

By Laura B. Crane

* * * * *

Respondent .

DECISION

This Decision shall become effective at 12 o'clock
noon on December 9, 1997.

IT IS SO ORDERED

JIM ANTT, JR.
Real Estate Commissioner

John C. Smith

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation) of) CARMELO FERREIRA,) Respondent.)	No. H 26990 LA OAH NO. L-9702153
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AMENDED PROPOSED DECISION

On August 6, 1997, at Los Angeles, California, Joseph D. Montoya, Administrative Law Judge ("ALJ"), Office of Administrative Hearings, State of California, heard this matter.

Mr. Sean Crahan, Staff Counsel, represented the complainant. Respondent appeared personally, and with his attorney, Mr. David Shane.

Complainant moved to further amend the First Amended Accusation. After argument, the motion was granted and the First Amended Accusation was amended in the following particulars:

At page 4, line 5, in paragraph 8(e), to amend allegations of the bases of discipline, by adding "or 10177(j)" after the citation to Code section 10176(i), so that that portion of the accusation now reads:

"(e) 10176(i) or 10177(j) for fraud and dishonest dealing"

At page 4, line 7, in paragraph 8(f), to amend allegations of the bases of discipline, by adding "or 10177(j)" after the citation to Code section 10176(i), so that that portion of the accusation now reads:

"(f) 10176(i) or 10177(j) for fraud and dishonest dealing"

Evidence was received and record held open for Respondent to submit a brief, which was received August 12, 1997, and made

part of the record as Exhibit "A". The record remained open for any reply Complainant might file, which Complainant declined to do. The matter was then submitted for decision on August 22, 1997.

The original proposed decision in this matter was issued on September 22, 1997. Thereafter, Complainant's counsel requested reconsideration in writing, pointing out that the original proposed decision ordered both an actual suspension and a suspension stayed. A copy of that request was served on Respondent's counsel. Complainant contended this could cause confusion in the enforcement of such an order. There was no opposition to the request for reconsideration.

The motion for reconsideration is granted. The order, as originally drafted, inadvertently failed to state the ALJ's intent, which was to revoke Respondent's license, stay that revocation, on the condition there be an actual suspension and probation. (See Determination of Issues, number 8, set forth in both the original and this amended proposed decision.) Therefore, the order is amended, as set forth below.

FINDINGS OF FACT

1. The Accusation and First Amended Accusation was filed by Thomas J. McCrady while he was acting in his official capacity as a Deputy Real Estate Commissioner, Department of Real Estate ("the Department"), State of California. The Accusation was filed on January 28, 1997; the First Amended Accusation was filed on June 27, 1997.

2. Respondent is presently licensed and has rights under a real estate salesperson's license, no. 00909949. At all times relevant to this proceeding, he was functioning as a mortgage broker¹, assisting consumers in obtaining loans to be used in the purchase of real property in California.

3. (A) In approximately April 1994, Respondent was employed by Federal Mortgage Company in Van Nuys, California. His employing broker was Mr. Joseph Major, although the company was owned by Mr. Victor Vicia. Respondent was employed in his customary role of mortgage broker, along with his wife, Tamara Smith Ferreira, who is also a real estate licensee.

(B) In approximately April 1994 Respondent and his wife left the employ of Mr. Vicia's company. They moved their professional activities downstairs and into the employ of another

¹ Respondent was not a broker per se; he was employed as loan officer by various firms which were licensed as brokers.

corporate mortgage broker, Pacific Horizon Bancorp ("Pacific Horizon"). Their supervisor was Mr. Jesse Lopez, office manager.²

4. The Department never received notice that Respondent had changed jobs and was thereafter employed by Pacific Horizon in a capacity which required a real estate license.

5. (A) On May 1, 1994, while acting on behalf of Pacific Horizon, Respondent met with Mr. Fidencio Rodriguez, who wanted to obtain a real estate loan. Mr. Rodriguez had been referred to Respondent by Mr. Verny Mejia, a real estate broker. Mr. Mejia also attended the meeting.

(B) Mr. Rodriguez was in the process of buying a house for \$145,000.00, and Mr. Mejia was the broker in that transaction. Self employed as a gardener, Mr. Rodriguez did not speak English fluently, nor could he read or write that language with great proficiency. He conversed with the two real estate professionals in Spanish throughout their May 1, 1994, meeting.

6. (A) In the course of the meeting Mr. Rodriguez prepared a loan application with the assistance of Respondent and Mr. Mejia. Mr. Rodriguez also gave two checks to Respondent, at Respondent's request. One check was in the amount of \$500.00 and the other was for \$350.00; both checks were made payable to "cash." Mr. Rodriguez was led to believe that in some way these monies would help him obtain a loan, so that he could buy a house.

(B) Respondent gave Mr. Rodriguez a "good faith estimate" form, which is designed to set forth the estimated costs of completing a loan. On that document Respondent showed that Mr. Rodriguez had paid \$50.00 for a credit report, and had paid \$300.00 for an appraisal fee. Respondent initialed a figure which indicated a lender's inspection fee of either \$500.00 or \$600.00; the figure had been altered at some point and is less than clear. That amount was not marked as paid. Near the bottom of the form Respondent wrote "\$850.00" and his name. The good faith estimate also showed various other estimated charges totalling more than \$1,000.00, though such figures were not marked as paid.

(C) Respondent had his wife deposit both of the checks from Mr. Rodriguez into her checking account the next day. There is no credible evidence that the funds were used to assist Mr. Rodriguez in obtaining a loan.

7. Shortly after the meeting, Respondent's wife caused

² Pacific Horizon's main office was in La Canada, California, approximately twenty miles from the Van Nuys office. Pacific Horizon opened its Van Nuys office as a satellite office in approximately January 1994.

a loan file to be opened at Pacific Horizon and she signed off on the loan application as Pacific Horizon's loan officer. Pacific Horizon took steps to obtain a loan for Mr. Rodriguez, but ultimately no loan was obtained. In the course of its efforts, Pacific Horizon paid \$350.00 for a credit report and appraisal. These items were not paid for from the monies Mr. Rodriguez gave to Respondent.

8. On May 9, 1997, Mr. Rodriguez went to the house he hoped to buy. There he met with a house inspector employed by Certified Property Inspections ("CPI"). At that time the inspector examined the home to ascertain its physical condition. Mr. Rodriguez paid the inspection firm \$120.00 for that work and for an inspection report.

9. On or about June 15, 1997, at Respondent's urging, Mr. Rodriguez wrote a check for \$750.00, payable to Mr. Marc Justinian. The loan application was still pending. Ostensibly, the check was written so that Mr. Justinian could help Respondent establish credit at two different stores. With such "credit" Mr. Rodriguez supposedly would improve his chances of obtaining a loan. However, there was no evidence that Mr. Justinian did anything to improve Mr. Rodriguez' credit, or otherwise obtain a loan for him.

10. Eventually, Mr. Rodriguez's attempt to purchase a house failed, in part because of financing difficulties. He contacted Respondent who promised to return \$500.00 to Rodriguez, but Respondent never performed that promise.

11. (A) Meanwhile, on May 11, 1997, Respondent became embroiled in a dispute with a co-worker, Mr. Meza, regarding a commission. Respondent claimed a one-half interest in a commission check written to Mr. Meza, and Mr. Meza contended otherwise. Respondent's former employer, Mr. Vicia, became involved in the matter, as he obtained possession of the check at some point on that day, and because he was going to employ Mr. Meza. Respondent went to Mr. Vicia's office and had an argument with him, which was broken up by Mr. Jesse Lopez. During that argument, Respondent allegedly pushed Vicia, threatened him, and threw something at him.

(B) Acting on Mr. Lopez's advice, Respondent then took steps to resolve the matter with Mr. Meza, and by the end of business on May 11, 1994, thought he had an agreement to resolve the dispute. He typed up a simple agreement, and drove to Mr. Meza's home to obtain Mr. Meza's signature on that agreement. There he was arrested by the police, who had been told by Mr. Vicia that Respondent had threatened to harm Meza. Police found an unloaded gun in his car, and ammunition for that weapon in the car's trunk.

12. (A) Respondent was prosecuted for making a terrorist threat and for attempted extortion in violation of Penal

Code sections 422 and 524, respectively. On August 8, 1994, in the Municipal Court of California, Los Angeles Judicial District, in the case People v. Carmelo Ferreira, Respondent pled nolo contendere to violating Penal Code sections 422 and 242. By that plea, he was convicted of making a terrorist threat, and battery. The former crime is a felony, the latter a misdemeanor.

(B) Respondent was placed on three years' supervised probation, on the condition that he serve six days in the County Jail and perform 150 hours of community service. He was ordered to pay a small fine, to stay away from Mr. Vicia, and not to own any dangerous weapons or firearms.³

13. Respondent was convicted of a crime of moral turpitude, substantially related to the duties, functions, and qualifications of a real estate salesperson. His conviction arose from his use of threats and violence to settle a business dispute, which dispute was related to licensed activities.

14. Respondent's act of depositing Mr. Rodriguez's checks into his wife's account, rather than delivering them to his broker, constituted a willful act of commingling in violation of Business and Professions Code section 10176(e)⁴, based on Findings 6(A), 6(C), 7, and 8, above.

15. Respondent's act of depositing Mr. Rodriguez's checks into his wife's account, rather than delivering them to his broker, constituted fraud and dishonest dealing in violation of Code section 10176(i), based on Findings 6(A), 6(C), 7, and 8, above.

16. Respondent's employment by Pacific Horizon, and his work as a real estate salesperson when he was not licensed to that firm, constitutes a violation of Code section 10137, based on Findings 3(A), 3(B), and 4, above.

17. (A) In mitigation, Respondent has never been disciplined and has no criminal record other than the convictions set forth in Finding 12(A). Mr. Lopez attested to facts which contradicted the story given by Mr. Vicia to the police, which testimony was extenuating. The probation officer assigned to investigate his case prior to sentencing concluded that the matter was an isolated incident, unlikely to occur again, and that conclusion is made a finding herein.

³ There were other standard terms of probation, such as the admonition to obey all laws, to maintain employment, etc.

⁴ All statutory references shall be to the Business and Professions Code unless otherwise noted.

(B) In aggravation, the Respondent misappropriated hundreds of dollars from an unsophisticated working man who placed his trust in Respondent, in part because Respondent spoke the victim's native language.

18. There is evidence of rehabilitation, in that more than two years have passed since Respondent's conviction. He remains employed as a salesperson, and his employer knows of the circumstances of this case, and testified on Respondent's behalf. Respondent is still married, and he completed all of the terms of his criminal probation.

19. Those allegations upon which findings are not made herein are either unproven, or surplusage.

DETERMINATION OF ISSUES

1. Cause exists to suspend or revoke Respondent's license pursuant to Code sections 10177(b) and 490, for conviction of a crime of moral turpitude, based on Findings 12(A) and 13.

2. Cause exists to suspend or revoke Respondent's license pursuant to Code section 10176(e), for commingling monies taken in trust, based on Findings 6(A), 6(C), 7, 8, and 14.

3. Cause exists to suspend or revoke Respondent's license pursuant to Code section 10176(i), for acts of fraud and dishonesty, based on Findings 6(A), 6(C), 7, 8, and 15.

4. Cause exists to suspend or revoke Respondent's license pursuant to Section 10137 of the Business and Professions Code, for acting as a salesperson while not licensed to a broker, based on Findings 3(A), 3(B), 4, and 16.

5. This disciplinary proceeding is not barred by the statute of limitations, Code section 10101, based on Findings 1, 3(B), 5(A), 11(A), 12(A).

6. There are mitigating facts as to the convictions suffered by Respondent, and aggravating facts as to the actions pertaining to the Rodriguez loan, based on Findings 17(A) and (B).

7. There is evidence that Respondent is rehabilitated from his criminal conduct, based on Finding 18.

8. It is determined that it is in the best interests of the public, and the Respondent, that Respondent's license be revoked and that the revocation be stayed, on the condition he is actually suspended, and placed on probation.

Discussion and Rationale:

A. The Statute of Limitation Defense:

Code section 10101 requires that disciplinary proceedings be commenced within three years of the occurrence of the alleged wrongful acts. In cases of fraud or misrepresentation, such proceedings are to be filed within one year of the discovery of the fraud by the aggrieved party, or three years from occurrence, whichever is later.

Here the Accusation was filed in January 1997. However, all of the wrongful acts occurred between April and August, 1994. As such, the Accusation was filed within three years of the wrongful acts, and is not time barred. The Complainant is entitled to the extended term to prosecute any claim of fraudulent conduct by Respondent.

B. The Substantive Issues of the First Amended Accusation:

While the criminal conduct and convictions were serious, there was substantial mitigating evidence, and evidence of rehabilitation. For example, Mr. Lopez, who witnessed the events, gave testimony which strongly contradicted the claims made by the victim, Mr. Vicia, to the police. Even giving some credence to the complaints, there was substantial evidence that for the only time in his adult life, Respondent let a business dispute go beyond professional and civilized parameters. Respondent completed his probation without incident, and based on his behavior since then, may be deemed rehabilitated.

As to Respondent working for Pacific Horizon without being licensed to that firm, there was conflicting testimony. The firm's owner attested that she hired Respondent to translate for his wife. The owner apparently wanted the convenience of only writing one check to Respondent and his wife, who would be employed as a team. On the other hand, Mr. Lopez attested to executing an employment contract with Respondent (on behalf of Pacific Horizon), and to forwarding the contract and Respondent's license to the firm's main office so that the change of employment could be processed.

Respondent asserts it was the broker's duty to have the license "moved". However, at bottom Code section 10137 prohibits a salesman for working for someone without having the license with that firm. Hence, Respondent must be subject to discipline.

Had the convictions or the matter of the license been the only matters raised in the hearing, this decision would propose minimal, if any, discipline. However, there was clear and

convincing evidence that for some inexplicable reason Respondent breached the trust placed in him by Mr. Rodriguez. No doubt that trust was based, in part, upon the parties' common language. There can also be no doubt that the trust was based, in part, on the fact Mr. Rodriguez believed Respondent to be duly licensed.

It is well settled that the primary purpose of this proceeding is to protect the public, and not to punish the Respondent. (Camacho v. Youde, (1979) 95 Cal. App. 3d 161, 164.)

Respondent has been steadily employed with no further incidents since those at issue occurred. His current employer vouched for him at the hearing, and would continue to employ him. Respondent does not seem inherently evil or otherwise irredeemable. Under the circumstances, some discipline less than a complete revocation of his license is appropriate, so long as it is accompanied by an actual suspension. Such will bring home to Respondent the error of his ways, while serving to deter other licensee's from similar misconduct.

ORDER

WHEREFORE, THE FOLLOWING ORDER IS HEREBY MADE:

All licenses and licensing rights of Respondent Carmelo Ferreira under the Real Estate Law are hereby revoked; provided, however, a restricted real estate salespersons's 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. Any restricted license issued to Respondent shall be actually suspended for a period of one hundred and twenty (120) days, commencing with the issuance of that restricted license.

2. Respondent shall, prior to the issuance of the restricted license and as a condition of the issuance of said restricted license, submit proof satisfactory to the Commissioner of payment of restitution in the amount of five hundred dollars (\$500.00) to Mr. Fidencio Rodriguez.

3. 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.

4. 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.

5. 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 three (3) years have elapsed from the effective date of this Decision.

6. 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 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.

October 29, 1997



Joseph D. Montoya,
Administrative Law Judge

SEAN CRAHAN, Counsel
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, California 90012

(213) 897-3937

FILED
JUN 27 1997
DEPARTMENT OF REAL ESTATE

By Laura B. Lima

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H-26990 LA
)	
CARMELO FERREIRA,)	<u>F I R S T A M E N D E D</u>
)	<u>A C C U S A T I O N</u>
Respondent.)	

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against CARMELO FERREIRA, amends the Accusation filed January 28, 1997 by alleging as follows in underscore:

1.

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in his official capacity.

2.

CARMELO FERREIRA (hereafter respondent) is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (herein "the Code"). At all times mentioned herein, respondent was and now is licensed by the Department of Real Estate of the State of

1 California (herein "the Department") as a real estate salesperson.
2 At no time between April 12, 1994 through July 20, 1995 was
3 respondent licensed to a real estate broker.
4

5 3.

6 In or about April, 1994 Fidencio Rodriguez (Rodriguez)
7 was purchasing real property at 19557 Aldbury St, Canyon Country
8 California and needed to obtain a purchase money loan. Verny
9 Mejia, Rodriguez agent, referred Rodriguez to Respondent, then
10 employed by Pacific Horizon Bancorp, for loan qualification.

11 4.

12 On or about May 1, 1994, Rodriguez met Respondent who
13 requested Rodriguez to give him \$850; \$350 for credit and
14 appraisal reports and \$500 for a lender's inspection fee.
15 Rodriguez entrusted with Respondent two checks for \$350 and \$500.
16 Rodriguez did not fill in the payee on the two checks but "cash"
17 was filled as payee.

18 5.

19 Respondent failed to deliver Rodriguez' funds to
20 ~~Respondent's broker,~~ Pacific Horizon Bancorp, which took
21 Rodriguez' loan application through its agent, Tamara Jean Smith.
22 Respondent deposited the two checks into his own personal bank
23 account, thus commingling trust funds with his own funds and
24 property.

25 6.

26 Rodriguez was unsuccessful in qualifying for a loan. On
27 or about June 15, 1995, Respondent referred Rodriguez to Mark
Justinia, and represented to Rodriguez that for \$750, Justinia



1 would qualify Rodriguez at two stores to establish credit.
2 Respondent further represented and promised, falsely, that if
3 Rodriguez still did not qualify for a loan, Rodriguez would be
4 refunded his money. In reliance, on or about June 15, 1995,
5 Rodriguez delivered \$750 to Justinia. Rodriguez did not qualify
6 for a loan and did not, after request made to Respondent, receive
7 his money back.

8 7.

9 On or about November 7, 1994, in the Municipal Court of
10 Van Nuys Judicial District, County of Los Angeles, California, in
11 case numbered LA017564, respondent was convicted of violating
12 Penal Code Section 422 [making a terrorist threat], a felony, and
13 Penal Code Section 242 [battery], misdemeanor. Said convictions
14 are of crimes substantially related to the qualifications,
15 functions or duties of a real estate licensee under Section 2910,
16 Chapter 6, Title 10, of the California Code of Regulations. The
17 crimes arose out of a dispute with respondents then employing
18 broker Pacific Horizon Bancorp, Inc. and a salesperson in its
19 office regarding compensation.

20 8.

21 The conduct or omissions of respondent, as set forth
22 above, subjects his real estate licenses and license rights to
23 suspension or revocation under the following Code Sections:

24 (a) 10137 for accepting employment other than through a
25 broker to whom he was at the time licensed.

26 (b) 10176(a) for substantial misrepresentations, as set
27 forth in paragraph 6 above.



1 (c) 10176(b) for making a false promise likely to
2 persuade, influence or induce.

3 (d) 10176(e) for each commingling, as set forth in
4 paragraph 5 above.

5 (e) 10176(i) for fraud or dishonest dealing for
6 conversion as set forth in paragraph 5 above.

7 (f) 10176(i) for fraud or dishonest dealing for the
8 misrepresentation.

9 (g) 10177(b) and 490 because of the conviction as set
10 forth in paragraph 8 above.

11 (h) 10177(d) for willful violation of Code Section
12 10145(c) for failure to turn over trust funds to his employing
13 broker.

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

22 Dated this 27th day of June, 1997 at Los Angeles,
23 California.

24 THOMAS Mc CRADY
Thomas McCrady
Deputy Real Estate Commissioner

25 cc: Carmelo Ferreira
26 Emerald Mortgage Corporation
Sacto.
27 SB

SC/sc

Sacto

195-0314-014
BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
MAR 25 1997
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation and

CARMELO FERREIRA,

Respondents.

)
)
) NOTICE OF HEARING ON ACCUSATION
) Case No. H-26990
) L- 9702153
)
)
)

By

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 314 West First Street, Los Angeles, California 90012 on August 6 & 7 1997. at 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: March 25, 1997

DEPARTMENT OF REAL ESTATE

By:

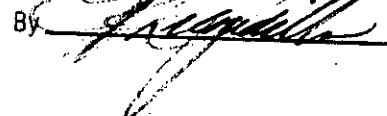
Sean Crahan
SEAN CRAHAN, DRE, Counsel

cc: Carmelo Ferreira
MS, SB, OAH & SACTO

SACTO
Flag

FILED
JAN 28 1997

DEPARTMENT OF REAL ESTATE

By 

SEAN CRAHAN, Counsel
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, California 90012

(213) 897-3937

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H-26990 LA
CARMELO FERREIRA,)	A C C U S A T I O N
Respondent.)	

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against CARMELO FERREIRA, alleges as follows:

1.

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in his official capacity.

2.

CARMELO FERREIRA (hereafter respondent) is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (herein "the Code"). At all times mentioned herein, respondent was and now is licensed by the Department of Real Estate of the State of California (herein "the Department") as a real estate salesperson.

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On or about May 1, 1994, Rodriguez met Respondent who requested Rodriguez to give him \$850; \$350 for credit and appraisal reports and \$500 for a lender's inspection fee. Rodriguez entrusted with Respondent two checks for \$350 and \$500. Rodriguez did not fill in the payee on the two checks but "cash" was filled as payee.

5.

Respondent failed to deliver Rodriguez' funds to Respondent's broker, Pacific Horizon Bancorp. Respondent deposited the two checks into his own personal bank account, thus commingling trust funds with his own funds and property.

6.

Rodriguez was unsuccessful in qualifying for a loan. On or about June 15, 1995, Respondent referred Rodriguez to Mark Justinia, and represented to Rodriguez that for \$750, Justinia would qualify Rodriguez at two stores to establish credit. Respondent further represented and promised, falsely, that if Rodriguez still did not qualify for a loan, Rodriguez would be refunded his money. In reliance, on or about June 15, 1995, Rodriguez delivered \$750 to Justinia. Rodriguez did not qualify

1 for a loan and did not, after request made to Respondent, receive
2 his money back.

3 7.

4 On or about November 7, 1994, in the Municipal Court of
5 Van Nuys Judicial District, County of Los Angeles, California, in
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12 crimes arose out of a dispute with respondents then employing
13 broker Pacific Horizon Bancorp, Inc. and a salesperson in its
14 office regarding compensation.

15 8.

16 The conduct or omissions of respondent, as set forth
17 above, subjects her real estate licenses and license rights to
18 suspension or revocation under the following Code Sections:

19 (a) 10176(a) for substantial misrepresentations, as set
20 forth in paragraph 6 above.

21 (b) 10176(b) for making a false promise likely to
22 persuade, influence or induce.

23 (c) 10176(e) for each commingling, as set forth in
24 paragraph 5 above.

25 (d) 10176(i) for fraud or dishonest dealing for
26 conversion as set forth in paragraph 5 above.

27 (e) 10176(i) for fraud or dishonest dealing for the

1 misrepresentation.

2 (f) 10177(b) and 490 because of the conviction as set
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4 (g) 10177(d) for willful violation of Code Section
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11 the Real Estate Law (Part 1 of Division 4 of the Business and
12 Professions Code) and for such other and further relief as may be
13 proper under other applicable provisions of law.

14 Dated this 28th day of December, 1996 at Los Angeles,
15 California.

16
17
18 THOMAS MC CRADY
19 Thomas McCrady
20 Deputy Real Estate Commissioner
21
22

23 cc: Carmelo Ferreira
24 Emerald Mortgage Corporation
25 Sacto.
26 SB

27 SC/sc