

FILED  
FEB 04 2003

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Shelly Ely

\* \* \*

In the Matter of the Accusation of )  
MICHAEL WILLIAM RUPPRECHT, )  
Respondent. )

NO. H-8128 SF

N-2002080578

DECISION

The Proposed Decision dated December 26, 2002, 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 with the following correction:

Pursuant to Section 11517(b)(3) of the Government Code, "section 10177(b)" is substituted for "section 10177(b) and (j)" in line 3 of Paragraph 1 of the "Legal Conclusions" on page 3 of the Proposed Decision.

This Decision shall become effective at 12 o'clock noon on February 24, 2003.

IT IS SO ORDERED January 28, 2003.

PAULA REDDISH ZINNEMANN  
Real Estate Commissioner

Paula Reddish

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of

MICHAEL WILLIAM RUPPRECHT,

Respondent.

No. H-8128 SF

OAH No. N2002080578

**PROPOSED DECISION**

John K. Markley, Administrative Law Judge, Office of the Administrative Hearings, State of California, heard this matter on December 11, 2002, in Oakland, California.

The Department of Real Estate ("Department") was represented by Michael Rich, Counsel.

Michael William Rupprecht, respondent, was not present but was represented by Jerome Fishkin, Attorney At Law, 369 Pine Street, Suite 627, San Francisco, California 94104.

Evidence was received, and the record was held open to allow opportunity for respondent to present additional documentary evidence. The additional documentary evidence having been received and admitted into evidence, the record was closed and the matter was submitted on December 20, 2002.

**FACTUAL FINDINGS**

1. Les R. Bettencourt ("complainant") made and filed this accusation in his official capacity of Deputy Real Estate Commissioner of the State of California.

2. Respondent currently holds restricted real estate broker license number 00528780 which will expire February 4, 2005, unless renewed.

3. Respondent was first licensed as a real estate broker in 1976. Respondent was previously disciplined by the Department on February 5, 1997. The basic facts underlying respondent's 1997 discipline are: On June 29, 1995, the Department

brought an accusation against respondent and his selling agents in matter number H-3141 SAC. After hearing (OAH No. N 9507121) the February 5, 1997 Decision was issued which found that respondent, as the supervising broker, failed to exercise reasonable control over his selling agents who had misrepresented material facts to potential home purchasers. The Department's discipline was, in part, the revocation of respondent's broker license and the issuance of the current "restricted" broker license.

4. On or about May 10, 2001 (while holding the current "restricted" broker license), respondent pled guilty and was convicted of intentionally causing another to submit a false document with the Internal Revenue Service, a misdemeanor violation of 26 U. S. C. section 7207, in the United States District Court, Northern District of California, San Francisco Division, in Case Number CR-1-40032-WBD. This is a crime involving moral turpitude and is substantially related to the qualifications, functions or duties of a real estate broker.

5. The underlying facts and circumstances of the May 10, 2001 conviction are: In December of 1996, respondent was due compensation of \$50,000 from his employer, Dame Construction. Respondent requested that his employer make the compensation check payable to a third party. The third party had previously agreed with respondent to place the money in a bank account in the third party's name and to later return the money to respondent. These acts were knowingly done with the intention of under-reporting respondent's taxable compensation and avoiding the payment of income taxes on the compensation. These acts adversely reflect on the honesty, integrity and trustworthiness of respondent; traits which are expected and required of a real estate broker.

6. Following his guilty plea, respondent was sentenced to three years of criminal probation which, unless violated, will terminate on or about May 9, 2004. Respondent was also sentenced to perform 400 hours of community service, pay a \$10,000 fine and make full restitution to the Internal Revenue Service by payment of all taxes, interest and penalties on the \$50,000 compensation.

7. As to mitigation: Respondent was not present and presented no direct evidence of mitigating facts. The evidence in the documentary record disclosed that respondent graduated from Michigan State University in 1971 with a degree in business, earned a law degree and an MBA in taxation from Golden Gate Law School, and was admitted to the practice of law in California in 1974. By virtue of his specialized education, and by the facts admitted in respondent's plea agreement, respondent was fully aware and knew that his attempt to evade income taxes was illegal. Consequently, respondent has failed to prove any mitigating facts.

8. As to respondent's rehabilitation: Respondent is currently serving the criminal probation, has paid the \$10,000 criminal fine and has paid the taxes, penalties and interest due to the Internal Revenue Service. However, no evidence was presented

and it is not known whether respondent has performed any or all of the required 400 hours of community service. Respondent also submitted eleven character reference letters which were admitted as administrative hearsay for the purpose of supporting other information in the record. The record, however, is essentially devoid of evidence demonstrating respondent's rehabilitation subsequent to his criminal conviction. The character reference letters, written in February 2002, were submitted in a separate State Bar disciplinary action against respondent and do not directly address the issue of respondent's rehabilitation following his criminal conviction. It is also noted that respondent's 2001 criminal conviction occurred while he was holding the "restricted" real estate broker license resulting from his 1997 Department discipline. It is further noted that respondent's criminal probation is still in effect and will not expire until for another 29 months. Consequently, respondent has failed to demonstrate sufficient rehabilitation, and it would be adverse to the public interest to allow respondent to continue as a licensed real estate broker.

#### LEGAL CONCLUSIONS

1. By reason of the matters set forth in Findings 2, 3, 4 and 5, cause for disciplinary action exists pursuant to Business and Professions Code section 490 and section 10177 (b) and (j) in that respondent pled guilty to causing another to submit a false document with the Internal Revenue Service, a crime involving moral turpitude which is substantially related to the qualifications, functions or duties of a licensed real estate salesperson.


2. By reason of the matters set forth in Findings 5 and 7, respondent failed to establish mitigating circumstances for his criminal actions.

3. By reason of the matters set forth in Findings 5, 6 and 8, respondent failed to establish that he has been sufficiently rehabilitated.

#### ORDER

All licenses and licensing rights of respondent, Michael William Rupprecht,  
under the Real Estate Law are revoked.

DATED: December 26, 2002

  
\_\_\_\_\_  
JOHN K. MARKLEY  
Administrative Law Judge  
Office of Administrative Hearings

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

**FILED**  
AUG 08 2002

DEPARTMENT OF REAL ESTATE

*In the Matter of the Accusation of*

MICHAEL WILLIAM RUPPRECHT

By Shelly Ely  
Case No. H-8128 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, THE ELIHU HARRIS STATE BUILDING, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612** on **WEDNESDAY--DECEMBER 11, 2002**, 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.

DEPARTMENT OF REAL ESTATE

Dated: AUGUST 8, 2002

By

Michael B. Rich  
MICHAEL B. RICH, Counsel

cc: JEROME FISHKIN, ESQ.

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

**FILED**  
**AUG 01 2002**

DEPARTMENT OF REAL ESTATE

*In the Matter of the Accusation of*

**MICHAEL WILLIAM RUPPRECHT**

Case No. H-8128 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, THE ELIHU HARRIS STATE BUILDING, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612** on **FRIDAY--SEPTEMBER 13, 2002**, at the hour of **10:30 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.

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DEPARTMENT OF REAL ESTATE

*Dated:* AUGUST 1, 2002

By

*David A. Peters*  
DAVID A. PETERS, Counsel

cc: JEROME FISHKIN, ESQ.

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  
JUN 13 2002

DEPARTMENT OF REAL ESTATE

By Shelly Elzy

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )

12 MICHAEL WILLIAM RUPPRECHT, )

13 Respondent. )  
14

No. H-8128 SF

ACCUSATION

15 The Complainant, Les R. Bettencourt, a Deputy Real  
16 Estate Commissioner of the State of California for cause of  
17 Accusation against MICHAEL WILLIAM RUPPRECHT (hereinafter  
18 Respondent), is 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  
27 restricted real estate broker.

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III

On or about May 10, 2001, in the United States District Court, Northern District of California, San Francisco Division, Respondent was convicted of 26 USC Section 7207 (Willfully Causing Another to Provide a False Document to the Internal Revenue Service), 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.

PRIOR DISCIPLINE


V

Effective February 5, 1997, in Case No. H-3141 SAC, the Real Estate Commissioner ordered the revocation of the real estate licenses and license rights of Respondent with the right to a restricted real estate broker license for a violation of Code Section 10177(h).

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

  
LES R. BETTENCOURT  
Deputy Real Estate Commissioner

Dated at Oakland, California, .  
this 25th day of April, 2002.