

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
AUG 05 2003

DEPARTMENT OF REAL ESTATE

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In the Matter of the Accusation of)
DENNIS M. FAHEY and,)
FAHEY PROPERTIES, INC.)
Respondents.)

NO. H-8159 SF
OAH NO. N2002100274

DECISION

The Proposed Decision dated July 3, 2003, 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.

This Decision shall become effective at 12 o'clock noon on AUGUST 25, 2003.

DATED: JULY 22, 2003.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish Zinnemann

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DENNIS M. FAHEY and
FAHEY PROPERTIES, INC.

Respondents.

Case No. H-8159 SF

OAH No. N2002100274

PROPOSED DECISION

On May 28, 2003, in Oakland, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

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

Thomas C. Lasken, Attorney at Law, of the Lasken Law Offices, 980 9th Street, 16th Floor, Suite 1631, Sacramento, California 95814, represented respondents Fahey Properties Inc., and Dennis M. Fahey. Respondent Dennis M. Fahey appeared for all phases of the hearing.

On May 28, 2003, the parties submitted the matter and the record closed.

FACTUAL FINDINGS

1. Complainant Les R. Bettencourt ("Complainant"), in his official capacity as a Deputy Real Estate Commissioner of the State of California, made the Accusation against respondents Dennis M. Fahey ("respondent Fahey") and Fahey Properties, Inc.

2. Respondent Fahey is presently licensed and has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (hereinafter "Code") as a real estate broker with license identification number 00461339. On September 25, 1987, the license was issued to respondent as officer of Fahey Properties, Inc.

Respondent corporation Fahey Properties, Inc., gained original licensure on September 25, 1987, under license number 00971065. Since the first date of licensure as a real estate corporation, respondent Fahey Properties, Inc., has had Dennis M. Fahey as its designated officer.

Respondents currently maintain a business mailing address and principal business office at 1005 Terra Nova Boulevard, Pacifica, California 94044.

Both the corporation license issued to Fahey Properties, Inc. and the license issued to Respondent Fahey as designated officer will expire on May 7, 2004.

Contract for the Sale of Cape Breton, Pacifica Property

3. On January 18, 2001, Respondent Fahey made entries onto a form contract captioned "Commercial Property Purchase Agreement, Receipt for Deposit, and Escrow Instructions" ("Agreement and Receipt") for the sale of real property known as 650 Cape Breton Drive, Pacifica, which is situated in San Mateo, County.

The contract and receipt document showed the buyer to be "Fred Cziska." The last page of the contract reflects the signature of George Lawrence Butler.

4. The opening paragraph of the contract, which is boldly captioned as a contract, receipt for deposit and escrow instructions, sets out:

Received from Fred Cziska ("Buyer"), an individual, a Deposit of One Hundred Thousand Dollars (\$100,000) towards the Purchase Price of One Million Six Hundred Thousand Dollars (\$1,600,000) for purchase of property... described as 650 Cape Breton Dr[ive], Pacifica....

5. Neither on January 18, 2001, nor on any date thereafter, did Respondent Fahey secure from Fred Cziska a deposit of \$100,000.

6. After January 18, 2001, Respondent Fahey telephoned Fred Cziska regarding the buyer's failure to tender the deposit with the escrow agent. On one occasion, Respondent Fahey prompted the escrow agent's employee to telephone Fred Cziska regarding the deposit.

Mr. Cziska did not make the deposit after any of the numerous requests that he pay \$100,000 in an established escrow account.

7. On January 18, 2001, when Fred Cziska signed the Agreement and Receipt, Respondent Fahey knew that the "potential" buyer - Mr. Cziska had "financial concerns relating to the [horse ranch] business" on the property."

8. On January 24, 2001, Respondent Fahey procured the signature of George Butler, as seller, upon the Purchase Agreement, Receipt and Instructions. By that date, Respondent Fahey had not secured the deposit from Fred Cziska of \$100,000.

9. The dispute that erupted between Fred Cziska and George Butler has little consequence to this matter, which involves the limited issues raised in the Accusation.

Matters in Extenuation

10. After January 18, 2001, the buyer - Fred Cziska - did not look upon the Agreement and Receipt as a solemn pledge to consummate the real estate transaction for which Respondent Fahey acted as broker. Rather, Mr. Cziska viewed the terms and expressions in the Agreement, Receipt and Instructions as part of "an offer sheet or a means to negotiate a fair price."

11. In May 2001, without the aid of a broker, George Lawrence Butler sold the Cape Bretton Drive property for \$1.5 million to a ready, willing and able buyer, who was not associated with Fred Cziska.

Matters in Mitigation

12. Respondent has held a real estate broker license since May 3, 1985. He was first licensed as a real estate salesperson in September 1973.

13. Other than a complaint to the Department from Mr. Butler, respondent knows of no other consumer complaint against his real estate licenses since the date he was first licensed thirty years ago as a real estate licensee.

Matter in Aggravation

14. Notwithstanding the substantial misrepresentation in the Commercial Property Purchase Agreement and Receipt of Deposit document, as well as his negligence in handling the transaction involving Fred Cziska, Respondent Fahey collected \$25,000, in settlement of a lawsuit against George Lawrence Butler.

Ultimate Findings

15. Substantial misrepresentation is evident in the Purchase and Receipt document, after January 18, 2001, and before January 24, 2001, when Respondent Fahey did not possess the contractual prescribed deposit amount of \$100,000, or where such prescribed deposit was not in route to an escrow officer or other third party deposit holder for the commercial sale of real property, and then the broker presented an Agreement and Receipt document to the seller where the contract specified the broker's receipt in hand of the prescribed deposit amount.

16. Respondent breached the standard of duty care expected of a real estate broker in preparing an Agreement, Receipt and Instructions document. At a minimum, Respondent Fahey was negligent in his acts and omissions regarding the subject contract and receipt document as signed by a potential buyer on January 18, 2001, and as signed by the seller on January 24, 2001.

LEGAL CONCLUSIONS

1. Business and Professions Code section 10176, subdivision (a) establishes that the Commission of the Department of Real Estate ("the Commissioner") may temporarily suspend or permanently revoke a real estate license when a licensee, while acting as a real estate licensee, has engaged in "[m]aking any substantial misrepresentation."

Cause for discipline exists pursuant to Business and Professions Code section 10176, subdivision (a), by reason of the matter set out in Factual Finding 15.

2. Business and Professions Code section 10177, subdivision (g) sets out the Commissioner may suspend or revoke the license of a real estate corporation if an officer, director or person owning or controlling 10 percent or more of the corporation's stock has "demonstrated negligence or incompetence in performing any act for which he or she is required to hold a license"

Cause for discipline exists pursuant to Business and Professions Code section 10177, subdivision (g), by reason of the matter set out in Factual Finding 16.

3. Respondent's acts and omissions were careless and unprofessional. However, evidence does not show respondent's conduct involved fraud or culpable dishonesty. But, suspension of licensing rights in this matter is warranted.

4. The Real Estate Commissioner has discretion Business and Professions Code section 10175.2, subdivision (a) to permit Respondent to pay a monetary penalty to the department in lieu of an actual license suspension, on a petition from Respondent. Pursuant to Code section 10175.2, subdivision (d), the monetary penalty payment shall not exceed two hundred fifty dollars for each day of suspension stayed, or a total of ten thousand dollars under this decision.


ORDER

All licenses and licensing rights of Respondent Fahey and of Fahey Properties, Inc. under the Real Estate Law are suspended for a period of forty (45) days from the effective date of this Decision; provided, however, that if Respondents petition, said suspensions (or a portion thereof) shall be stayed upon condition that:

1. Respondent Fahey pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of one hundred fifty (\$150) dollars for each day of the stayed suspension.
2. Respondent Fahey Properties, Inc., pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of fifty (\$50) dollars for each day of the stayed suspension.
3. Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be delivered to the Department prior to the effective date of the Decision in this matter.
4. No further cause for disciplinary action against the real estate licenses of Respondents occurs within two year from the effective date of the Decision in this matter.
5. If either Respondent fails to pay the monetary penalty in accordance with the terms and conditions of the Decision, the Commissioner may, without a hearing, order the immediate execution of all or any part of the stayed suspension in which event the affected Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.
6. If either Respondent pays the monetary penalty and if no further cause for disciplinary action against the real estate license of Respondents occurs within two year from the effective date of the Decision, the stay hereby granted shall become permanent.
7. Respondent Fahey 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 the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
8. Respondent Fahey 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 fails to satisfy this condition, the Commissioner may order suspension of Respondent's license until Respondent passes the examination.

Dated: July 3, 2003



PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

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JAN 09 2003

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

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

By Shelly Rhy

DENNIS M. FAHEY and
FAHEY PROPERTIES, INC.

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Case No. H-8159 SF

OAH No. N2002100274

Respondents

**SECOND CONTINUED
NOTICE OF HEARING ON ACCUSATION**

To the above named respondents:

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--MAY 28, 2003**, 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: JANUARY 9, 2003

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

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DEC 06 2002

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

DEPARTMENT OF REAL ESTATE

By Shelly E. [Signature]

In the Matter of the Accusation of

DENNIS M. FAHEY and
FAHEY PROPERTIES, INC.

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Case No. H-8159 SF

OAH No. N2002100274

Respondents

**FIRST CONTINUED
NOTICE OF HEARING ON ACCUSATION**

To the above named respondents:

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--JANUARY 3, 2003**, 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.

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Dated: DECEMBER 6, 2002

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

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
OCT 24 2002

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

DENNIS M. FAHEY and
FAHEY PROPERTIES, INC.

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By Shelly [Signature]

Case No. H-8159 SF

OAH No. N2002100274

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 MONDAY--DECEMBER 23, 2002, at the hour of 1:00 P.M., 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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Dated: OCTOBER 24, 2002

DEPARTMENT OF REAL ESTATE
By [Signature]
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

FILED
AUG 09 2002

DEPARTMENT OF REAL ESTATE

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

By Shelly Chy

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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11	In the Matter of the Accusation of)	No. H- 8159 SF
12	DENNIS M. FAHEY and)	<u>ACCUSATION</u>
13	FAHEY PROPERTIES, INC.,)	
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 DENNIS M. FAHEY (hereinafter "Respondent
18 FAHEY") and FAHEY PROPERTIES, INC. (hereinafter "Respondent
19 FPI"), 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 in his official capacity.

24 II

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

1 real estate broker with Respondent FAHEY as the designated
2 officer.

3 III

4 Respondent FAHEY is licensed and/or has license rights
5 under the Real Estate Law, Part 1 of Division 4 of the Code as a
6 real estate broker.

7 IV

8 On or about January 18, 2001, Respondent FAHEY, in his
9 capacity as the designated broker of Respondent FPI, assisted in
10 the preparation of a document entitled COMMERCIAL PROPERTY
11 PURCHASE AGREEMENT RECEIPT FOR DEPOSIT AND ESCROW INSTRUCTIONS,
12 on behalf of Fred Cziska (hereinafter "Cziska") for purchase of
13 the real property located at 650 Cape Breton, Pacifica
14 (hereinafter the "Property").

15 V

16 On or about January 24, 2001, Lawrence Butler
17 (hereinafter the "Seller"), accepted the purchase agreement
18 referred to in Paragraph IV.

19 VI

20 The purchase agreement provided, in pertinent part,
21 that Respondent FAHEY had received from Cziska a deposit of
22 \$100,000 toward the purchase price of \$1,600,000 and that the
23 deposit would be held uncashed until acceptance. However,
24 Respondent FAHEY had not received nor did he ever receive a
25 deposit from Cziska in any amount.

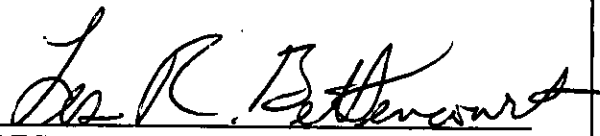
1 VII

2 At the time the purchase agreement was presented to the
3 Seller he was unaware that Respondent FAHEY was not in possession
4 of the \$100,000 deposit. At no time between the presentation of
5 the offer to the Seller and the Seller's acceptance of the offer
6 on January 24, 2001 did Respondent FAHEY inform the Seller that
7 no deposit had been received nor did the Seller otherwise obtain
8 such knowledge.

9 VIII

10 The acts and/or omissions of Respondent FAHEY described
11 above are grounds for the revocation or suspension of all the
12 licenses of Respondents FAHEY and FPI under Sections 10176(a)
13 and/or 10177(g) of the Code.

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

21
22
23 
24 LES R. BETTENCOURT
Deputy Real Estate Commissioner

25 Dated at Oakland, California,
26 this 9th day of July, 2002.