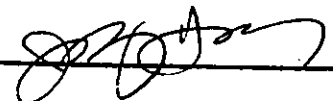


FILED
JUN 08 2005

DEPARTMENT OF REAL ESTATE

By



BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)

RUBEN DAVILA ARROYO,)

Respondent.)

No. H-25618 LA

ORDER EXTENDING TIME

On November 8, 1994, a Decision was rendered herein
revoking the real estate broker license of Respondent, but
granting Respondent the right to the issuance of a restricted
real estate broker license. A restricted real estate broker
license was issued to Respondent or about February 2, 1995, and
Respondent has operated as a restricted licensee without cause
for disciplinary action against Respondent since that time.

On March 25, 2003, Respondent petitioned for
reinstatement of said real estate broker license.

///

///

///

1 Effective September 9, 2004, Respondent's petition
2 for reinstatement was granted. An Order was issued that a real
3 estate broker license would be issued to Respondent if
4 Respondent satisfied the following conditions within nine (9)
5 months from the effective date of the Order:

6 1. Submittal of a completed application and payment of
7 the fee for a real estate broker license.

8 2. Submittal of evidence of having, since the most
9 recent issuance of an original or renewal real estate license,
10 taken and successfully completed the continuing education
11 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
12 for renewal of a real estate license.

13 Good cause having been shown, the time during which
14 Respondent must complete the conditions described above is
15 hereby extended to September 9, 2005.

16 This Order shall be effective immediately.

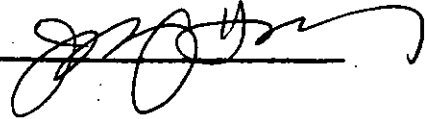
17 DATED: 6 - 2, 2005

18 JEFF DAVI
19 Real Estate Commissioner
20
21
22
23
24
25
26
27

1. 5000
1200

FILED
SEP 16 2004

DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) NO. H-25618 LA
RUBEN DAVILA ARROYO,)
Respondent.)

ORDER GRANTING REINSTATEMENT OF LICENSE

On November 8, 1994, a Decision was rendered herein
revoking the real estate broker license of Respondent, but
granting Respondent the right to the issuance of a restricted
real estate broker license. A restricted real estate broker
license was issued to Respondent or about February 2, 1995, and
Respondent has operated as a restricted licensee without cause
for disciplinary action against Respondent since that time.

On March 25, 2003, Respondent petitioned for
reinstatement of said real estate broker license and the
Attorney General of the State of California has been given
notice of the filing of said petition.

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
4 to my satisfaction that Respondent meets the requirements of
5 law for the issuance to Respondent of an unrestricted real
6 estate broker license and that it would not be against the
7 public interest to issue said license to Respondent RUBEN DAVILA
8 ARROYO.
9

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

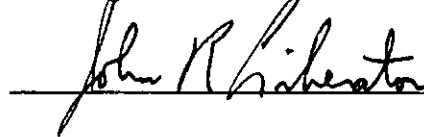
15 1. Submittal of a completed application and payment
16 of the fee for a real estate broker license.

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

22 This Order shall become effective immediately.

23 DATED: Sept. 9, 2004.

24 JOHN R. LIBERATOR
25 Acting Real Estate Commissioner

26 

27 cc: Ruben D. Arroyo
1545 E. Verness St.
West Covina, CA 91791

By Laura B. Chona

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of	)	
	)	No. H-25618 LA
RUBEN DAVILA ARROYO	)	
	)	L-62087
Respondent.	)	

DECISION AFTER REJECTION

This matter came on for hearing before Theresa Fay-Bustillos, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California, on April 19, 1994.

V. Ahda Sands, Counsel, represented the Complainant.

The respondent appeared in person and represented himself.

Evidence was received, the hearing was closed and the matter was submitted.

On May 23, 1994, the Administrative Law Judge submitted a Proposed Decision which I declined to adopt as my Decision herein. Pursuant to Section 11517(c) of the Government Code of

1 the State of California, respondent was served with notice of my
2 determination not to adopt the decision of the Administrative Law
3 Judge along with a copy of said Proposed Decision. Respondent
4 was notified that the case would be decided by me upon the
5 record, the transcript of proceedings held on April 19, 1994, and
6 upon any written argument offered by respondent. Respondent did
7 not submit any written argument.

8 I have given careful consideration to the record in
9 this case including the transcript of proceedings of April 19,
10 1994. The following shall constitute the Decision of the Real
11 Estate Commissioner in this proceeding:

12 FINDINGS OF FACT

13 I have determined that all of the Findings of Fact in
14 the Proposed Decision of the Administrative Law Judge, dated May
15 23, 1994, are appropriate in all respects and they are adopted as
16 the Findings of Fact of the Real Estate Commissioner in this
17 proceeding.

18 DETERMINATION OF ISSUES

19 I have determined that the Determination of Issues in
20 the Proposed Decision of the Administrative Law Judge, dated May
21 23, 1994, are appropriate in all respects and they are adopted as
22 the Determination of Issues of the Real Estate Commissioner in
23 this proceeding. This Decision differs only with respect to the
24 discipline imposed on the Respondent

25 /

26 /

27 /

ORDER

All license and license rights of respondent RUBEN DAVILA ARROYO, under the Real Estate Law are revoked; provided, however, a restricted real estate broker 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 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 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.

2. 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.

3. 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

1 a restricted license until three years has elapsed from the
2 effective date of this Decision.

3 4. Pursuant to Section 10148 of the Business and
4 Professions Code, Respondent shall pay the Commissioner's
5 reasonable cost, not to exceed \$5,000.00, for an audit to
6 determine if Respondent has corrected the trust fund violations
7 found in the Proposed Decision Determination of Issues. In
8 calculating the amount of the Commissioner's reasonable cost, the
9 Commissioner may use the estimated average hourly salary for all
10 person performing audits of real estate brokers, and shall
11 include an allocation for travel costs, including mileage, time
12 to and from the auditor's place of work and per diem.
13 Respondent shall pay such cost within 45 days of receiving an
14 invoice from the Commissioner detailing the activities performed
15 during the audit and the amount of time spent performing those
16 activities. The Commissioner may suspend the restricted license
17 issued to Respondent pending a hearing held in accordance with
18 Section 11500, et. seq. of the Government Code, if payment is not
19 timely made as provided for herein, or as provided for in a
20 subsequent agreement between the Respondent and the Commissioner.
21 The suspension shall remain in effect until payment is made in
22 full, or until Respondent enters into an agreement satisfactory
23 to the Commissioner to provide for payment or until a decision
24 providing otherwise is adopted following hearing held pursuant to
25 this condition.

26 5. Respondent repay interest of \$138.75 to the
27 beneficiary or beneficiaries of said interest.

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

13 The right to reinstatement of a revoked or suspended
14 real estate license or to the reduction of a penalty is
15 controlled by Section 11522 of the Government Code. A copy of
16 Section 11522 and a copy of the Commissioner's Criteria of
17 Rehabilitation are attached hereto for the information of
18 respondent.

19 This Decision shall become effective at 12 o'clock noon
20 on November 30, 1994.

21
22 IT IS SO ORDERED November 8, 1994.

23 JOHN R. LIBERATOR
24 Interim Commissioner

25
26 John R. Liberator
27

Sacto
Jury

FILED
JUN 29 1994
DEPARTMENT OF REAL ESTATE

By Laura B. Orma

BEFORE THE DEPARTMENT OF REAL ESTATE.

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
RUBEN DAVILA ARROYO,)
Respondent.)

NO. H-25618 LA
L-61990

NOTICE

TO: RUBEN DAVILA ARROYO, Respondent

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated May 23, 1994, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated May 23, 1994, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on April 19, 1994, and any written argument hereafter submitted on behalf of respondent and complainant.

1 Written argument of respondent to be considered by me
2 must be submitted within 15 days after receipt of the transcript
3 of the proceedings of April 19, 1994, at the Los Angeles office
4 of the Department of Real Estate unless an extension of the time
5 is granted for good cause shown.

6 Written argument of complainant to be considered by me
7 must be submitted within 15 days after receipt of the argument of
8 respondent at the Los Angeles office of the Department of Real
9 Estate unless an extension of the time is granted for good cause
10 shown.

11 DATED: June 20, 1994

12 CLARK WALLACE
13 Real Estate Commissioner

14 John R. Liberator

15
16 BY: John R. Liberator
17 Chief Deputy Commissioner
18
19
20
21
22
23
24
25
26
27

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation	)	
Against:	)	
	)	
Ruben Davila Arroyo, d.b.a.	)	No. H-25618 LA
Royal Mortgage Company,	)	OAH No. L-61990
	)	
Respondent.	)	
	)	

PROPOSED DECISION

This matter was heard by Theresa Fay-Bustillos, Administrative Law Judge, Office of Administrative Hearings, in Los Angeles, California, on April 19, 1994. The Department of Real Estate of the State of California (hereinafter "Department") was represented by V. Ahda Sands, Staff Counsel. Respondent, Ruben Davila Arroyo, d.b.a. Royal Mortgage Company appeared and represented himself.

At the hearing, the Department moved to conform the Accusation to the evidence. This motion was not objected to by Respondent, and was granted by the Administrative Law Judge.

Oral and documentary evidence was received and the matter submitted. Based upon clear and convincing evidence, the Administrative Law Judge finds as follows:

FINDINGS OF FACT

1. The Accusation was made by Steven J. Ellis, a Deputy Real Estate Commissioner of the State of California, solely in his official capacity.

2. Since December 8, 1986, Respondent has been a licensed broker. His license is set to expire on December 7, 1994. Prior to becoming a broker, he was a licensed real estate salesperson.

3. (A) Respondent is currently employed on a full time basis by the Franchise Tax Board as a Program Specialist 1. Since March 1, 1979, he has been employed on a full time basis by the Franchise Tax Board.

(B) From September 1, 1977 through February 28, 1979, Respondent was employed by the Department as an Auditor, on a permanent full time basis. From September 1, 1977 to June 30, 1978, he was also an Examination Proctor. In this capacity, he administered real estate license exams and monitored continuing education courses.

(C) Respondent has a bachelor's degree in business administration with an emphasis in accounting. He has passed the certified public accountant (CPA) examination, but he does not hold the certificate.

4. (A) Since November 21, 1989, Respondent has operated as Royal Mortgage Company. Respondent has operated this mortgage loan brokerage business on a part-time basis; soliciting lenders and borrowers, most of whom are friends and co-workers, and negotiating loans secured directly or collaterally by a lien on real property. During the period of June 1, 1990 to November 30, 1994, Respondent, on average, arranged one loan per month with an average loan amount of \$125,000.00.

(B) In addition, from July 13, 1990 through October 28, 1991, Respondent also performed broker escrow services. In this regard, he maintained an interest-bearing bank trust account to handle escrow funds received and disbursed. The account no. is 09800-03539, entitled the "Royal Mortgage Company Escrow Trust Account." It was maintained at the Eastland branch office of Bank of America in Covina, California. During the period in which he performed broker escrow services, he averaged one transaction per month.

(C) Respondent is currently conducting business as Royal Mortgage Company, but he has closed the escrow department. It was closed on or about October 28, 1991, when he closed the trust account. Currently, he is not involved in the sale of homes, but only in refinancing mortgage loans.

(D) Royal Mortgage Company is located at 1545 East Verness Street, West Covina, California 91791.

5. The Department conducted an audit of Respondent's business activities for the period of June 1, 1990 to November 30, 1991, to determine whether Respondent handled and accounted for trust funds in accordance with pertinent regulations. The examination by the Department occurred during January 15, 1992 through March 25, 1992.

6. (A) Department auditor, Jennifer Wang, compared the escrow funds received and deposited into the trust account, as well as other unidentified deposits or funds against the authorized disbursements related to 12 closed escrow transactions, for the period of July, 1990 through September, 1991, to determine the principal amounts due to the beneficiaries as of November 22, 1991, of \$2,233.57 in the trust account. Ms. Wang added to this minimum amount the accumulated interest-earnings for this interest-bearing account, \$238.75, which as of November 22, 1991 - after the account was closed - brought the minimum aggregate trust fund liability to

\$2,372.32; while the account balance was zero.¹ As of November 22, 1991, this resulted in a shortage of \$2,372.32.

(B) The audit report includes a remaining balance in the amount of \$761.00 in escrow no. 00114-G - Bauerline. However, the evidence establishes that on February 7, 1991, this outstanding escrow amount was paid, although, this payment wasn't referenced to the proper escrow or transaction number. Thus, as of November 22, 1991, the aggregate trust fund liability of \$2,372.32 should be reduced by \$761.00 to an amount of \$1,611.32.

(C) There were many instances of trust account checks made payable to unidentified payees (cash) or to payees with no notation of the related transaction or escrow number. The evidence establishes that Annette Garcia, Respondent's escrow officer, withdrew funds from the trust account, without obtaining the prior written consent of every beneficiary. The evidence is sufficient to infer that at least one or more of the withdrawals created the shortage. The unauthorized withdrawals and shortage in the account were due to poor record keeping and Respondent's failure to adequately monitor the trust account and the activities of Annette Garcia.

(D) The audit indicates that with regard to 4 escrows: Jimenez - escrow no. 00103-G; Fields - escrow no. 00117-G; Parada - 00118-G; and Anley - escrow no. 00125-G, there were outstanding balances as of the close of escrow. In the four cited instances, all of the remaining escrow funds were ultimately paid; there was evidence that checks were issued but were not mailed-out as of the close of escrow, and in one instance, the escrow balance was not disbursed according to the escrow instructions. However, no lender or borrower was shortchanged.

7. Respondent failed to maintain columnar records for the trust account. While some information was maintained, not all of the required information was maintained.

8. (A) Respondent maintained separate records by transaction in transaction folders. However, some of the records were either not complete or accurate. The evidence failed to

¹Paragraph 9(a) of the Accusation alleges that Respondent disbursed or allowed the disbursement of funds from the trust account, wherein said disbursements reduced the funds in the account "to an amount which, on July 31, 1991, was approximately \$2,233.57 less than the existing aggregate trust fund liability to all owners..." The Department moved to conform the Accusation to the proof, this motion was granted. Thus, this paragraph of the Accusation should be amended to conform to the proof.

establish that these irregularities rose to the level of not constituting maintenance of the required records in accordance with generally accepted accounting principles.

(B) Respondent failed to maintain a separate record of his funds in the escrow trust account and of the interest earned on the funds on deposit.

9. Although Respondent's records were sufficient to do so; Respondent failed to reconcile the separate transaction records with the escrow trust account on a monthly basis when there was escrow activity. He did however, perform some reconciliation of the records.

10. Respondent permitted Annette Garcia, to be a signatory on the escrow trust fund account, when she was unlicensed and when Respondent did not have fidelity bond coverage at least equal to the maximum amount of the trust funds to which Ms. Garcia had access.

11. Respondent failed to maintain a record of the interest earned on funds in this trust account. There was also no evidence that the accrued interest had been prorated or disbursed to the beneficiaries.

12. Respondent's letterhead read, "Royal Mortgage Escrow Division." There was no evidence that Respondent, in writing, disclosed that this was a broker owned agency.

13. (A) Respondent entered into oral agreements with Annette and David Garcia. Annette and David Garcia are husband and wife, and were personal friends of Respondent. Neither David or Annette Garcia were licensed by the Department during the period of time they performed work for Respondent. Respondent did not supervise their work.

(B) Respondent's oral agreement with David Garcia provided that he, David Garcia, would process loan papers and verify certain information on the loan documents. In exchange, he was paid a flat fee per successful loan transaction, depending on the size of Respondent's commission, that ranged between \$250.00 and \$400.00. Respondent did not verify David Garcia's qualifications to perform these duties, but Respondent believed that he had worked for different companies for a couple of years processing loan documents.

(C) Respondent had a similar oral agreement with Annette Garcia to handle escrow services. She was paid a fee between \$300 and \$350 per transaction. Respondent did not verify Annette Garcia's qualifications to perform these duties, but he believed that she had been working for an escrow company, and he assumed she had previous experience handling an escrow trust account.

(D) The evidence concerning the exact period of time the Garcias performed work for Respondent was vague and somewhat contradictory. It is reasonable to infer that Annette Garcia performed work for Respondent at least during the period of time the escrow operation was open, July, 1990 through October, 1991.² It is also inferred, that David Garcia performed work for Respondent from January, 1990 to approximately, January, 1992, based upon the information in the audit report, which was not challenged by Respondent.

(E) At some point during this period of time, the Garcia's moved from Los Angeles to Palmdale, California. When they moved to Palmdale, they continued to perform the same functions for Respondent but out of their home located at 1642 Suffolk Court, Palmdale, California. The evidence did not establish that Respondent, personally, conducted any business at the Palmdale location. Respondent never obtained a branch office license for this location.

14. (A) In or about, February, 1991, David Garcia, in the name of Royal Mortgage Company, solicited borrowers, Lyle Wayne Fields and Cheryl Lynn Williams-Fields. David Garcia processed a loan for the Fields, and submitted the loan documents to a lender bank. The loan was funded on approximately July 5, 1991 in the amount of \$132,750.00. On February, 22, 1991, Annette Garcia opened an escrow for the Fields. On July 8, 1991, Royal Mortgage Company received escrow funds from the title company in the amount of \$18,752.08. The audit reveals that the escrow was closed on July 10, 1991, but that as of March 25, 1992, \$230.03 of the escrow funds were not disbursed according to the escrow instructions. Respondent has subsequently taken care of these discrepancies.³

(B) Respondent did not, in advance, authorize David Garcia to solicit the borrowers, process the loan, and open the escrow, he found out about the transaction when the loan documents

²This is a reasonable inference based upon the fact that Annette Garcia only performed escrow services for Respondent. When Respondent closed the escrow operation, he testified that he also severed his relationship with the Garcias.

³The Accusation alleges that David Garcia, was compensated for acts requiring a license during 1990 and 1991. The Accusation does not allege, but the evidence established the facts in Finding No.14(A). The Accusation does allege, but the Department failed to prove that David Garcia, negotiated the sale of real property located on 11720 Wilkie Avenue, Inglewood, California. However, there is no evidence of this transaction in the Department's audit report, nor was there any evidence introduced to support this allegation at the hearing. Since the Accusation has been amended to conform to the proof, paragraph 9(j) should be amended.

were submitted to the lender. However, Respondent paid David Garcia a commission in the amount of \$2,152.25 for his services regarding this transaction.

15. The evidence failed to establish that Respondent employed any real estate salespersons or engaged in the sale of real property or engaged in business opportunity transactions.

16. (A) Respondent's demeanor at the hearing was sincere and remorseful. He was, for the most part, candid and forthright. He testified convincingly that he did not know about the Fields' transaction until after the loan papers were submitted, and he saw a check regarding a transaction of which he knew nothing. Once he saw the check, he confronted David Garcia, and found out about the Fields' transaction.

(B) There were two contradictions in the evidence that were troublesome. Respondent testified that after he found out about the Fields' transaction, he severed his relationship with the Garcias. The escrow for the Fields was closed on July 10, 1991. However, the audit report indicates that David Garcia continued to perform work for Respondent until January, 1992. This contradiction was never explained by Respondent and is not consistent with Respondent's claim that this incident severed his relationship, both personally and professionally with the Garcias. Secondly, Respondent testified that he took care of any discrepancies found by the auditor, yet, there was no evidence that the accrued interest in the trust account had been disbursed to the appropriate beneficiaries.

17. (A) Except for these contradictions, the evidence establishes that, for the most part, Respondent has been rehabilitated.

(B) Respondent was remorseful and assumed responsibility for his conduct. It is notable that he took action and closed the escrow operations, including the escrow trust account before the Department audit. The only evidence that anyone was shortchanged as a result of Respondent's actions or omissions is the apparent failure to pay the accrued interest - a nominal amount, \$238.75 - to the beneficiaries. Further, in response to the audit, Respondent made sure that there were no outstanding balances in any of the escrows questioned by the Department auditor.

(C) Respondent testified candidly, that he put friendship before judgment, in his dealings with the Garcias.

(D) Respondent's conduct which led to the violations appears to be isolated. His remorse and assumption of responsibility along with his testimony that he has learned his lesson, evidences that it is unlikely he will repeat the violations. Moreover, he has changed his business practices by

closing down the escrow division and trust account.

Pursuant to the foregoing findings of facts, the Administrative Law Judge makes the following determination of the issues:

DETERMINATION OF THE ISSUES

1. Cal. Bus. & Prof. Code Section 10177(d):

(A) In the Accusation, the Department alleges a violation of Cal. Bus. & Prof. Code Section 10177(d). This Section states, in pertinent part, that the Department may suspend or revoke the license of any real estate licensee if he or she has

"[w]illfully disregarded or violated the Real Estate Law ... or Chapter 1 ... of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law ..."

The issue is whether Respondent willfully disregarded or violated the California Business and Professions Code which governs the conduct of Department licensees or the Department's regulations.⁴

(B) "'Willfully' as used in section 10177, subdivision (d) does not require an intent to violate the law, only an intent to engage in the act or conduct prohibited by the statute is required." Milner v. Fox, 102 Cal.App.3d 567, 574 n.9 (First Dist., Div. Three, 1980) citing Goodhew v. Industrial Acc. Com., 157 Cal.App.2d 252, 256-57 (1958). The issue is whether "Respondent acted voluntarily with an awareness of the nature of his conduct and therefore 'willfully.'" Advice of counsel or other evidence of good faith does not render his act any less 'willful.'" Milner at 574, n.9.

(C) The evidence establishes the following violations of

⁴The Accusation fails to allege that any of Respondent's conduct was willful. However, this is not considered a material omission since the Department alleged that Respondent violated Cal. Bus. & Prof. Code Section 10177(d), which clearly requires a finding of willfulness. Moreover, the Department's motion to conform the Accusation to the proof was granted. Thus, Respondent was not prejudiced by this omission, and he failed to object at the hearing, so it is also deemed waived. Hayes v. Richfield Oil Corp., 38 Cal.2d 375, 382 (1952); Cal. Gov't. Code Section 11503; and Shea v. Bd. of Medical Examiners, 81 Cal.App.3d 564, 576 (Third Dist. 1978).

the regulations and California Business and Professions Code relating to the trust account: (1) disbursement of funds from the account without the prior written consent of every principal who is an owner of the funds which reduced the balance of funds in the account to an amount less than the existing aggregate trust fund liability in violation of Cal. Code Regs. tit. 10, Section 2832.1; (2) failure to maintain columnar records that includes the information delineated in the regulations and a separate record of the broker's funds and of the interest earned in violation of Cal. Code Regs. tit. 10, Sections 2831(a), 2831.1 and 2951; (3) maintenance of an interest-bearing trust account without fully complying with and in violation of Cal. Bus. & Prof. Code Section 10145(d) (permits the use of an interest-bearing account under certain conditions); (4) failure to reconcile the separate transaction records on a monthly basis and keep a record thereof in violation of Cal. Code Regs. tit. 10, Section 2831.2; (5) withdrawals from the account by Annette Garcia, an unlicensed individual for whom Respondent did not have fidelity bond coverage in violation of Cal. Code Regs. tit. 10, Section 2834(a); and (6) depositing funds in trust from others into an account in the name of Royal Mortgage Company rather than in the name of the licensee in violation of Cal. Code Regs. tit. 10, Section 2830 and Cal. Bus. & Prof. Code Section 10145(d)(1). See, Finding Nos. 4, 6 - 11, and 13.

(D) Respondent has an accounting background. He also worked for the Department as an auditor for approximately one and one-half years, and as an examination proctor for less than a year. Based upon his education and work experience and the nature of the violations - failure to follow generally accepted accounting principles and Departmental regulations of a similar nature - Respondent was clearly aware of the nature of his conduct. Under these circumstances, the violations of the Department's regulations and the California Business and Professions Code Sections regarding the trust account were willful. Milner, at 574 n.9.

(E) The Department also alleged a violation of Cal. Code Regs. tit. 10, Section 2725 which requires that every instrument prepared or signed by a real estate salesperson, which meets certain requirements, must be reviewed, initialed and dated by the broker of the salesperson. Further, that

"In the case of any real property or business opportunity transaction in which the escrow is conducted by a real estate broker ... the broker's responsibility hereunder shall extend to escrow instructions, or to closing statements if rendered to the parties to a transaction prior to close of escrow, which were prepared or signed by a salesperson...or by an associate or employee of the broker."

Cal. Code Regs. tit. 10, Section 2725(c).

In this matter, the evidence failed to establish that Respondent employed any real estate salespersons or that he engaged in the sale of real property or business opportunity transactions. Good cause does not exist to find a violation of this regulation. See, Finding No. 15.

(F) (1) The Department also alleged a violation of Cal. Code Regs. tit. 10, Section 2950(h), which provides that the following act when performed by a real estate broker in the handling of an escrow is prohibited and may be considered grounds for disciplinary action:

"Failing to advise all parties in writing if he has knowledge that any licensee acting as such in the transaction has any interest as a owner of the agency holding the escrow."

The trust account and stationery related to the handling of escrow services were in the name of "Royal Mortgage Escrow Division" or "Royal Mortgage Company Escrow Trust Account." There also was no evidence of any other disclosure of the relationship. This did not put parties on notice that this was a broker owned escrow service. Respondent violated this regulation.

(2) However, the evidence does not support the conclusion that he was aware of this requirement or of the nature of his conduct. Unlike the prior violations concerning the trust account, the evidence was insufficient to support the determination that he acted willfully. See, Finding Nos. 3 - 5, and 12.

(G) Good cause exists to suspend or revoke Respondent's license pursuant to Cal. Bus. & Prof. Code Section 10177(d). See, Finding Nos. 2 - 4, 6 - 11 and 13.

2. Cal. Bus. & Prof. Code Section 10137:

(A) In the Accusation, the Department alleges a violation of Cal. Bus. & Prof. Code Section 10137. This Section states, in pertinent part, that

"[i]t is unlawful for any licensed real estate broker to employ or compensate, directly or indirectly, any person for performing any of the acts within the scope of this chapter who is not a licensed real estate broker ...

For a violation of any of the provisions of this section, the commissioner may temporarily suspend or permanently revoke the license of the real estate licensee, in accordance with the provisions of this part relating to hearings."

(B) There was insufficient evidence to support the conclusion that David Garcia was employed by Respondent, but this determination is unnecessary, because the evidence does show that

Respondent, compensated David Garcia, an unlicensed broker, for soliciting a borrower and negotiating the loan with the lender. See, Finding Nos. 13 - 14.

(C) Cal. Bus. & Prof. Code Section 10131 defines a broker as a

"person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others:

(d) Solicits borrowers or lenders for or negotiates loans or collects payment or performs services for borrowers or lenders ... in connection with loans secured directly or collaterally by liens on real property or on a business opportunity."

In this matter, all of the elements of this definition are easily satisfied except for two: (1) whether David Garcia expected to be compensated when he solicited the Fields and negotiated the loan; and (2) whether the loan was secured directly or collaterally by liens on real property or on a business opportunity.

(D) (1) While there was no direct evidence that this loan was secured directly or collaterally by a lien on real property, this can be inferred from the evidence. The fact that an escrow was opened, there was an appraisal fee, a title company was involved, support the inference that the loan was secured by a lien on real property.

(2) The only evidence in support of the conclusion that David Garcia expected to be compensated is the commission payment by Respondent to Mr. Garcia. However, again this conclusion can be inferred from the evidence. David Garcia and Respondent had a contractual relationship which was based upon remuneration for each successful loan transaction. It is reasonable to assume that David Garcia would expect to be compensated if this loan transaction was similarly successful. Respondent testified that he did not believe he was under any obligation to compensate David Garcia for this transaction. However, since Respondent did compensate Mr. Garcia, this is further evidence that there must have been some expectation. Finally, the evidence is that David Garcia accepted the payment, further proof that payment must have been expected.

(E) Respondent asserts that he did not authorize the loan transaction or know about it until after it had been submitted to the bank. However, his lack of knowledge does not matter. When he compensated David Garcia, in spite of believing he was under no obligation to do so, he ratified David Garcia's conduct and subjected himself to liability. Stickel v. Harris, 196 Cal.App.3d 575, 586-587. Moreover, Cal. Bus. & Prof. Code Section 10131, when

it defines a broker, and as applied here to Garcia's activities, clearly indicates that the timing of the payment is unimportant to determining whether one is or is not a broker.

(F) Good cause exists to suspend or revoke Respondent's license pursuant to Cal. Bus. & Prof. Code Section 10137. See, Finding Nos. 13 - 14 and 16.

3. Cal. Bus. & Prof. Code Section 10165:

(A) In the Accusation, the Department alleges a violation of Cal. Bus. & Prof. Code Section 10165. This Section states, in pertinent part:

"For a violation of any of the provisions of ... Section 10163, the commissioner may temporarily suspend or permanently revoke the license of the real estate licensee in accordance with the provisions of this part relating to hearings."

Cal. Bus. & Prof. Code Section 10163 states, in pertinent part, that

"[i]f the applicant for a real estate broker's license maintains more than one place of business within the State he shall apply for and procure an additional license for each branch office so maintained by him."

The issue is whether the Palmdale home of the Garcias constitutes a branch office of the Respondent. A broker's place of business is defined as a place "which shall serve as his office for the transaction of business. This office shall be the place where his license is displayed and where personal consultations with clients are held." Cal. Bus. & Prof. Code Section 10162.

(B) (1) The only evidence in support of the conclusion that the Garcias' home in Palmdale is a branch office of the Respondent is the Fields' transaction. However, even with regard to the Fields' transaction there was no evidence that the Fields ever visited the Garcias' home, or that any of Respondent's clients visited the home for a personal consultation.⁵ Thus, this issue turns on whether the Fields' transaction itself is sufficient evidence to support the conclusion that Respondent maintained a branch office. The audit report states that on at least some of

⁵The Department auditor testified that based upon her audit she could tell that on at least one occasion, the Fields had contacted the Garcias by telephone at their Palmdale home. The Department offered this as proof of the existence of a branch office used by clients. However, Section 10162 clearly indicates that the branch office is to be used for "personal consultations", a telephone call does not satisfy this definition.

the loan documents, the Suffolk address was used as the address for Royal Mortgage Company.

(2) Respondent testified convincingly that he did not know about the Field's transaction until the loan had been submitted to the lender. While he ratified the conduct of David Garcia by compensating him, this ratification occurred after the fact. Unlike with Determination No. 2, where Respondent's ratification was a consideration in concluding that Respondent had violated the code section, the statutory language is different and does not compel the same conclusion.

(3) In reaching the violation in Determination No. 2, Cal. Bus. & Prof. Code Section 10131 was relied upon, it specifically states, that in determining whether someone is a broker the timing of the payment is irrelevant. Thus, the fact that Respondent compensated David Garcia was the important fact, its timing was irrelevant to the legal conclusion. Here, timing is not made irrelevant by the applicable code section. Section 10163, states in relevant part, "if the applicant for a real estate broker's license maintains ... he shall apply..."; a scheme that presupposes the existence of a branch office before the necessity to apply. Here, the only notice to Respondent that he was maintaining a branch office was the Fields' transaction, he closed down the operation after he found out; thus, there was no necessity to apply for a license. Ratification does not alter the sequence of these facts nor their legal import under this statutory scheme. Under these circumstances, the post-act ratification of a single transaction, is an insufficient basis upon which to conclude that Respondent maintained a branch office in Palmdale for which he should have applied for a license.

(C) Good cause does not exist to suspend or revoke Respondent's license under Cal. Bus. & Prof. Code Section 10165. See, Finding Nos. 13 - 14 and 16.

4. Mitigation and Rehabilitation:

(A) Several decisions discuss many of the factors that can be considered in determining the appropriate discipline. Some of these factors include: whether there are any extenuating circumstances; the likelihood of recurrence of the conduct; whether the individual is remorseful; proximity or remoteness in time of the incidents; whether it was an isolated incident; and the praiseworthiness or blameworthiness of the motives for the conduct. Martin B. v. Committee of Bar Examiners, 33 Cal.3d 717, 725-26 (1983); Morrison v. State Board of Education, 1 Cal.3d 214, 229 (1969); and Brandt v. Fox, 90 Cal.App.3d 737, 747 (First Dist. Div. Two 1979).

The Department has also promulgated regulations that provide useful guidance in determining whether an individual has been

rehabilitated. While these regulations apply when there has been the commission of a crime, they are nonetheless instructive. Some of the criteria are: restitution to any person who had suffered monetary losses; correction of business practices responsible in some degree for the conduct; new and different social and business relationships from those which existed at the time of the commission of the acts; significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems; and change in attitude from that which existed at the time of the commission of the acts. See, Cal. Code Regs. tit. 10, Section 2912.

(B) Respondent satisfies most of the criteria that apply, and has demonstrated that, for the most part, he has been rehabilitated. The most impressive factor is that Respondent, on his own, before the Department audit, closed down the escrow operations and the trust account because of the irregularities described herein; and that he made sure no client, business or lender was shortchanged as a result of any of the audit findings. Moreover, the audit found that Respondent arranged, on average one loan per month with an average loan amount of \$125,000.00, yet only concluded that a shortage of \$2,372.33 existed - a de minimis amount considering the volume of business. The only caveat to rehabilitation, is the contradiction in the evidence concerning when he actually severed his relationship with the Garcias and the apparent failure to pay the interest from the trust account to the beneficiaries. See, Finding Nos. 11, 16 - 17.

(C) (1) The Department's recommendation concerning the appropriate discipline takes these factors into consideration, it recommends Respondent be given a restricted brokers license for two years; that he repay the beneficiaries the interest; and that he pay the Department for conducting a follow-up audit of his brokerage activities, which cost is not to exceed \$5,000.00. This recommendation will be followed, except for the follow-up audit.

(2) The violations at issue all involved Respondent's escrow trust account and escrow operations, except for the Fields' transaction. Respondent has closed the escrow operations and the trust account, and he has severed his relationship with the Garcias. For these reasons, a follow-up audit paid for by the Respondent is not warranted.

ORDER

WHEREFORE, THE FOLLOWING ORDER IS hereby made:

not adopted { All licenses and licensing rights of Respondent Ruben Davila Arroyo, d.b.a. Royal Mortgage Company, under the Real Estate Law are revoked; provided, however, a restricted real estate broker

license shall be issued to Respondent pursuant to Cal. Bus. & Prof. Code Section 10156.5 if Respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this decision. The restricted license issued to Respondent shall be subject to all of the provisions of Cal. Bus. & Prof. Code Section 10156.7 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 may be suspended following 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.

2. 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 pending final determination made after formal hearing.

3. 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 years have elapsed from the effective date of this decision.

4. Respondent shall, within nine months from the effective date of this decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Cal. Bus. & Prof. Code Section 10171.3, 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.

not adopted

5. Respondent shall, within ninety days from the effective date of this decision, present written evidence satisfactory to the Real Estate Commissioner that Respondent has paid the accrued interest from the interest-bearing trust account on a proportionate basis to the appropriate beneficiaries.

Dated: May 23, 1994

Theresa Fay-Bustillos
Theresa Fay-Bustillos
Administrative Law Judge
Office of Administrative Hearings

Sacto. Hays

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)
RUBEN DAVILA ARROYO,)
Respondent.)

Case No. H-25618 LA
OAH No. L-62087

DEC 15 1993

DEPARTMENT OF REAL ESTATE
BY Laura B. Chon

NOTICE OF HEARING ON ACCUSATION

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at Office of Administrative Hearings, 314 West First Street, Los Angeles, California, on APRIL 19, 1994 at the hour of 9:00 a.m. or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

Dated: December 15, 1993

DEPARTMENT OF REAL ESTATE

By:

V. Ahda Sands

V. AHDA SANDS, Counsel

cc: Ruben Davila Arroyo
Sacto.
OAH

1 V. AHDA SANDS, Counsel
2 Department of Real Estate
3 107 South Broadway, Room 8107
4 Los Angeles, California 90012
5 (213) 897-3937

FILED

NOV-4 1993

DEPARTMENT OF REAL ESTATE

BY James B. Cron

8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * * *

11 In the Matter of the Accusation of) NO. H-25618 LA
12 RUBEN DAVILA ARROYO, d.b.a.)
13 Royal Mortgage Company,) ACCUSATION
14)
15 Respondent.)

16 Complainant, Steven J. Ellis, a Deputy Real Estate
17 Commissioner of the State of California, as and for cause of
18 Accusation against RUBEN DAVILA ARROYO, d.b.a. Royal Mortgage
19 Company, (herein "Respondent") alleges as follows:

20 1

21 The term "the Regulations" as used herein refers to
22 provisions of Chapter 6, Title 10, California Code of Regulations.

23 2

24 The Complainant, Steven J. Ellis, a Deputy Real Estate
25 Commissioner of the State of California, makes this Accusation
26 against Respondent in his official capacity.

27 //

28 //

1
2 3
3 Respondent is presently licensed and has license rights
4 under the Real Estate Law, Part 1 of Division 4 of the Business
5 and Professions Code (herein "the Code").

6 4
7 At all times mentioned herein, Respondent RUBEN DAVILA
8 ARROYO, d.b.a. Royal Mortgage Company, was and now is licensed by
9 the Department as an individual real estate broker and was
10 previously employed by the Department as an auditor whose duties
11 included review of the office records of licensees to determine
12 compliance with Department Regulations.

13 5
14 All further references herein to "Respondent" includes
15 the party identified in Paragraphs 3 and 4, above, and also
16 includes employees, agents and real estate licensees employed by
17 or associated with said party and who at all times herein
18 mentioned were engaged in the furtherance of the business or
19 operations of said party and who were acting within the course and
20 scope of their authority and employment.

21 6
22 At all times herein mentioned, Respondent engaged in the
23 business of, acted in the capacity of, advertised or assumed to
24 act as real estate brokers in the State of California within the
25 meaning of Section 10131(d) of the Code, including the operation
26 and conduct of a mortgage loan brokerage business with the public
27 wherein, on behalf of others and for compensation or in
28 expectation of compensation, Respondent solicited lenders and

1 borrowers and negotiated loans secured directly or collaterally by
2 a lien on real property.

3 7

4 In connection with the aforesaid real estate brokerage
5 activities, Respondent accepted or received funds in trust
6 (hereinafter "trust funds") from or on behalf of borrowers and
7 lenders and note owners and thereafter made disbursements of such
8 funds. Respondent deposited certain of said funds into the
9 following account (herein "said account"):

10 (a) Account No. 09800-03539 (hereinafter " Escrow T/A
11 #1"), the "Royal Mortgage Company Escrow Trust Account", at the
12 Eastland branch office of Bank of America in the City of Covina,
13 California;

14 8

15 On March 31, 1992, the Department concluded its
16 examination of Respondent's books and records pertaining to the
17 real estate brokerage activities described in Paragraph 6, above,
18 for the seventeen-month period ending November 30, 1991, which
19 examination revealed violations of the Code and of the Regulations
20 as set forth in the following paragraphs.

21 9

22 In connection with the trust funds referred to in
23 Paragraph 7, above, Respondent acted in violation of the Code and
24 the Regulations in that:

25 (a) Respondent violated Section 2832.1 of the
26 Regulations by disbursing or causing or allowing the disbursement
27 of trust funds from the Escrow T/A #1, wherein the disbursement of
28

1 said funds reduced the funds in the said account to an amount
2 which, on July 31, 1991, was approximately \$2,233.57 less than the
3 existing aggregate trust fund liability to all owners of said
4 funds, without first obtaining the prior written consent of every
5 principal who was an owner of said funds.

6 (b) Respondent did not maintain an adequate formal
7 trust fund receipts journal and a formal trust fund disbursements
8 journal for the account identified in Paragraph 7, above, or other
9 records of the receipt and disposition of all trust funds received
10 by Respondent, conforming to the requirements of Sections 2831 and
11 2951 of the Regulations;

12 (c) Respondent failed to maintain adequate separate
13 records for each beneficiary or transaction, accounting therein
14 for all trust funds received, deposited, and disbursed, conforming
15 to the requirements of Sections 2831.1 and 2951 of the
16 Regulations;

17 (d) Respondent violated Section 2831.2 of the
18 Regulations by failing to perform a monthly reconciliation of the
19 records of the receipt and disposition of all trust funds received
20 by Respondent, and the balance of all separate beneficiary or
21 transaction records;

22 (e) Allowed Annette Garcia, an unlicensed person to be
23 a signatory on Respondent's Escrow TA #1 account. In addition,
24 Respondent failed to obtain fidelity bond coverage for this
25 person, in violation of Section 2834 of the Code.

26 (f) Respondent violated Section 10145 of the Code and
27 Section 2830 of the Regulations by depositing certain funds
28

1 received by Respondent in trust into accounts not designated in
2 the name of Arroyo as a Trustee;

3 (g) Escrow TA # 1 was maintained by Respondent as an
4 interest bearing account without meeting the requirements of
5 Section 10145(d) of the Code.

6 (h) Respondent did not disclose to all parties in
7 writing that he had a financial interest in the escrow operation
8 in violation of Regulation 2950.

9 (i) Respondent conducted activities requiring a
10 license at the Palmdale branch office including broker controlled
11 escrows but failed to obtain a branch office license from the
12 Department in violation of Code 10163.

13 (j) In the course of the activities described in
14 Paragraph 6, above, Respondent employed and compensated David
15 Garcia, a person who was not licensed by the Department and known
16 to Respondent not to be licensed by the Department, to perform
17 acts requiring a real estate license for and in the name of Arroyo
18 during 1990 and 1991, including, but not limited to, negotiating
19 the sale of real property located at 11720 Wilkie Avenue,
20 Inglewood, California for others. In employing David Garcia
21 Respondent violated Section 10137 of the Code. Each said
22 violation constitutes cause for suspension or revocation of all
23 real estate licenses and license rights of Respondent pursuant to
24 the provisions of Section 10137 of the Code.

25 (k) Failed to review and initial instruments prepared
26 or signed by real estate salespersons employed by Respondent in
27 connection with transactions for which a real estate license is
28 required, which instruments may have a material effect upon the

1 rights or obligations of a party to the transaction, in violation
2 Section 2725 of the Regulations.

3 10

4 The acts and omissions of Respondent described in
5 Paragraph 9, above, violated the Code and the Regulations as set
6 forth below:

7	<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
8	9(a)	Sec. 2832.1 of the Regulation
9	9(b)	Sec. 2831 of the Regulations; and
		Sec. 2951 of the Regulations;
10	9(c)	Sec. 2831.1 of the Regulations; and
		Sec. 2951 of the Regulations.
11	9(d)	Sec. 2831.2 of the Code and
	9(e)	Sec. 2834 of the Regulations;
	9(f)	Sec. 2830 of the Regulations; and
12		Sec. 10145 of the Code;
	9(g)	Sec. 10145 of the Code.
13	9(h)	Sec. 2950 of the Regulations
	9(i)	Sec. 10163 of the Code
14	9(k)	Sec. 2725 of the Regulations

15 Each of the foregoing violations separately constitutes
16 cause for the suspension or revocation of all licenses and license
17 rights of Respondent pursuant to the provisions of Section
18 10177(d) of the Code, while Paragraph 9(i) cites cause for
19 discipline under Section 10165 of the Code.

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

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

8 Dated at Los Angeles, California
9 this 4th day of November, 1993.

10
11 STEVEN J. ELLIS
12 Deputy Real Estate Commissioner
13
14
15
16
17
18
19
20
21
22
23

24 cc: Ruben Davila Arroyo.
25 Sacto.
26 OAH
 mdj
 vas
27
28