

JAN 04 2002

By Shelly Elzy

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1 suspension. Reconsideration is hereby granted and the Order in
2 said Decision is modified to read as follows:

3 All licenses and licensing rights of Respondents THOMAS
4 RICHARD SILVA and THOMAS R. SILVA & CO. under the Real Estate Law
5 are revoked; provided, however, a restricted real estate broker
6 license shall be issued to respondents pursuant to Section
7 10156.5 of the Business and Professions Code if respondents make
8 application thereof and pay to the Department of Real Estate the
9 appropriate fee for the restricted licenses within 90 days from
10 the effective date of this Decision. The restricted licenses
11 issued to respondents shall be subject to all of the provisions
12 of Section 10156.7 of the Business and Professions Code and to
13 the following limitations, conditions and restrictions imposed
14 under authority of Section 10156.6 of that Code:

- 15 1. The restricted license issued to respondents may be
16 suspended prior to hearing by Order of the Real Estate
17 Commissioner in the event of respondent Silva's
18 conviction or plea of nolo contendere to a crime which is
19 substantially related to respondents' fitness or capacity
20 as a real estate licensee.
- 21 2. The restricted licenses issued to respondents may be
22 suspended prior to hearing by Order of the Real Estate
23 Commissioner on evidence satisfactory to the Commissioner
24 that respondent Silva has violated provisions of the
25 California Real Estate Law, the Subdivided Lands Law,
26 Regulations of the Real Estate Commissioner or conditions
27 attaching to the restricted license.

1 3. Respondents shall not be eligible to apply for the
2 issuance of an unrestricted real estate license nor for
3 the removal of any of the conditions, limitations or
4 restrictions of a restricted license until four (4) years
5 have elapsed from the effective date of this Decision.

6 4. Respondent Silva shall, within nine months from the
7 effective date of this Decision, present evidence
8 satisfactory to the Real Estate Commissioner that he has,
9 since the most recent issuance of an original or renewal
10 real estate license, taken and successfully completed the
11 continuing education requirements of Article 2.5 of
12 Chapter 3 of the Real Estate Law for renewal of a real
13 estate license. If respondent Silva fails to satisfy this
14 condition, the Commissioner may order the suspension of
15 the restricted licenses until respondent Silva presents
16 such evidence. The Commissioner shall afford respondents
17 the opportunity for a hearing pursuant to the
18 Administrative Procedure Act to present such evidence.

19 5. All licenses and licensing rights of Respondents THOMAS
20 RICHARD SILVA and THOMAS R. SILVA & CO. under the Real
21 Estate Law are suspended for a period of thirty (30) days
22 from the date of issuance of said restricted license;
23 provided, however, that if Respondent petitions, said
24 suspension (or a portion thereof) shall be stayed upon
25 condition that, as to each Respondent:

26 A. Respondent pays a monetary penalty pursuant to
27 Section 10175.2 of the Business and Professions

1 Code at the rate of \$250.00 for each day of the
2 suspension for a total monetary penalty of \$7,500.

3 B. Said payment shall be in the form of a
4 cashier's check or certified check made payable to
5 the Recovery Account of the Real Estate Fund. Said
6 check must be received by the Department prior to
7 the effective date of the Decision in this matter.

8 C. No further cause for disciplinary action
9 against the real estate license of Respondent
10 occurs within one year from the effective date of
11 the Decision in this matter.

12 D. If Respondent fails to pay the monetary penalty
13 in accordance with the terms and conditions of the
14 Decision, the Commissioner may, without a hearing,
15 order the immediate execution of all or any part
16 of the stayed suspension in which event the
17 Respondent shall not be entitled to any repayment
18 nor credit, prorated or otherwise, for money paid
19 to the Department under the terms of this
20 Decision.

21 E. If Respondent pays the monetary penalty and if
22 no further cause for disciplinary action against
23 the real estate license of Respondent occurs
24 within one year from the effective date of the
25 Decision, the stay hereby granted shall become
26 permanent.

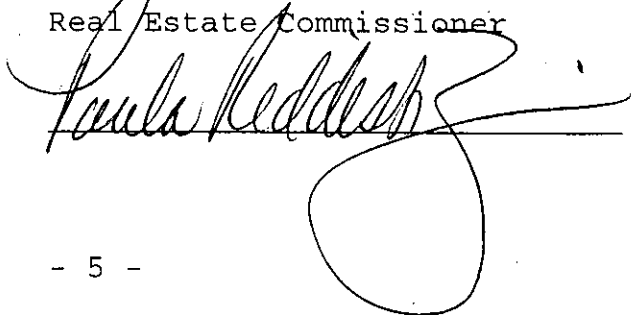
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1 6. Respondent Silva shall, within six months from the
2 effective date of this Decision, take and pass the
3 Professional Responsibility Examination administered by the
4 Department including the payment of the appropriate
5 examination fee. If respondent Silva fails to satisfy this
6 condition, the Commissioner may order suspension of
7 respondents' licenses until respondent Silva passes the
8 examination.

9 7. Respondents shall report in writing to the Department of
10 Real Estate as the Real Estate Commissioner shall direct by
11 his Decision herein or by separate written order issued
12 while the restricted license is in effect such information
13 concerning Respondents' activities for which a real estate
14 license is required as the Commissioner shall deem to be
15 appropriate to protect the public interest. Such reports may
16 include, but shall not be limited to, periodic independent
17 accountings of trust funds in the custody and control of
18 respondents and periodic summaries of salient information
19 concerning each real estate transaction in which respondents
20 engaged during the period covered by the report.

21 This Decision shall become effective at 12 o'clock
22 noon on January 24, 2002.

23 DATED: January 4, 2002.

24
25 PAULA REDDISH ZINNEBANN
26 Real Estate Commissioner
27 

FILED

DEC - 5 2001

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
)
 THOMAS RICHARD SILVA, and,) NO. H-7949 SF
 THOMAS R. SILVA & CO.,)
)
 Respondents.)

ORDER STAYING EFFECTIVE DATE

On November 6, 2001, a Decision was rendered in the above-entitled matter to become effective on December 6, 2001.

On December 3, 2001, Respondent petitioned for reconsideration of the decision of November 6, 2001.

IT IS HEREBY ORDERED that the effective date of the
decision be stayed for a period of thirty (30) days. The
decision of November 6, 2001, shall become effective at
12 o'clock noon on January 7, 2002.

DATED: December 4, 2001.

PAULA REDDISH ZINNEBANN
Real Estate Commissioner

Paula Reddish

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
NOV 16 2001

DEPARTMENT OF REAL ESTATE

* * *

In the Matter of the Accusation of)

THOMAS RICHARD SILVA and)
THOMAS R. SILVA & CO.,)

Respondents.)

By Shelly El
NO. H-7949 SF

OAH NO. N2001060038

DECISION

The Proposed Decision dated October 10, 2001, 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 December 6, 2001.

IT IS SO ORDERED November 6, 2001.

PAULA REDDISH ZINNEBANN
Real Estate Commissioner

Paula Reddish

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

THOMAS RICHARD SILVA and
THOMAS R. SILVA & CO.,

Respondents.

Case No. H-7949 SF

OAH No. N2001060038

PROPOSED DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings on August 23 and 24, 2001, in Oakland, California.

Complainant was represented by David B. Seals, Counsel, Department of Real Estate.

Thomas Richard Silva was present and represented by Thomas C. Lasken, Esq., Attorney at Law, 4411 Bilby Road, Elk Grove, California 95758.

Submission of the matter was deferred pending filing of closing briefs. Complainant's Closing Brief was received on September 5, 2001, and marked as Exhibit 4 for identification. Respondents' Closing Argument was received on September 17, 2001, and marked as Exhibit D for identification.

The case was submitted for decision on September 17, 2001.

FACTUAL FINDINGS

1. Complainant Les R. Bettencourt, a Deputy Real Estate Commissioner of the State of California, made and filed the Accusation against Thomas Richard Silva and Thomas R. Silva & Co. in his official capacity.

2. Thomas Richard Silva ("respondent Silva") is a licensed real estate broker. He is the designated officer and sole shareholder of Thomas R. Silva & Co. ("respondent TRS"), a licensed real estate brokerage corporation doing business as Eden Realty. The primary business of respondent TRS is property management. In December 2000, respondent TRS managed six residential apartment buildings and one residential-business apartment complex for six owners.

3. Respondent Silva holds two general contractor licenses, with business names of "Eden Rehab Corporation" and "Thomas R. Silva General Contractor." For the property managed by respondents, most of the maintenance work was done under his individual contractor license, "Thomas R. Silva General Contractor." "Eden Rehab Corporation" is a company respondent Silva incorporated for a remodeling project involving the City of San Leandro.

Respondent Silva, for the last few years, has also been involved as general contractor and as sole owner of a residential construction project located at 503 Willow Avenue in Hayward ("503 project").

4. In November 2000 the Department of Real Estate ("Department") conducted an audit of respondents' property management books and records for the period January 1, 2000 to September 30, 2000. Respondent TRS maintained three accounts, into which trust funds were placed.

Two accounts were at US Bank, 987 B Street, Hayward, California. One was designated as Acct. # 153400197759 under the title Eden Realty-General Trust Account #F ("Trust #1"). The other was designated as Acct. #153400197734 under the title Eden Realty-General Trust Account #G ("Trust #2"). The third account was at Bank of the West, 1058 B Street, Hayward, California. It was designated as Acct. #035-012393 under the title Mayten Manor Apartments, Vincent-Silva Rentals C/O Eden Realty Property Management ("Bank #3"). Bank #3 was not set up as a trust account.

5. Trust #1 was the operating account for multiple properties managed by respondents. Respondents had no ownership interests in any of these properties. Deposits in the account consisted of rents and security deposits received from tenants, while disbursements included payments for expenses incurred on properties, remittances to the property owners, as well as management fees to the broker. Respondent Silva was the only signatory on the account.

The Department audit established a shortage in Trust #1 of \$42,216.55 as of the September 29, 2000 cutoff date.¹

6. Trust #2 was the operating account for multiple properties in which respondent Silva has ownership interests. He had a 100 percent ownership in eight property references, and a 20 percent interest in five other property references. The latter were held in partnership with others. Deposits in the account consisted of rents

¹ The adjusted balance of Trust #1 as of September 29, 2000 was negative Three Thousand Two Hundred Forty and 08/100 Dollars (-\$3,240.08) and the trust fund accountability in the account as of September 29, 2000 was Thirty-Eight Thousand Nine Hundred Seventy-Six and 47/100 Dollars (\$38,976.47). Therefore, respondent TRS, as of September 29, 2000, had a trust fund shortage of Forty-Two Thousand Two Hundred Sixteen and 55/100 Dollars (\$42,216.55).

and security deposits received from tenants, while disbursements included payments for expenses incurred on properties, remittances to the property owners, as well as management fees to the broker. Respondent Silva was the only authorized signatory on the account.

Trust #2 also contained a single tax impound account for the benefit of one Nancy Ladd in the amount of \$649.18. She had purchased a property solely owned by respondent Silva by means of a wraparound mortgage. Respondent did not charge Ladd a management fee.² The account involved business conducted by respondent Silva in his capacity as an individual, not as a real estate broker.

The Department audit established a shortage in Trust #2 of \$208,772.29 as of the September 29, 2000 cutoff date.³

7. Bank #3 was the operating account for a business-residential complex located at 24000 Second Street in Hayward ("Mayten Manor"). Respondent Silva, Ed Vincent and Ed Gonsalves have equal ownership interest in this property. Deposits in the account consisted of rents and security deposits received from tenants, while disbursements included payments for expenses incurred on the property, remittances to property owners, as well as management fees to the broker. Respondent Silva was the only authorized signatory on the account.

The Department audit established a shortage in Bank #3 of \$9,788.30 as of the September 29, 2000 cutoff date.⁴

8. The trust shortages were largely attributed to disbursements made by respondent Silva to fund the 503 project. Monies were taken out of Trusts #1 and #2 and Bank #3 for this purpose. According to respondent Silva the 503 project became

² The Nancy Ladd account was not a property management account and neither respondent was performing any property management within the meaning of Business and Professions Code section 10131, subdivision (b). There was no evidence that the Nancy Ladd tax impound was being managed "for a compensation or in expectation of a compensation" to be a licensed activity under section 10131. To fall under the requirements of the Real Estate Law, funds must not only be held in a trust account, they must be held in connection with activities requiring a real estate license.

³ The adjusted balance of Trust #2 as of September 29, 2000 was negative Eighteen Thousand Four Hundred Ninety and 15/100 Dollars (-\$18,490.15) and the trust fund accountability in the account as of September 29, 2000 was One Hundred Ninety Thousand Two Hundred Eighty-Two and 14/100 Dollars (\$190,282.14). Therefore the Department contends that respondent TRS, as of September 29, 2000, had a trust fund shortage of Two Hundred Eight Thousand Seven Hundred Seventy-Two and 29/100 Dollars (\$208,772.29).

⁴ The adjusted balance of Bank #3 as of September 29, 2000 was a negative Fifty-Five and 62/100 Dollars (-\$55.62) and the trust fund accountability in the account as of September 29, 2000 was Nine Thousand Seven Hundred Thirty-Two and 68/100 Dollars (\$9,732.68). Therefore, the Department contends that respondent TRS, as of September 29, 2000, had a trust fund shortage of Nine Thousand Seven Hundred Eighty-Eight and 30/100 Dollars (\$9,788.30).

a "money pit" and he needed funds to keep this construction project going. With regard to Trust #1, respondent Silva acknowledges that his actions were inappropriate and unprofessional. Respondent Silva deeply regrets having engaged in such conduct. He was aware that he was using the monies of trust beneficiaries and that he was doing so without giving them any notice or obtaining their consent. Respondent Silva avers that he thought that he would be using the trust funds only over the short term, but that the practice extended longer than he ever thought it would.

9. Unauthorized transfers from Trust #1 were usually made into Trust #2. There were as many as sixteen transfers out of Trust #1 into Trust #2 or into a broker's general account between January 10, 2000 and September 11, 2000. Amounts ranged between \$500 and \$20,000. There was no evidence that written consent of every principal in the trust account was obtained prior to each disbursement. The balance of funds in Trust #1 was reduced to an amount less than the existing aggregate trust liability.

It was established that respondents made unauthorized transfers out of Trust #1 to fund a project 100 percent owned by respondent Silva. Respondent Silva did so without the permission of the owners of the funds in Trust #1 and his actions resulted in commingling with his own money or property the money of others that was received and held by him in trust.

10. On October 30 and 31, 2000, respondent Silva deposited approximately \$43,000 into Trust #1. This was intended to replace the trust funds that he had taken out earlier. Of this amount, \$20,398.22 was transferred from Trust #2. At the time of these transfers into Trust #1 respondents were aware that a Department audit was pending.

Respondent Silva avers that at the time that he withdrew funds from Trust #1 for the 503 project that he had sufficient funds in other accounts to cover the amounts he had borrowed. However, he notes that at the time he took monies from Trust #1 there were not always sufficient funds in Trust #2 and Bank #3 to cover these amounts. He suggests that monies from other sources were available for this purpose.

11. Respondents contend that other disbursements from Trust #2 and Bank #3, with the exception of the Nancy Ladd \$649.18 tax impound account, were loaned to the 503 project with the knowledge and consent of the owners.

The partnerships consist of respondent Silva and three other individuals. They were not all involved in each partnership. The partnership relationships were personal and informal. Clyde Edward Vincent, Jr. has known respondent Silva for twenty years. He and his brother formed a partnership with respondent Silva about fifteen years ago, and after his brother died his sister-in-law, Wanda Dale Vincent, continued as partner. Their partnership is strictly oral and none of the terms have

been memorialized in writing. Decisions affecting the partnership are made after consulting among partners, and by majority vote.

Respondent Silva is also a partner with Ed Gonsalves since 1991. They have an oral agreement and decisions are made based on majority vote/percent ownership.

12. In 1999 respondent Silva approached his three partners individually about using partnership funds for the 503 project. He told them that he was in the process of doing this project, that it was costing more money than he had anticipated and he asked if he could use their funds to support the project. Respondent Silva promised to pay them back when the project was completed and represented that distributions from partnership properties would continue during the interim. The agreements were all done orally. Interest on the loans was not discussed or charged. The loan amounts or term were never discussed. They essentially agreed that respondent Silva could take what he needed, when he needed it and pay it back when he could. Respondents aver that the various partners had previously made oral, interest-free loans amongst themselves although there was no evidence that such loan amounts ever approached the sums that were borrowed for the 503 project.

Respondent Silva indicates that he is in the process of repaying his partners. After the refinancing of certain partnership property is concluded on August 17, he plans on making disbursements to square partnership accounts. The partners had not been paid at the time of hearing. They all trust respondent Silva and have expressed no reservations about his use of their funds to fund the 503 project. To this day they do not even know how much money he borrowed from their trust funds.

13. Respondent acknowledges no wrongdoing in connection with Trust #2 and Bank #3, contending that the withdrawals were with the knowledge and consent of the owners and that he fully had intentions of paying back his partners. He believes monies in the Nancy Ladd tax impound account were not "trust funds" because they were not held in connection with activities requiring a real estate license. Specifically, he notes that the account was not managed for compensation or in expectation of compensation.

14. Respondents failed to designate Bank #3 as a trust account. It was designated as an operating account. Respondent Silva acknowledges that this is technically a violation. He explains that it was inadvertent on his part and that he originally thought that he did not need to designate it as a trust account because he was a one-third owner. Although he has been aware of this violation since at least December 2000, as of the time of hearing he had yet to change it to a trust account.

15. Respondent Silva was licensed as a real estate salesperson in 1981, and as a broker in 1986. He is certified as a property manager and is also accredited as an expert in the field of apartment management. He holds memberships in the Institute of Real Estate Management, the National Association of Realtors, the California

Apartment Association and the Southern Alameda County Rental Housing Owners Association. His primary interest is buying, developing and selling apartment properties. He has completed the 503 project. Three of those homes have been sold and two have been retained as rentals. Prior to this action he has had no disciplinary action taken against his license.

Respondent Silva continues to be active in several professional associations. He is first vice president of the Southern Alameda County Rental Housing Owners Association and chairs its education and political action committee. In the past he played a key role in seismic retrofit/rehabilitation of City of San Leandro rental property. He is a member of the board of directors of the Boys and Girls Club of Hayward, and is in line to chair the board next year. The Club is building a 20,000 square foot facility and respondent is managing the construction of this project. He is also a volunteer instructor with a rental housing manager training program. Several of his community projects and activities have allowed him to work with local officials. Among civic leaders in his community respondent Silva is highly regarded and he has a reputation for honesty and truthfulness.

LEGAL CONCLUSIONS

1. Business and Professions Code section 10145, subdivision (a)(1) provides:

A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained by the broker in a bank or recognized depository in this state. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the person entitled to the funds.

California Code of Regulations, title 10, section 2832.1 further provides:

Compliance with Section 10145 of the Code requires that a real estate broker not disburse, nor cause or permit the disbursement of, trust funds from a trust fund account without the prior written consent of every principal who is an owner of the funds in the account if the disbursement will reduce the balance of funds in the account to an amount less than the aggregate trust fund liability of the broker to all owners of said funds. The written consent shall be obtained by a real estate broker prior to each disbursement if such a disbursement will reduce the balance of funds in the account to an amount less than the existing aggregate trust fund liability of the broker to all owners of the funds. Nothing in this section shall be construed to permit a violation of Section 10145 of the Code.

2. Respondents were required to obtain a written consent from each beneficiary of a trust account every time a disbursement was made that reduced any beneficiary's account balance to an amount less than the aggregate trust fund liability. Respondents failed to obtain a written consent from each beneficiary of Trust #1 prior to each disbursement that reduced the balance to an amount less than the aggregate trust fund liability. This happened on numerous occasions. (See Finding 9.) The total trust fund shortage was \$42,216.55. He never told the Trust #1 beneficiaries that he was using their funds for his own business purposes, he never obtained oral or written consent for trust fund disbursements, he never advised Trust #1 beneficiaries whether he would be paying interest on this "loan" and he used such funds for his personal business, and not in the interest of beneficiaries. As one who specializes in property management he was well aware of his fiduciary duty and obligations to trust fund beneficiaries. He knew his actions were improper, yet he drew upon Trust #1 funds numerous times, commingling trust monies with that of his own.

Respondents by way of mitigation note that Respondent Silva always intended to repay the funds, that he had ample funds to cover the shortage and that he did so at the end of October 2000. (See Finding 10.) Repayment was prompted by the impending Department audit. If respondents had ample funds to cover the shortage in Trust #1, and knew that trust monies had been improperly disbursed and commingled, then actual repayment just prior to the Department's audit is at best a marginal show of mitigation.

3. By reason of the above, cause for disciplinary action exists under Business and Professions Code sections 10177, subdivision (d) and 10145, subdivision (a)(1), and California Code of Regulations, title 10, section 2832.1, by reason of the matters set forth in Findings 5, 8 and 9.

4. Cause for disciplinary action exists under Business and Professions Code section 10176, subdivision (e), by reason of the matters set forth in Findings 5, 8 and 9. Respondent Silva commingled with his own money or property the money or other property of others that was received and held by him.

5. Cause for disciplinary action exists under Business and Professions Code section 10176, subdivision (i), by reason of the matters set forth in Findings 5, 8 and 9. Respondent Silva purposefully and repeatedly withdrew funds from Trust #1 without the knowledge or consent of beneficiaries, and for his personal business. He knew it was wrong and that it was the money of others. His failure to disclose such unauthorized disbursements to the trust beneficiaries constituted dishonest dealing. It did not, however, rise to the level of fraud.

6. Respondents characterize all disbursements to the 503 project from Trust #2 and Bank #3 as being pursuant to instructions from the principals. They contend that the trust fund liability would have to be reduced accordingly and if there were no shortages then no written consents were needed.

It does appear that respondent Silva's partners placed absolute trust in him, never mind the particulars or details of the loan disbursements. Each of the three gave him their oral consent to take out as much as he needed from Trust #2 and Bank #3. Through the time of hearing they had not been repaid and they still did not know how much he had borrowed. It apparently does not matter to them and they essentially authorized respondent Silva to borrow monies on whatever terms he desired. (See Findings 11 through 13.)

Although complainant questions the credibility of the three partners, no evidence was offered to contradict their testimony. Their written consent was not needed for him to draw down the account because any withdrawal was pursuant to their instructions and therefore did not cause the shortages in those accounts.

7. Accordingly, no cause for disciplinary action exists with regard to any failure by respondents to obtain written consents from principal beneficiaries of Trust #2 and Bank #3. (Bus. & Prof. Code, §§ 10145, subd. (a)(1) and 10177, subd. (d); Cal. Code Regs., tit. 10, § 2832.1.) Similarly, no cause for disciplinary action exists on grounds of commingling money or dishonest dealing. (Bus. & Prof. Code, § 10176, subds. (e) & (i).)

8. Cause for disciplinary action exists under Business and Professions Code section 10177, subdivision (d) and California Code of Regulations, title 10, section 2832, by reason of the matters set forth in Finding 14. Respondents failed to designate Bank #3 as a trust account.

9. It is a matter of concern that one with respondent Silva's expertise and professional standing in the area of property management would engage in repeated unauthorized withdrawals up to \$42,216.55 as he did from Trust #1. It was for personal business needs and but for the Department's impending audit it would not have been corrected until perhaps much later. Discipline is certainly warranted.

Respondent Silva has been licensed since 1981, and respondent TRS since 1986. Consideration must also be given to respondent Silva's otherwise untarnished reputation within the Southern Alameda County real estate and civic communities. He has acknowledged wrongdoing and he has expressed some regret for his actions. It is unlikely that similar conduct will ever recur. He has restored funds taken from Trust #1 beneficiaries.

10. Having considered these several factors it would not be contrary to the public interest to issue respondents restricted licenses, the terms of which include actual license suspension for a period of thirty (30) days. The matters set forth in Findings 8 and 15 were also considered in making the following order.

ORDER

All licenses and licensing rights of respondents Silva and TRS under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondents pursuant to Section 10156.5 of the Business and Professions Code if respondents makes application thereof and pay to the Department of Real Estate the appropriate fee for the restricted licenses within 90 days from the effective date of this Decision. The restricted licenses issued to respondents shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. The restricted license issued to respondents may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent Silva's conviction or plea of nolo contendere to a crime which is substantially related to respondents' fitness or capacity as a real estate licensee.
2. The restricted licenses issued to respondents may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent Silva 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.
3. Respondents 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 four (4) years have elapsed from the effective date of this Decision.
4. Respondent Silva shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that he 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 Silva fails to satisfy this condition, the Commissioner may order the suspension of the restricted licenses until respondent Silva presents such evidence. The Commissioner shall afford respondents the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
5. Any restricted real estate license issued to respondents pursuant to this Decision shall be suspended for thirty (30) days from the date of issuance of said restricted license.

6. Respondent Silva shall, within six 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 Silva fails to satisfy this condition, the Commissioner may order suspension of respondents' licenses until respondent Silva passes the examination.

7. Respondents shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning Respondents' activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest. Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of respondents and periodic summaries of salient information concerning each real estate transaction in which respondents engaged during the period covered by the report.

DATED: October 10, 2001


JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings

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

FILED
JUL 13 2001

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

THOMAS RICHARD SILVA and
THOMAS R. SILVA & CO.

By Shelly Elzy
Case No. H-7949 SF

OAH No.

Respondent

**FIRST CONTINUED
NOTICE OF HEARING ON ACCUSATION**

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at THE OFFICE OF ADMINISTRATIVE HEARINGS, ELIHU M. HARRIS BUILDING, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612 on THURSDAY--AUGUST 23, and FRIDAY--AUGUST 24, 2001, 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: JULY 13, 2001

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

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
MAY 29 2001

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

THOMAS RICHARD SILVA and
THOMAS R. SILVA & CO.

Case No. H-7949 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, ELIHU M. HARRIS BUILDING, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612 on MONDAY--JULY 2, 2001, 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: MAY 29, 2001

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

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

5 Telephone: (916) 227-0789
6 -or- (916) 227-0792 (Direct)

FILED
APR 20 2001

DEPARTMENT OF REAL ESTATE

By Shelly Ely

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

) No. H-7949 SF

12 THOMAS RICHARD SILVA and)
13 THOMAS R. SILVA & CO.,)

) ACCUSATION

14 Respondents.)

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

20 I

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

24 II

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

1 (a) Respondent TRS as a corporate real estate broker
2 dba Eden Realty.

3 (b) Respondent SILVA as the designated officer of
4 Respondent TRS.

5 III

6 At various times mentioned herein, Respondents engaged
7 in the business of, acted in the capacity of, advertised, or
8 assumed to act as real estate brokers within the State of
9 California, within the meaning of Section 10131(b) of the Code by
10 leasing or renting or offering to lease or rent, or placing for
11 rent, or soliciting listings of places for rent, or soliciting
12 for prospective tenants, or negotiating the sale, purchase or
13 exchanges of leases on real property, or a business opportunity,
14 or collecting rents from real property, or improvements thereon,
15 or from business opportunities, for or in expectation of
16 compensation.

17 IV

18 That at all times mentioned herein, Respondents
19 accepted or received funds in trust (hereafter trust funds) from
20 and on behalf of their principals placing them in accounts and at
21 times thereafter made disbursements of such funds.

22 V

23 From November 16, 2000 to November 22, 2000 an investigative
24 audit was conducted by the Department of the records and bank
25 records of Respondent TRS for the period from January 1, 2000 to
26 September 30, 2000, as said records related to its activities as
27 a real estate broker described above.

1 VI

2 Respondent TRS maintained three accounts, into which
3 trust funds were placed. Two accounts were at US Bank, 987 B
4 Street, Hayward, CA 94541. One was designated as Acct.
5 #153400197759 under the title Eden Realty-General Trust Account
6 #F (hereinafter "Trust #1") and the other was designated as Acct.
7 #153400197734 under the title Eden Realty-Trust Account #G
8 (hereinafter "Trust #2"). The third account was at Bank of the
9 West, 1058 B Street, Hayward, CA 94541, designated as Acct. #035-
10 012393 under the title Mayten Manor Apartments, Vincent-Silva
11 Rentals C/O Eden Realty Property Management/Trust A/C
12 (hereinafter "Bank #3"). Bank #3 was not setup as a trust
13 account.

14 VII

15 The adjusted balance of Trust #1 as of September 29,
16 2000 was negative Three Thousand Two Hundred Forty and 08/100
17 Dollars (-\$3,240.08) and the trust fund accountability in the
18 account as of September 29, 2000 was Thirty-Eight Thousand Nine
19 Hundred Seventy-Six and 47/100 Dollars (\$38,976.47). Therefore,
20 Respondent TRS, as of September 29, 2000, had a trust fund
21 shortage of Forty-Two Thousand Two Hundred Sixteen and 55/100
22 Dollars (\$42,216.55).

23 VIII

24 The adjusted balance of Trust #2 as of September 29,
25 2000 was negative Eighteen Thousand Four Hundred Ninety and
26 15/100 Dollars (-\$18,490.15) and the trust fund accountability in
27 the account as of September 29, 2000 was One Hundred Ninety

1 Thousand Two Hundred Eighty-Two and 14/100 Dollars (\$190,282.14).
2 Therefore, Respondent TRS, as of September 29, 2000, had a trust
3 fund shortage of Two Hundred Eight Thousand Seven Hundred
4 Seventy-Two and 29/100 Dollars (\$208,772.29).

5 IX

6 The adjusted balance of Bank #3 as of September 29,
7 2000 was a negative Fifty-Five and 62/100 Dollars (-\$55.62) and
8 the trust fund accountability in the account as of September 29,
9 2000 was Nine Thousand Seven Hundred Thirty-Two and 68/100
10 Dollars (\$9,732.68). Therefore, Respondent TRS, as of September
11 29, 2000, had a trust fund shortage of Nine Thousand Seven
12 Hundred Eighty-Eight and 30/100 Dollars (\$9,788.30).

13 X

14 The shortages referred to in Paragraphs VII through IX
15 were due primarily to Respondent SILVA making unauthorized
16 transfers of funds to fund a project 100% owned by him in
17 violation of Sections 10176(e) and 10176(i) of the Code and
18 Section 2832, Title 10, California Code of Regulations
19 (hereinafter the "Regulations").

20 XI

21 Respondent TRS caused the disbursement of trust funds
22 from Trust #1, Trust #2 and Bank #3 without the written consent
23 of every principal who was an owner of the funds, causing the
24 balance of the funds in the account to be an amount less than the
25 existing aggregate trust fund liability of Respondent TRS to all
26 owners of said funds in violation of Section 10145 of the Code
27 and Section 2832.1 of the Regulations.

XII

The acts and/or omissions of Respondents SILVA and TRS described above are grounds for the suspension or revocation of Respondents' licenses and license rights under Sections 10176(e) and (i) of the Code and Section 10145 of the Code and Sections 2831.2 and 2832.1 of the Regulations in conjunction with Section 10177(d) 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 Respondents, 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 2nd day of April, 2001.