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FILED

APR 19 2010

DEPARTMENT OF REAL ESTATE
By *[Signature]*

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of
ROBERT BERNARD FACCHINO II,
Respondent.

No. H-7801 SF

ORDER GRANTING REINSTATEMENT OF LICENSE

On January 3, 2001, in Case No. H-7801 SF, a Decision was rendered revoking the real estate salesperson license of Respondent effective January 25, 2001.

On June 2, 2008, 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 the petition.

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has demonstrated to my satisfaction that Respondent meets the requirements of law for the issuance to Respondent of an unrestricted real estate salesperson license and that it would not be against the public interest to issue said license to Respondent.

NOW, THEREFORE, IT IS ORDERED that Respondent's petition for reinstatement is granted and that a real estate salesperson license be issued to Respondent if

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Respondent satisfies the following conditions within twelve (12) months from the date of this order:

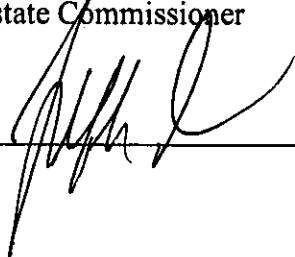
1. Respondent shall qualify for, take and pass the real estate salesperson license examination.

2. Submittal of a completed application and payment of the fee for a real estate salesperson license.

This Order shall become effective immediately.

DATED: 3/2/2010

JEFF DAVI
Real Estate Commissioner



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FILED
JUN 29 2005
DEPARTMENT OF REAL ESTATE

By *Jean Arundel*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA
* * *

In the Matter of the Accusation of) No. H-7801 SF
ROBERT BERNARD FACCHINO,)
Respondent.)

ORDER DENYING REINSTATEMENT OF LICENSE

On January 3, 2001, a Decision After Rejection was rendered revoking the real estate salesperson license of Respondent.

On May 30, 2003, 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 and arguments in support. Respondent has failed to demonstrate to my satisfaction that Respondent has undergone sufficient rehabilitation to warrant the reinstatement of Respondent's real estate salesperson license.

1 The burden of proving rehabilitation rests with the
2 petitioner (Feinstein v. State Bar (1952) 39 Cal. 2d 541). A
3 petitioner is required to show greater proof of honesty and
4 integrity than an applicant for first time licensure. The proof
5 must be sufficient to overcome the prior adverse judgment on the
6 applicant's character (Tardiff v. State Bar (1980) 27 Cal. 3d
7 395).

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

12 (c) Expungement of criminal convictions resulting from
13 immoral or antisocial acts. Respondent has submitted no evidence
14 of expungement of his criminal conviction.

15 (i) Completion of, or sustained enrollment in, formal
16 educational or vocational training courses for economic self-
17 improvement. Respondent has submitted no evidence of completion
18 of, or sustained enrollment in, formal educational or vocational
19 training courses.

20 (k) Correction of business practices resulting in
21 injury to others or with the potential to cause such injury.
22 Respondent has not acted in a fiduciary capacity, including the
23 handling of funds on behalf of another or other persons apart
24 from family members. Respondent has not established that he has
25 corrected his business practices.

26 Given the fact that Respondent has not established that
27 he has complied with Sections 2911(c), (i) and (k) of Title 10,

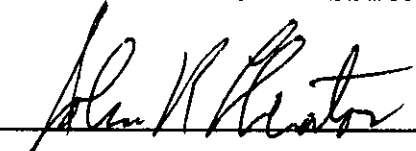
1 California Code of Regulations, I am not satisfied that
2 Respondent is sufficiently rehabilitated to receive a real estate
3 salesperson license.

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

7 This Order shall become effective at 12 o'clock
8 noon on JUL 20 2005, 2005.

9 Dated: June 24, 2005.

10 JEFF DAVI
11 Real Estate Commissioner

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13 _____

14 BY: John R. Liberator
15 Chief Deputy Commissioner

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1 determination not to adopt the Proposed Decision of the ALJ
2 along with a copy of said Proposed Decision. Respondent was
3 notified that the case would be decided by the Commissioner upon
4 the record, the transcript of proceedings held on the above date,
5 and upon any written arguments offered by Respondent and
6 Complainant.

7 I have given careful consideration to the record in
8 this case including the transcript of proceedings held on
9 June 14, 2000, and the written argument submitted by Respondent.

10 The following shall constitute the Decision of the Real
11 Estate Commissioner in this proceeding:

12 The Factual Findings and Legal Conclusions in the
13 Proposed Decision dated July 14, 2000, are hereby adopted as a
14 part of this Decision with the following modifications,
15 deletions, and additions:

16
17 LEGAL CONCLUSIONS

18 Paragraph 2 of the Legal Conclusions is deleted and
19 not adopted. The following paragraph is added in its place:

20 2. Respondent has not met several of the applicable
21 Criteria of Rehabilitation (Section 2912, Title 10, California
22 Code of Regulations), including the passage of not less than two
23 years from the conviction (subsection (a)), expungement of the
24 conviction (subsection (c)), and successful completion of
25 probation (subsection (d)).

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1 Of particular concern, however, is subsection (1):
2 change in attitude from that which existed at the time of the
3 commission of the criminal acts in question. Respondent has
4 failed to take responsibility for his actions. On September 17,
5 1998, Respondent committed an act of sexual misconduct against a
6 16-year old girl with a five-month old baby, in front of a
7 junior high school, severely traumatizing the victim. On
8 January 13, 2000, during the investigation of this matter by
9 the Department, Respondent lied to the investigating Deputy
10 Commissioner, totally denying any misconduct. On June 14,
11 2000, at the hearing in this matter, Respondent testified
12 falsely under oath to a version of the circumstances of the
13 conviction which differed both from the truth and from what he
14 had told the Deputy Commissioner.

15 Respondent has not only failed to demonstrate a change
16 in attitude, he has aggravated the circumstances surrounding his
17 conviction by denying responsibility and by testifying falsely
18 under oath. Such conduct is a far cry from the mitigation and
19 rehabilitation he needed to show in order to demonstrate that he
20 possesses the qualities of honesty and truthfulness required of
21 all persons who hold a real estate license.

22 Under the circumstances, it would not be in the public
23 interest to allow Respondent to hold a real estate license, even
24 on a restricted basis.

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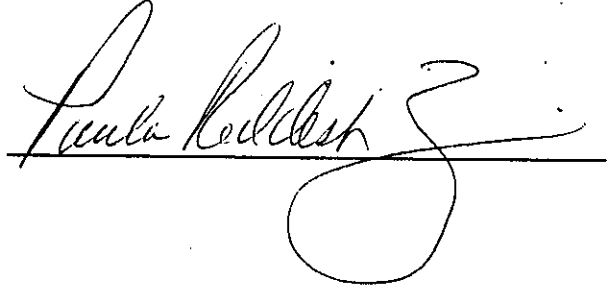
ORDER

The real estate salesperson license and all license rights of Respondent under the Real Estate Law are revoked.

This Decision shall become effective at 12 o'clock noon on JANUARY 25, 2001.

IT IS SO ORDERED January 3, 2001.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



A handwritten signature in cursive script, reading "Paula Reddish Zinnemann", is written over a horizontal line. The signature is fluid and extends below the line.

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FILED
AUG 14 2000

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	
ROBERT BERNARD FACCHINO, II,)	No. H-7801 SF
)	
Respondent.)	N-2000030516
)	

NOTICE

TO: Respondent ROBERT BERNARD FACCHINO, II, and EDGARDO GONZALES, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated July 14, 2000, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated July 14, 2000, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on June 14,

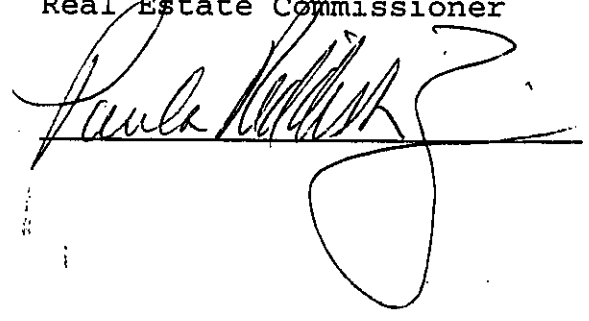
1 2000, and any written argument hereafter submitted on behalf of
2 Respondent and Complainant.

3 Written argument of Respondent to be considered by me
4 must be submitted within 15 days after receipt of the transcript
5 of the proceedings of June 14, 2000, at the Sacramento office of
6 the Department of Real Estate unless an extension of the time is
7 granted for good cause shown.

8 Written argument of Complainant to be considered by me
9 must be submitted within 15 days after receipt of the argument of
10 Respondent at the Sacramento office of the Department of Real
11 Estate unless an extension of the time is granted for good cause
12 shown.

13 DATED: August 8, 2000

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15 PAULA REDDISH ZINNEMANN
16 Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

ROBERT BERNARD FACCHINO, II,

Respondent.

No. H-7801 SF

OAH No. N 2000030516

PROPOSED DECISION

Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, heard this matter on June 14, 2000, in Oakland, California.

Department of Real Estate Counsel Thomas C. Lasken represented complainant Les R. Bettencourt, Deputy Real Estate Commissioner, State of California.

Respondent Robert Bernard Facchino, II, appeared and was represented by Edgardo Gonzales of Miller & Assoc., LLP, 1300 Clay Street, Suite 600, Oakland, California 94612.

FACTUAL FINDINGS

1. Respondent Robert Bernard Facchino, II, holds a real estate salesperson license issued by the Department of Real Estate (Department). The license expiration date is August 7, 2001.
2. On August 25, 1999, in the Superior Court of California, County of Santa Clara, respondent was convicted on a plea of no contest of violating Penal Code section 647(a) (lewd or dissolute conduct). He was sentenced to three years' court probation. Conditions of probation included serving six days in county jail, with credit for three days, paying a \$500 fine and performing 60 hours of community service.
3. Respondent's conviction stemmed from an incident in San Jose on September 17, 1998 at around 6:00 p.m. A 16-year-old girl, Rachel C., was walking down Sylvandale Avenue in front of Sylvandale Middle School, pushing a stroller with her infant daughter in it. Respondent drove his car into the school parking lot, pulled up next to Rachel C., and asked her for directions to Eastridge Mall. He had a map across

his lap. After she gave him directions, respondent drove out of the parking lot. But he then pulled his car around and into the lot again next to Rachel C. Respondent asked her if she wanted to make some money, and offered to pay her to watch him masturbate. He said he would not hurt her, and suggested that she could also masturbate. Rachel C. could see that respondent had his erect penis in his hand and was masturbating as he sat in his car. At this point, the girl saw a teacher come out of the school. When respondent saw her looking at the teacher, he drove off. Rachel C. was upset by her encounter with respondent, and she told the teacher what had happened. The police were called, and they took a report. Rachel C. described respondent and his vehicle, and either she or the teacher gave police the vehicle license number.

It apparently took some months for police to identify respondent as the suspect, because the criminal complaint was not executed until February 25, 1999. The complaint alleged a violation of Penal Code section 314.1 (indecent exposure).

4. On January 13, 2000, Deputy Real Estate Commissioner E. J. Haberer, II, interviewed respondent about the offense. Respondent told Haberer that while he was pulled over at the curb doing research for work, the woman (Rachel C.) approached him and asked him for \$10. He thought she was probably homeless, and he became irritated as she continued to harass him for money. Although respondent could not recall his exact words, he said something unkind to her, telling her to get the hell or fuck out of here because he wasn't going to give her any money. He then drove off and forgot about the incident. Respondent made the following written statement on a form Haberer had him complete:

The charge was a misdemeanor and my attorney advised me to plead guilty. Even though I did not commit the crime. Basically for the sake of time and money, and in his opinion it was not a serious offense.

5. At the hearing, respondent's story had changed. He again claimed that Rachel C. approached him and asked him for money (\$10 or \$20), and although he said no, she continued to badger him. He became angry and told her to get the hell out of here, but, he admitted, he pulled his pants down, exposed his penis and said, "Why don't you just suck my ____."¹ Respondent denied that he offered money to Rachel C. or asked her to masturbate, explaining, "She's not my type."

6. The description of the offense set forth in Finding 3 is based on the testimony of Rachel C., who denies asking respondent for money. As between respondent and Rachel C., Rachel C.'s version of events is credible and respondent's is not. The fact that respondent withheld material information about the offense from Deputy Real Estate Commissioner Haberer, and falsely stated that he did not commit the crime,

¹ Respondent did not repeat the word he used, but it was a slang term for penis.

seriously undermines the credibility of his testimony at the hearing (though it does appear that his story is getting closer to the truth). On the other hand, the testimony of Rachel C. is consistent with her report to police immediately after the incident. Additionally, there would seem to be some logistical difficulties for a man seated in a car to, on the spur of the moment, undo and pull his pants down, and expose himself. It is much more plausible that respondent already had his penis out (but initially covered by a map) when he drove up to Rachel C.

7. Even if respondent's version of events is correct, he is unable to explain why he would expose himself to a young woman who had made him angry by asking him for money. He denies ever expressing his anger in this manner before.

8. Respondent served his jail sentence on work furlough, and he performed his community service by working as a security guard at the Center for Employment Training (CET). He paid his fine, and is in compliance with all the terms of his criminal probation.

9. Respondent is a 33-year-old married man with two children – a daughter, age 5½, and a son, age 18 months. His wife does not work outside the home.

10. Respondent obtained his real estate license after he graduated from San Diego State University in 1989. He worked for a commercial real estate firm in San Diego for about two years before moving to San Jose. In San Jose, respondent worked for another commercial real estate firm before starting with Terracommercial Real Estate Corporation in 1992 or 1993. Now vice-president at Terracommercial, respondent is involved with leasing and sales of shopping centers and industrial buildings. He has taken all but one of the courses required for a real estate broker license. Respondent wants to obtain his broker license within the next year and form a partnership with a friend. He does not want a restricted salesperson license, because he thinks it would interfere with his getting a broker license.²

11. Respondent's daughter attends Catholic school, and he is involved in her school activities. He also helps with school and church fundraisers. Since becoming acquainted with CET during his community service, respondent has continued to donate time and money to this nonprofit organization. CET provides job training and placement services to disadvantaged persons.

12. Respondent asserts that his attitude has changed since his conviction. At the time of the offense, he had a "my way" attitude in life, but he has learned to be nicer and less judgmental, and to treat people with more respect. Respondent's wife, who

² In his closing argument, however, respondent's counsel recommended a restricted salesperson license as appropriate discipline in this case.

testified on his behalf, believes he has become a better person since his encounter with the criminal justice system.

13. Respondent offered a number of letters from friends and business associates. His associates at Terracommercial praise him for his honesty, hard work, professionalism and good character. It appears, however, that respondent has not been forthright with them about the facts of his offense, because they have the impression that he was innocent of the criminal charges of which he was convicted. For example, Mike LaBarbera, president of Terracommercial, writes:

I am very aware of Rob's conviction. I find it to be extremely out of character for him to act in such a way. Furthermore, I believe that the true facts of the case are quite different than the actual conviction would lead one to believe. Would Rob have known about the possible ramifications to his License, I am confident he would have vehemently denied the charges and defended himself against them. Rob instead took the path of least resistance in an effort to save the time and money associated with a legal proceeding. In hindsight this may not have been the best course of action, but at the time, both he and I thought that going to court over such a ridiculous accusation would be foolish given the rather inconsequential punishment Rob was offered.

LEGAL CONCLUSIONS

1. Respondent's August, 1999 conviction was for a crime involving moral turpitude. As "[s]exually related conduct causing ... emotional distress to a person who is an observer or non-consenting participant in the conduct,"³ this crime also meets the criteria for being substantially related to the qualifications, functions or duties of a real estate licensee. Cause to discipline respondent's license exists under Business and Professions Code sections 490 and 10177(b).

2. Determining the appropriate measure of discipline is not an easy task in this case. While it is understandable that respondent would be embarrassed about his offense, his lack of candor and failure to take responsibility for his actions is disturbing. Respondent could offer no insight into the reasons for his misconduct, and he apparently has not sought professional help to explore this issue. It has been less than two years since the offense, and less than one year since respondent's conviction. Despite respondent's professed change in attitude and his compliance with the terms of probation, these factors suggest that respondent has a long way to go in the process of rehabilitation.

³ Cal. Code Regs., tit. 10, § 2910, subd. (a)(5).

However, this offense does appear to have been out of character for respondent, who by all accounts has led a productive and otherwise law-abiding life. He is respected by his associates as an honest and conscientious professional, he has a stable family life, and he is involved in his community. And in commercial real estate work, unlike residential, a real estate license does not afford special access to likely victims of the kind of crime respondent committed.

It frankly seems unduly harsh to revoke respondent's license. Despite the questions about his rehabilitation, the public interest can be adequately protected if respondent is allowed to keep his real estate salesperson license on a restricted basis. It is appropriate, though, to impose a substantial actual suspension on the license. And respondent should not expect to be granted a real estate broker license, in which he would not be under the supervision of another licensee, without a greater showing of rehabilitation.


ORDER

All licenses and licensing rights of respondent Robert Bernard Facchino, II, under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if he makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this decision. The restricted license issued to respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

1. Any restricted real estate license issued to respondent pursuant to this decision shall be suspended for 60 days from the date of issuance of said restricted license.
2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
3. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

4. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until one year has elapsed from the effective date of this decision.
5. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:
 - (a) That the employing broker has read the decision of the Commissioner which granted the right to a restricted license; and
 - (b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.
6. Respondent shall, within nine months from the effective date of this decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: July 14, 2000



NANCY L. RASMUSSEN
Administrative Law Judge
Office of Administrative Hearings

FILED

BEFORE THE DEPARTMENT OF REAL ESTATE MAR 22 2000
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

Laurie A. Zan

In the Matter of the Accusation of
ROBERT BERNARD FACCHINO II,

}

Case No. H-7801 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, June 14, 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: March 22, 2000

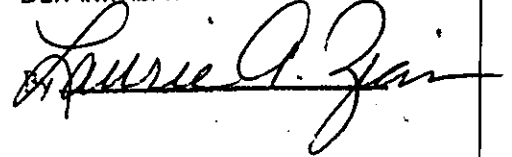
By Thomas C. Lasken
THOMAS C. LASKEN Counsel (12)

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
MAR - 3 2000

DEPARTMENT OF REAL ESTATE



7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 ROBERT BERNARD FACCHINO II,)
13 Respondent.)

No. H-7801 SF
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 BERNARD FACCHINO II, (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 Business and Professions Code (hereinafter "Code") as a real
23 estate salesperson.

24 II

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

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III

On or about September 22, 1999, Municipal Court of California, Santa Clara County Judicial District, Respondent was convicted of violation of Section 647(a) of the California Penal Code (Lewd or Dissolute Conduct), a crime involving moral turpitude which is substantially related under Section 2910, Title 10, California Code of Regulations to the qualifications, functions or duties of a real estate licensee.

IV

The facts alleged above constitute cause under Sections 490 and 10177(b) of the Code for suspension or revocation of all licenses and license rights of Respondent under the Real Estate Law.

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 a may be proper under the provisions of law.


LES R. BETTENCOURT
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 28th day of February, 2000.