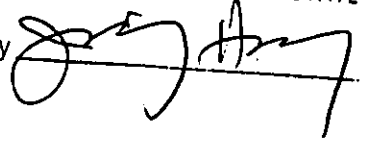


FILED
DEC 15 2000
DEPARTMENT OF REAL ESTATE
By 

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of) No. H-28714 LA
)
JESUS ALVAREZ, dba Action Realty) L-2000090544
Services, All City Investments,)
B.G.A. Financial Services, Cachi)
Realty, Camini Properties,)
United Real Estate Services;)
ERASMO JOSE RODRIGUEZ; and RAJA)
FIROZ MOHAMMED,)
)
Respondents.)

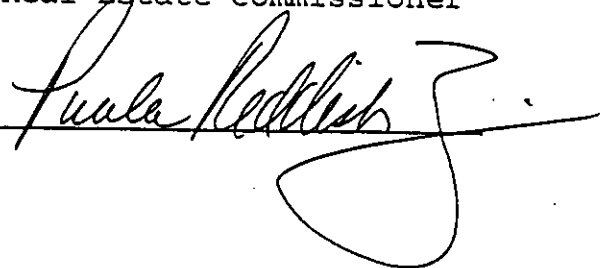
DECISION

The Proposed Decision dated November 22, 2000 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 January 4, 2001.

IT IS SO ORDERED December 14, 2000.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



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

In the Matter of the Accusation of:

JESUS ALVAREZ, dba Action Realty
Services, All City Investments, B.G.A.
Financial Services, Cachi
Realty, Camini Properties, United Real
Estate Services;
ERASMO JOSE RODRIGUEZ; and RAJA
FIROZ MOHAMMED

Respondents.

Case No. H-28714 LA

OAH No. L-2000090544

PROPOSED DECISION

On October 26, 2000 at Los Angeles, California Calvin W. Torrance, Administrative Law Judge, Office of Administrative Hearings, State of CALIFORNIA heard the above-captioned matter. Complainant, Thomas McCrady, was represented by Mary Work, Staff Counsel. Respondent JESUS ALVAREZ, dba Action Realty Services, All City Investments, B.G.A. Financial Services, Cachi Realty, Camini Properties, United Real Estate Services was present throughout the hearing and represented himself. Respondent ERASMO JOSE RODRIGUEZ was present throughout the hearing and represented himself.

No Notice of Defense having been filed by or on behalf of Respondent RAJA FIROZ MOHAMMED ("Mohammed"), the Department of Real Estate ("Department") entered Mohammed's default prior to the hearing. The hearing proceeded against Respondent Alvarez and Respondent Rodriguez only.

Oral and documentary evidence was received, and the matter was submitted for decision.

FACTUAL FINDINGS

The Administrative Law Judge finds the following facts:

1. The Accusation in the above-captioned matter was made by Thomas McCrady, Complainant, who is a Deputy Real Estate Commissioner of the State of California, acting in his official capacity.

2. Respondent Alvarez was issued a license as a real estate broker by the Department on a date not disclosed by the evidence. He was so licensed at all relevant times. The license shall expire on March 8, 2003 unless renewed.
3. Respondent Rodriguez was originally issued a license as a real estate salesperson by the Department on May 11, 1981. He also was so licensed at all relevant times. The license shall expire on August 17, 2003 unless renewed.
4. Respondent Mohammed was originally issued a license as a real estate salesperson by the Department on April 2, 1992. His salesperson license was issued in the employ of Respondent Alvarez on May 13, 1996.
5. On January 4, 1999, in Case No. VC 025 186, in the Superior Court of the State of California, County of Los Angeles, a final civil judgment ("the civil action") was entered against each of the three Respondents (Alvarez, Rodriguez & Mohammed) jointly and severally.
6. Alvarez admitted that he appeared in the civil action and litigated the issues. Rodriguez claimed that he also appeared, although the judgment indicated that he did not and his default was taken.
7. This judgment was in the amount of \$50,000 (less approximately \$5,800 credit for monies paid) plus 10% interest. It was for fraudulently converting the funds of the plaintiff with reference to a transaction for which a real estate license is required.
8. The conduct underlying the judgment occurred during a period when respondents Rodriguez & Mohammed were each employed as salespersons by Respondent Alvarez at Excel Real Estate Company. Plaintiff loaned \$50,000 to respondents to invest for her, in various real estate parcels, and was promised a return of 14% interest.
9. Each of the two respondents who testified at the administrative hearing denied any knowledge at all of the transaction, and blamed the absent respondent, Mohammed. In the civil action, a jury was waived and a statement of decision was not requested. However, since the elements of fraud were proved in the civil action, "collateral estoppel principles bar the licensee from attempting to relitigate those facts at the administrative proceeding." Calif. Real Estate Loans, Inc. v Wallace (1993) 18 Cal.App.4th 1575, 1582.
10. Moreover, the testimony of both respondents Rodriguez & Alvarez lacked credibility. They gave inconsistent answers on whether Mohammed was actually supervising both of them, even though Alvarez's broker license was supposedly responsible to supervise both of the salespersons. They also gave inconsistent answers as to what percentages of the profit during this period were allotted to each of the three respondents and a fourth person, Clay Shaw, who did not have any real estate license.

11. Alvarez denied that his signature appeared on one of the key documents in the fraud civil litigation. His testimony in this regard, claiming that someone else had forged his signature, lacked credibility.

12. Alvarez was 67 years of age. Alvarez testified that he retired two years ago, which was inconsistent with his testimony that he had done only five real estate transactions in calendar year 2000.

13. Rodriguez had been working full time as a salesperson under the broker's license of Stephen Roberson for the past 14 months.

14. As a factor in aggravation, on February 9, 1999, in case no. H-27672-LA, the Department issued a decision publicly reprimanding Rodriguez.

15. Neither respondent submitted any evidence of rehabilitation or mitigation.

LEGAL CONCLUSIONS

1. Respondent Alvarez:

A. Cause exists to revoke or suspend Respondent Alvarez's real estate broker's license pursuant to Business and Professions Code section 10177.5 for suffering a final judgment in a civil action upon grounds of fraud with reference to a transaction for which a real estate license was required, as set forth in Findings 5, 6, 7, 8, 9, 10, & 11.

B. Assuming, arguendo, that Alvarez and Rodriguez did not actually directly perpetrate the fraud on the plaintiff, Alvarez is absolutely liable for the conduct of his salesperson Mohammed, even if he had no knowledge of it." Calif. Real Estate Loans, Inc. v Wallace (1993) 18 Cal.App.4th 1575, 1583-4. If it is assumed that Mohammed or someone else directly perpetrated the fraud, this could not have occurred unless Alvarez was so negligent in supervising his office that his laxity permitted Mohammed to have access to Alvarez's license, his letterhead stationery, and other indicia of his office.

C. Each of the above violations was a direct result of Respondent Alvarez's failure to supervise his salespersons, Rodriguez & Mohammed. Respondent Alvarez accepted a position as a supervising broker. In so doing, he also tacitly accepted each of the responsibilities of that position. Those responsibilities included his supervision over his salespersons. Respondent failed to fulfill those responsibilities.

D. Respondent should have taken steps to be more vigilant in connection with his broker's duties. Instead, he chose to ignore those duties, leaving it to his salespersons to assume them and abuse them.

2. Respondent Rodriguez:

Cause exists to revoke or suspend Respondent Rodriguez's salesperson's License pursuant to Business and Professions Code section 10177.5 for suffering a final judgment in a civil action upon grounds of fraud with reference to a transaction for which a real estate license was required, as set forth in Findings 5, 6, 7, 8, 9, & 10.

3. Complainant failed to prove by clear and convincing evidence the involvement of either respondent Alvarez or respondent Rodriguez in the fraudulent scheme. Since there was no evidence adduced that respondent Rodriguez had any supervisory role over either Mohammed or anyone else, the responsibility for permitting this fraud to occur lies greater on the broker, respondent Alvarez. The recent prior discipline (reproval) suffered by respondent Rodriguez has been considering in assessing the recommended penalty against him.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. RESPONDENT JESUS ALVAREZ:

All licenses and licensing rights of Respondent JESUS ALVAREZ, dba Action Realty Services, All City Investments, B.G.A. Financial Services, Cachi Realty, Camini Properties, United Real Estate Services under the Real Estate Law are revoked.

2. RESPONDENT ERASMO JOSE RODRIGUEZ: All licenses and licensing rights of Respondent, ERASMO JOSE RODRIGUEZ, under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson'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:

A. The restricted license issued to Respondent RODRIGUEZ 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.

B. The restricted license issued to Respondent RODRIGUEZ 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.

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

D. Respondent RODRIGUEZ shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

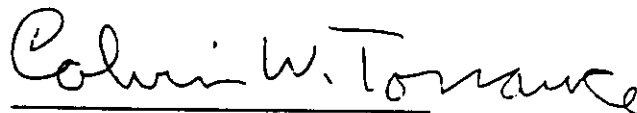
(1) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted real estate salesperson's license; and

(2) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

E. Respondent RODRIGUEZ shall, within nine (9) 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 Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

F. Respondent RODRIGUEZ shall, within six (6) 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: November 22, 2000



CALVIN W. TORRANCE

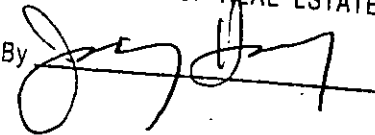
Administrative Law Judge

Office of Administrative Hearings

FILED
OCT 31 2000

BEFORE THE DEPARTMENT OF REAL ESTATE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By 

* * *

In the Matter of the Accusation of)
)
 RAJA FIROZ MOHAMMED,)
)
 Respondent.)
 _____)

NO. H-28714 LA

DECISION AFTER DEFAULT

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on October 12, 2000, and the findings of fact set forth herein are based on one or more of the following: (1) Respondent's express admissions; (2) affidavits; and (3) other evidence.

This Decision revokes a real estate license and/or license rights on grounds that final judgment, due to fraud, misrepresentation, or deceit with reference to a transaction for which a real estate license is required was entered against Respondent.

The right to reinstatement of a revoked license is controlled by Section 11522 of the Government Code. A copy of the Commissioner's Criteria of Rehabilitation is attached hereto for the information of the Respondent.

FINDINGS OF FACT

I

On August 25, 2000, Thomas McCrady made the Accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent, and Notice of Defense were mailed, by certified mail, to Respondent's last known mailing address on file with the Department on August 25, 2000. A second mailing was attempted on September 15, 2000. The United States Postal Service returned said mailing stamped "Return to Sender, Forward Order Expired."

On October 12, 2000, no Notice of Defense having been filed herein within the time prescribed by Section 11506 of the Government Code, Respondent's default was entered herein.

II

Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereinafter "Code") as a real estate salesperson.

III

Respondent's license expired on May 12, 2000, however Respondent maintains a two year right of late renewal.

IV

On or about January 4, 1999, in the Superior of the State of California, County of Los Angeles, in Case No. VC 025 186, a final judgment was entered against Respondent RAJA FIROZ MOHAMMED amounting to approximately \$50,000.00 based on the grounds of fraud, misrepresentation, or deceit with reference to a transaction for which a real estate license is required. Said evidence is sufficient to suspend or revoke the license of RAJA FIROZ MOHAMMED.

DETERMINATION OF ISSUES

I

Cause for disciplinary action against Respondent exists pursuant to Business and Professions Code Sections 10177.5.

II

The standard of proof applied was clear and convincing proof to a reasonable certainty.

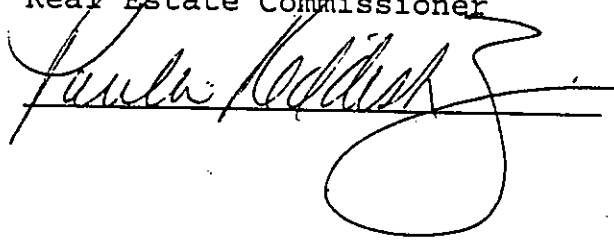
ORDER

The licenses and license rights of Respondent RAJA FIROZ MOHAMMED under the provisions of Part I of Division 4 of the Business and Professions Code are revoked.

~~This Decision shall become effective at 12 o'clock
noon on November 20, 2000.~~

DATED: October 23, 2000

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

A handwritten signature in cursive script, appearing to read "Paula Reddish Zinnemann", written over a horizontal line.

1 Department of Real Estate
2 320 West Fourth Street, Suite 350
3 Los Angeles, California 90013-1105
4 (213) 576-6982

FILED
OCT 12 2000

DEPARTMENT OF REAL ESTATE

By 

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * * *

11 In the Matter of the Accusation of)
12 RAJA FIROZ MOHAMMED,)
13 Respondent(s).)
14 _____)

NO. H-28714 LA

DEFAULT ORDER

15 Respondent, RAJA FIROZ MOHAMMED, having failed
16 to file a Notice of Defense within the time required by
17 Section 11506 of the Government Code, is now in default.
18 It is, therefore, ordered that a default be entered on the
19 record in this matter.

20 IT IS SO ORDERED October 12, 2000.

21 PAULA REDDISH ZINNEMANN
22 Real Estate Commissioner

23
24 *Randolph Brendia & Co. Kelly 10-12-00*
25 By: RANDOLPH BRENDIA
26 Regional Manager
27



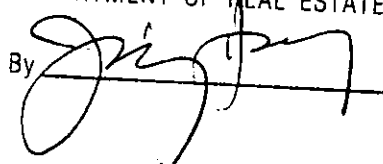
SACTO

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	Case No. <u>H-28714 LA</u>
)	
<u>JESUS ALVAREZ</u> , dba Action Realty)	OAH No. L-2000090544
Services, All City Investments,)	
B.G.A. Financial Services, Cachi)	
Realty, Camini Properties, United)	
Real Estate Services; <u>ERASMO JOSE</u>)	
<u>RODRIGUEZ</u> ; and RAJA FIROZ MOHAMMED,)	
<hr/>		
Respondents.		

FILED
OCT 05 2000
DEPARTMENT OF REAL ESTATE

NOTICE OF HEARING ON ACCUSATION

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, 320 West Fourth Street, Suite 630, Los Angeles, CA 90013-1105 on THURSDAY, OCTOBER 26, 2000, at the hour of 1:30 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.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE


-FOR-

MARY E. WORK, Counsel

Dated: October 5, 2000

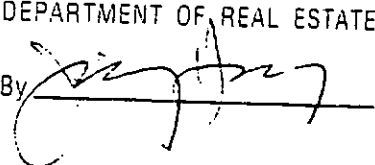
By

cc: Jesus Alvarez
Erasmus Jose Rodriguez
Stephen C. Roberson Incorporated
Sacto.
OAH
SR

5010

MARY E. WORK, Counsel
State Bar No.: 175887
Department of Real Estate
320 W. 4th Street, Suite 350
Los Angeles, CA 90013-1105

Telephone: (213) 576-6982
Direct - (213) 576-6916

FILED
AUG 25 2000
DEPARTMENT OF REAL ESTATE
By 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	No. H-28714 LA
JESUS ALVAREZ, dba Action Realty)	A C C U S A T I O N
Services, All City Investments,)	
B.G.A. Financial Services, Cachi)	
Realty, Camini Properties, United)	
Real Estate Services; ERASMO JOSE)	
RODRIGUEZ; and RAJA FIROZ MOHAMMED,)	
Respondents.)	

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against JESUS ALVAREZ, dba Action Realty Services, All City Investments, B.G.A. Financial Services, Cachi Realty, Camini Properties, United Real Estate Services; RAJA FIROZ MOHAMMED and ERASMO JOSE RODRIGUEZ, alleges as follows:

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



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II

At all times mentioned herein, JESUS ALVAREZ was and still is licensed by the Department of Real Estate of the State of California ("Department") as real estate broker. RAJA FIROZ MOHAMMED was licensed by the Department as a real estate salesperson. Said license expired on May 12, 2000. ERASMO JOSE RODRIGUEZ was and still is licensed by the Department as a real estate salesperson (collectively referred to as "Respondents").

III

On or about January 4, 1999, in the Superior Court of the State of California, County of Los Angeles, in Case No. VC 025 186, a final judgment was entered against Respondents amounting to some \$50,000.00 (less \$5,837.50 credit for monies paid), plus interest, based on grounds of fraud, misrepresentation, or deceit with reference to a transaction for which a real estate license is required.

IV

The facts set forth in Paragraph III constitute cause under Section 10177.5 of the Business and Professions Code for suspension or revocation of all licenses and license rights of Respondents under the Real Estate Law.

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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and/or license rights of JESUS
5 ALVAREZ, dba Action Realty Services, All City Investments, B.G.A.
6 Financial Services, Cachi Realty, Camini Properties, United Real
7 Estate Services; ERASMO JOSE RODRIGUEZ and RAJA FIROZ MOHAMMED,
8 under the Real Estate Law (Part I Division 4 of the Business and
9 Professional Codes) and for such other and further relief as may
10 be proper under applicable provisions of law.

11 Dated at Los Angeles, California

12 this 25th day of August, 2000.

13 
14 _____
15 Deputy Real Estate Commissioner

16
17
18
19
20
21
22 cc: Jesus Alvarez
23 Erasmus Jose Rodriguez
24 Raja Firoz Mohammed
25 Thomas McCrady
26 Sacto
27 SR
 Stephen C. Roberson Inc.

