent to perform 31 days under the sheriff's work furlough program. Additionally, the court commanded that respondent participate in a counseling program as directed by the Santa Clara County Probation Department. Lastly, the court directed that respondent have no contact with the crime victims, namely the sexually battered girl or her mother.

Matters in Mitigation and Extenuation

6. At the time that he kissed and fondled the 14-year-old girl against her will, respondent asserts that he had consumed alcoholic beverages.

7. Before his conviction, respondent had never suffered any criminal conviction.

8. Respondent has no record of complaints regarding his involvement in fraud, theft or malfeasance in the performance of his real estate profession.

Matters in Rehabilitation

9. Respondent completed the work furlough and jail term sentence.

10. Following his conviction, respondent enrolled in a behavior modification counseling program as administered by the Bill Wilson Center of Santa Clara. He attended counseling at the center from June 22, 1999, through September 28, 1999.

11. Respondent contends that he has been a successful real estate professional who has a lengthy tenure in the real estate office at which he works. To supplement and explain respondent's representations regarding his established position in the real estate sales profession, respondent introduces correspondence from Robert Stewart, the broker/owner of Referral Realty, under the authority of Government Code section 11513, subdivision (d).

Mr. Stewart's letter proclaims that respondent works extensively with Spanish speaking clients, many of whom may never have the opportunity to own real property. The letter further sets forth that respondent is one of the top producing real estate salespersons in the Referral Realty office in San Jose. Moreover, respondent claims that he works about 12 hours per day in his professional endeavors as a real estate licensee.

12. Respondent also holds a notary public license with the Secretary of State. During the tax season, respondent prepares tax returns.

13. Respondent compellingly conveys that he has faithfully abstained from the use of alcohol since his conviction.

14. Respondent lives with his wife and two children – a son who is 16 years old and a daughter who is one year old. He and his wife, who is also a Department licensee, are responsible for the support or maintenance of his immediate family.

Complainant provides no evidence that respondent lacks stability in his personal life.

15. Respondent claims that he regularly attends Our Lady of Guadeloupe Church in San Jose. However, respondent has a difficult time in recalling the name of the church pastor.

Matters in Aggravation

16. Respondent's conviction occurred in February 1999, which is less than one year before the date of the Accusation in this matter.

17. Respondent remains in a status of criminal probation due to his criminal conviction. He will not end the period of probation until approximately February 2001.

18. Because of the recency of his release from custody, respondent has not had time to petition the court to have the conviction record expunged.

19. Other than attending church, respondent is not involved in significant and conscientious community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

20. Although his wife – a fellow real estate salesperson – attended the hearing, respondent provides no witness at the hearing of this matter. No witness steps forward to offer evidence that respondent possesses a character for honesty, integrity,

and truthfulness necessary for a real estate licensee. Moreover, respondent provides no witness or evidence regarding his current attitude regarding his past criminal misconduct.

21. Respondent does not accept full responsibility for his past criminal misconduct. He seeks to diminish the gravity of the sexual oriented intrusion he inflicted upon the young girl. Moreover, he attempts to discount the veracity of the girl's mother and he attempts to assassinate the character of the girl's mother.

The documents secured by respondent from the Bill Wilson Center do not support a finding that respondent has been fully rehabilitated. After respondent had attended seven therapy sessions, the counselor wrote in the termination summary of September 22, 1999, in part:

"[Respondent] continues in denial of the situation ... doesn't believe his behavior is that of a sex offender and doesn't seem remorseful.... ¶ [Respondent] will not benefit from further counseling. He may not repeat his behavior but only due to the heavy consequences for repeated behavior."

LEGAL CONCLUSIONS

1. Cause for disciplinary action against the license issued to respondent exists under Business and Professions Code sections 490 and 10177(b), by reason of the matters set forth in Factual Finding 3.

2. The matters in mitigation and rehabilitation as set forth in Factual Findings 6 through 14 have been considered in making the following order.

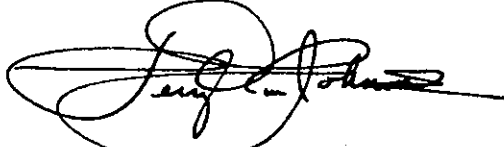
3. The municipal court convicted respondent of two grave crimes. Although his abuse of an impressionable 14-year-old girl is reprehensible, his attempt to frustrate justice by directing the girl's mother to lie about the anguish he caused the child reflects a character for deceit that is contrary to the quality of integrity necessary for a real estate licensee.

Respondent has not attained the level of the criteria of rehabilitation as set out in the Department's guideline under California Code of Regulations, title 10, section 2912. Hence, it would not be in the public interest to permit respondent to hold a real estate salesperson license, even on a restricted basis.

ORDER

All licenses and licensing rights of respondent Frank E. Montenegro under the Real Estate Law are revoked.

DATED: March 01st 2000

A handwritten signature in black ink, appearing to read "Perry O. Johnson", written over a horizontal line.

PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
OCT 14 1999

DEPARTMENT OF REAL ESTATE

Laurie A. Zini

In the Matter of the Accusation of

FRANK E. MONTENEGRO,

Case No. H-7741 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, CA 94612

on Wednesday, February 9, 2000, 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.

Dated: October 14, 1999

DEPARTMENT OF REAL ESTATE

By

David B. Seals
DAVID B. SEALS

Counsel

1 DAVID A. PETERS, Counsel (SBN 99528)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789
6 -or- (916) 227-0781 (Direct)

FILED
AUG 19 1999

DEPARTMENT OF REAL ESTATE

Lucille A. Zair

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

No. H-7741 SF

12 FRANK E. MONTENEGRO,)

ACCUSATION

13 Respondent.)
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15 The Complainant, Les R. Bettencourt, a Deputy Real
16 Estate Commissioner of the State of California, for cause of
17 Accusation against FRANK E. MONTENEGRO aka Francisco Enrique
18 Montenegro and Frank Enrique Montenegro (hereinafter
19 "Respondent"), is informed and alleges as follows:

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

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


LES R. BETTENCOURT
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 10th day of August, 1999.