

1 I have considered the petition of Respondent and the
2 evidence and arguments in support thereof including Respondent's
3 record as a restricted licensee. Respondent has demonstrated to
4 my satisfaction that Respondent meets the requirements of law
5 for the issuance to Respondent of an unrestricted real estate
6 salesperson license and that it would not be against the public
7 interest to issue said license to Respondent.

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

13 1. Submittal of a completed application and payment
14 of the fee for a real estate salesperson license.

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

20 This Order shall be effective immediately.

21 DATED: May 17, 2004.
22

23 JOHN R. LIBERATOR
24 Acting Real Estate Commissioner

25 John R. Liberator
26
27

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

RICHARD TRAVASSOS,

Respondent.

Case No. H-7809 SF

OAH No. N200030489

PROPOSED DECISION

This matter was heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, in Oakland, California on May 4, 2000.

Complainant Les R. Bettencourt, Deputy Real Estate Commissioner, was represented by David B. Seals, Counsel, Department of Real Estate.

Respondent Richard Travassos represented himself.

The matter was submitted on May 4, 2000.

FACTUAL FINDINGS

1. Richard Travassos (respondent) is licensed and has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code, as a real estate salesperson. Respondent's license has been renewed through March 8, 2002.

2. In October 1998, respondent was employed as a real estate salesperson by Golden Bay Realty. On or about October 24, 1998, respondent prepared on behalf of Deann Martinez and her mother, Nadine Rushing, a Manufactured Home Purchase Contract and Receipt for Deposit (purchase contract) in which an offer was made to purchase a mobile home located in Space 363 of the West Winds mobile home park at 500 Nicholson Lane, San Jose. The mobile home was owned by Dianna Schwartz, who was represented by Diane Bargar, a mobile home agent licensed by the Department of Housing and Community Development.

3. The purchase contract began with the following recitation: (The underlined portions were hand-printed. The remainder was preprinted on the purchase contract form.) "DATE: 10/24 1998 at San Jose, California, RECEIVED FROM Deann Martinez ("Buyer") A DEPOSIT OF One Thousand and xx/100 Dollars \$1000 TOWARD THE PURCHASE PRICE OF Ninety Five Thousand and xx/100 dollars \$95,000."

Paragraph 1c of the purchase contract represented that the buyer's deposit of \$1,000 was to be deposited in escrow.

In paragraph 34 ("Other Terms and Conditions") respondent wrote: "This offer subject to Nadine Rushing's approval of property within 24 hrs of acceptance. Nadine Rushing to be on title and on new loan."

4. On October 26, Schwartz accepted the offer subject to a counter offer increasing the purchase price to \$97,500 and providing that close of escrow was to be on December 1, 1998, with the seller to rent back the property if the buyers elected to close escrow earlier. Martinez accepted the counter offer on October 27. At Bargar's request, respondent opened an escrow at Escrow Control Company that day.

5. At the time he prepared the purchase contract, respondent did not have a \$1,000 deposit from Martinez as the contract represented. No deposit was ever placed into escrow. The buyers never went through with the purchase of the property.

6. Respondent testified that the contingency in paragraph 34 of the purchase contract gave Rushing 24 hours after acceptance to look at and approve the property because this time coincided with the time in which the deposit needed to be placed in escrow.¹ Rushing did not see, and hence did not approve, the property within 24 hours because she was hospitalized due to a medical emergency. She remained in the hospital for a week.

7. Told by respondent of Rushing's medical problem, Bargar agreed to a two-week "delay" in the transaction. She did not know, however, that no deposit had ever been made into escrow. She first learned this two or three weeks after October 27, when respondent told her that there was no deposit check.

8. At the hearing, respondent implied that it was always the buyers' intention that Rushing (and not Martinez) would supply the deposit check, and that Rushing was unable to make the deposit only because she was in the hospital. However, those facts are contradicted by the written statement (Exhibit Y) respondent submitted into evidence. There, respondent states that he had asked Martinez to write the deposit check but she did not have her checkbook. He goes on to state that even though he had no deposit, "since the contract does not state 'when' the deposit check was to be deposited into escrow," he decided to submit the offer "to see if we could get a counter from the seller." When Martinez signed the counter offer, "we had an acceptance." He then called Martinez and asked her to deposit \$1,000 at Escrow Control Company. "She said she would deposit the money into escrow since she

¹ Although he did not say so, respondent was apparently basing this time requirement upon title 10, California Code of Regulations 2832, which formerly provided that trust funds were to be deposited into escrow "no later than the next business day following receipt of the funds by the broker or by the broker's salesperson." Effective November 13, 1996 that time was increased to "not later than three business days following receipt of the funds by the broker or by the broker's salesperson."

lived close to the escrow company." But, "Apparently [Martinez] did not make the deposit because she rushed to see her mother in the hospital." Respondent went on to state that, "Unfortunately, I believed the buyer would make the deposit and did not call the title company to check on the deposit check."

9. Although respondent admits that he misrepresented on the purchase contract that he had received a \$1,000 deposit from Martínez, he seeks to excuse his actions on a number of grounds. First, respondent maintains that because Rushing did not approve the property as required by the contingency in paragraph 34, there was never "complete acceptance" of the purchase contract by the buyers and he was therefore "relieved . . . of the duty of depositing the check into escrow." In addition, he asserts that even if the deposit had been made, there were any number of circumstances (i.e., failure of the mobile home park to accept the buyers' residency application, disapproval by the buyers of the disclosure statement or termite report, etc.) under which the deposit would have been returned to the buyers. Respondent also seeks to deflect blame from himself by accusing the seller's agent of various misdeeds, including doing "a poor job" of representing Schwartz by not calling the escrow company to check that a deposit had been made and by failing to release the purchase contract when Rushing did not approve the property within 24 hours of acceptance.

10. Respondent's representation on the purchase contract that he had received a \$1,000 deposit from Martínez was a substantial misrepresentation. The seller acted upon respondent's representation in accepting the buyers' offer subject to her own counter offer. The seller also agreed to "delay" action on the contract for two weeks when respondent informed Bargar of Rushing's hospitalization. Because no deposit had been made, both actions were to seller's detriment.

11. Respondent's representation on the purchase contract that he had received a \$1,000 deposit from Martínez was clearly a departure from the standard of practice required of real estate licensees. It was, therefore, a negligent act. It was not shown by clear and convincing evidence that respondent's actions demonstrated a lack of skill, training or knowledge to act as a real estate licensee. It was not shown, therefore, that he acted incompetently.

12. Respondent is a full-time real estate agent. He has been licensed as a real estate salesperson for more than 10 years. He has suffered no prior discipline. Respondent submitted hearsay statements attesting to his honesty, trustworthiness and skill as a real estate licensee.

LEGAL CONCLUSIONS

1. Cause for disciplinary action against respondent exists pursuant to Business and Professions Code sections 10176(a) (making a substantial misrepresentation) and 10177(g) (negligence in performing an act for which a license is required).

2. Although respondent admitted he misrepresented on the purchase contract that he had received a \$1,000 deposit from Martinez, he sought to excuse his conduct in a number of ways. This is troubling. Of greatest concern is respondent's assertion that he was "relieved . . . of the duty of depositing the check into escrow" because there was never "complete acceptance" of the purchase contract by the buyers. In the first place, this begs the question since respondent was not charged with failing to deposit the check into escrow, but rather with misrepresenting that he had received a check at all. Further, it evinces some laxity in respondent's practice. There is no indication in the contract that the buyers' obligation to make the deposit was in any way contingent upon Rushing's approval of the property. While that may have been respondent's intention, it certainly was not clearly communicated in his offer. As it is written, the contingency would free the buyers from going forward with their offer, but it would not free them from having to make a deposit in the first place. Also of concern is respondent's attempt to deflect blame from himself by accusing the seller's agent of various misdeeds. Even if everything respondent accused that agent of was true, it would not have made his misrepresentation any less deserving of discipline:

3. Respondent has been a real estate salesperson for at least 10 years. He has no prior discipline and no evidence was presented to show that he had ever before been accused of any actions that could have warranted discipline. Considering that, it is determined that it would not be against the public interest to permit respondent to hold an appropriately restricted salesperson license. However, the matters set forth in Conclusion 2 warrant an even greater degree of discipline. For that reason, respondent's restricted license should also be suspended for a period of time and he should be required to take and pass the Department's Professional Responsibility Examination.

ORDER

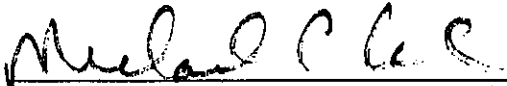
All licenses and licensing rights of respondent Richard Travassos are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within ninety (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. The restricted license issued to respondent pursuant to this Decision shall be suspended for fifteen (15) days from the date of issuance of the 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 two (2) years have 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 (9) 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 renewed 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.
7. Respondent shall, within six (6) months from the effective date of this Decision, take and pass the Professional Responsibility Examination

administered by the Department including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of respondent's license until respondent passes the examination.

DATED: May 11, 2006



MICHAEL C. COHN
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
MAR 29 2000

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

RICHARD TRAVASSOS

By Shelly Ely

Case No. H-7809 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 THURSDAY--MAY 4, 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: MARCH 29, 2000

DEPARTMENT OF REAL ESTATE
By David B. Seals
DAVID B. SEALS Counsel

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

FILED
MAR 10 2000

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4 Telephone: (916) 227-0789
-or- (916) 227-0792 (Direct)

DEPARTMENT OF REAL ESTATE

By

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	No. H-7809 SF
12 RICHARD TRAVASSOS,)	<u>ACCUSATION</u>
13)	
14 Respondent.)	

15 The Complainant, Les R. Bettencourt, a Deputy Real
16 Estate Commissioner of the State of California for cause of
17 Accusation against RICHARD TRAVASSOS (hereinafter Respondent), is
18 informed and alleges as follows:

19 I

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

23 II

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

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III

At all times mentioned herein Respondent was licensed as real estate salesperson in the employ of Golden Bay Realty.

IV

On or about October 25, 1998, Respondent participated in negotiations on behalf of De Ann Martinez, as Buyer, with Diane Bargar of Evans & O'Brien on behalf of Diana Lynn Schwartz, the Seller, regarding the proposed sale of a mobile home located at 500 Nicholson Ln., Space 363, San Jose (hereinafter the "Property").

V

On or about October 26, 1998, Respondent, on behalf of De Ann Martinez, caused a Manufactured Home Purchase Contract and Receipt for Deposit (Purchase Contract), which he prepared for the purchase of the Property, to be presented to Diana Lynn Schwartz.

VI

The Purchase Contract provided, in pertinent part, that Respondent had received a \$1,000 deposit from De Ann Martinez toward the purchase price of the Property. However, Respondent had not received nor did he ever receive a deposit from the Buyer in any amount.

VII

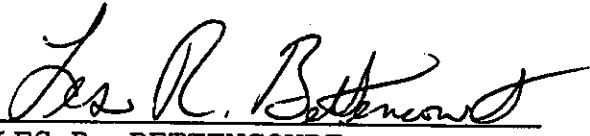
Respondent failed to inform Diana Lynn Schwartz or her agent, Diana Bargar that no deposit had been received.

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VIII

The acts and/or omissions of Respondent described above are grounds for the revocation or suspension of all Respondent's licenses under Sections 10176(a) and/or 10177(g) of the Code.

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 24th day of February, 2000.