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FILED

MAY 08 2002

DEPARTMENT OF REAL ESTATE

BY *Jean L. ...*

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

| | |
|--------------------------------------|-------------------|
| In the Matter of the Accusation of) | |
| JAMES WILLIAM BOURNE,) | NO. H-1166 FRESNO |
| Respondent.) | H-1284 FRESNO |

ORDER DENYING REINSTATEMENT OF LICENSE

On September 23, 1993, in Case No. H-1166 FRESNO, a Decision was rendered herein revoking the real estate salesperson license of Respondent but granting Respondent the right to apply for a restricted real estate salesperson license. Respondent failed to apply for said restricted license. On March 5, 1996, a Decision was rendered in Case No. H-1284 FRESNO denying the Respondent's application for a real estate broker license, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on May 29, 1996.

1 On February 15, 2001, Respondent petitioned for
2 reinstatement of said real estate salesperson license, and the
3 Attorney General of the State of California has been given notice
4 of the filing of said petition.

5 I have considered the petition of Respondent and the
6 evidence and arguments in support thereof. Respondent has failed
7 to demonstrate to my satisfaction that he has undergone
8 sufficient rehabilitation to warrant the reinstatement of his
9 real estate salesperson license in that Respondent has no
10 experience acting in a fiduciary capacity since the effective
11 date of the Decision in this matter. Respondent has not had an
12 employing broker since his restricted real estate salesperson
13 license was issued. Consequently, Respondent is not able to
14 present any evidence of correction of practices that led to the
15 disciplinary action in this matter.

16 The Administrative Law Judge in Case No. H-1284 Fresno
17 found that:

18 "Respondent has little experience in real estate.
19 There is no evidence he has any real estate experience
20 involved in lending. He got into trouble before due to a
21 lack of understanding of his duties, and the only change
22 since that time is that he has taken an ethics course.
23 While that has obviously been helpful to him, it is not
24 enough at this time to warrant the issuance of a broker
25 license, where respondent's work would go unsupervised.

26 It would aid in his show of rehabilitation if
27 respondent worked under supervision for a period of time,
perhaps in the loan brokerage area, if that is his
interest."

28 Respondent has not worked under the supervision of a
29 broker. Respondent, therefore, has not demonstrated compliance

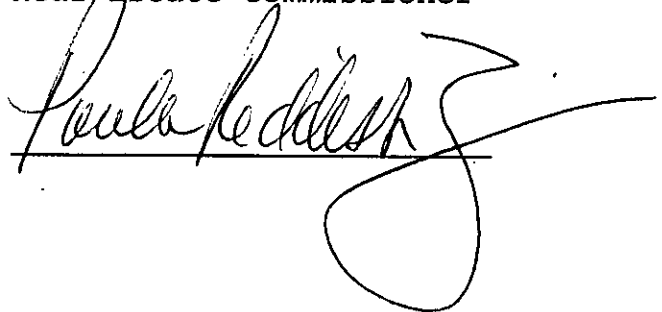
1 with Section 2911(j), Title 10, California Code of Regulations.
2 Additional time is required to establish that Respondent is
3 rehabilitated.

4 NOW, THEREFORE, IT IS ORDERED that Respondent's
5 petition for reinstatement of his real estate salesperson license
6 is denied.

7 This Order shall become effective at 12 o'clock
8 noon on May 28, 2002.

9
10 DATED: April 26, 2002

11 PAULA REDDISH ZINNEMANN
12 Real Estate Commissioner

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1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4
5 Telephone: (916) 227-0789
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FILED
NOV 23 1993
DEPARTMENT OF REAL ESTATE

By Amie A. Zier

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 CHRIS W. JOLLY,) NO. H-1166 FRESNO
13 JAMES W. BOURNE,) STIPULATION AND AGREEMENT
14 Respondents.) IN SETTLEMENT AND ORDER.

15 It is hereby stipulated by and between CHRIS W. JOLLY
16 (hereinafter "respondent JOLLY"), and the Complainant, acting by
17 and through David A. Peters, Counsel for the Department of Real
18 Estate, as follows, for the purpose of settling and disposing of
19 the Accusation filed on February 11, 1993, in this matter with
20 respect to respondent JOLLY.

21 1. All issues which were to be contested and all
22 evidence which was to be presented by Complainant and respondent
23 JOLLY at a formal hearing on the Accusation, which hearing was to
24 be held in accordance with the provisions of the Administrative
25 Procedure Act (APA), shall instead and in place thereof be
26 submitted solely on the basis of the provisions of this
27 Stipulation and Agreement in Settlement.

1 2. Respondent JOLLY has received, read and understands
2 the Statement to Respondent, the Discovery Provisions of the APA
3 and the Accusation filed by the Department of Real Estate in this
4 proceeding.

5 3. Respondent JOLLY hereby waives his right to require
6 the Commissioner to prove the allegations in the Accusation at a
7 contested hearing held in accordance with the provisions of the
8 APA and that he waives other rights afforded to him in connection
9 with the hearing such as the right to present evidence in defense
10 of the allegations in the Accusation and the right to cross-
11 examine witnesses.

12 4. Respondent JOLLY, pursuant to the limitations set
13 forth below, hereby admits that the factual allegations or
14 findings of fact set forth in Paragraphs 1. through 8. of the
15 Accusation filed in this proceeding are true and correct and the
16 Real Estate Commissioner shall not be required to provide further
17 evidence of such allegations.

18 5. It is understood by the parties that the Real Estate
19 Commissioner may adopt the Stipulation and Agreement in Settlement
20 as his decision in this matter thereby imposing the penalty and
21 sanctions on respondent JOLLY's real estate license and license
22 rights as set forth in the below "Order". In the event that the
23 Commissioner in his discretion does not adopt the Stipulation and
24 Agreement in Settlement, it shall be void and of no effect, and
25 respondent JOLLY shall retain the right to a hearing and
26 proceeding on the Accusation under all the provisions of the APA
27 and shall not be bound by any admission or waiver made herein.

1 6. The Order or any subsequent Order of the Real Estate
2 Commissioner made pursuant to this Stipulation and Agreement in
3 Settlement shall not constitute an estoppel, merger or bar to any
4 further administrative or civil proceedings by the Department of
5 Real Estate with respect to any matters which were not
6 specifically alleged to be causes for accusation in this
7 proceeding.

8 DETERMINATION OF ISSUES

9 By reason of the foregoing stipulations, admissions and
10 waivers and solely for the purpose of settlement of the pending
11 Accusation without a hearing, it is stipulated and agreed that the
12 following determination of issues shall be made:

13 I

14 The conduct of respondent JOLLY, as described in
15 Paragraph 8. of the Accusation is grounds for the suspension or
16 revocation of all of the real estate licenses and license rights
17 of respondent JOLLY under the provisions of Section 10177(g) of
18 the Business and Professions Code.

19 ORDER

20 I

21 A. All licenses and licensing rights of respondent
22 JOLLY under the Real Estate Law are suspended for a period of
23 fifteen (15) days from the date the Department lifts the
24 suspension of respondent JOLLY's real estate salesperson license
25 pursuant to Section 10153.4 of the Business and Professions Code.
26 Said suspension shall not be lifted until respondent JOLLY submits
27 the required evidence of course completion and the Commissioner

1 has given written notice to respondent JOLLY of lifting of the
2 suspension.

3 1. The fifteen (15) days of suspension described in
4 this Order above, shall be stayed for one (1) year
5 upon the following terms and conditions:

6 (a) Respondent JOLLY shall obey all laws, rules and
7 regulations governing the rights, duties and
8 responsibilities of a real estate licensee in
9 the State of California; and

10 (b) That no final subsequent determination be made,
11 after hearing or upon stipulation, that cause
12 for disciplinary action occurred within one (1)
13 year from the date that the suspension pursuant
14 to Section 10153.4 of the Business and
15 Professions Code has been lifted as described
16 above. Should such a determination be made,
17 the Commissioner may, in his discretion, vacate
18 and set aside the stay order and reimpose all
19 or a portion of the stayed suspension. Should
20 no such determination be made, the stay imposed
21 shall become permanent.

22 Oct. 15, 1993

23 DATED

22 David A. Peters

23 DAVID A. PETERS, Counsel
24 DEPARTMENT OF REAL ESTATE

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26 ///

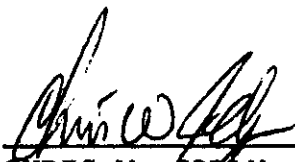
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* * *

I have read the Stipulation and Agreement, and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and voluntarily, waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusation at a hearing at which I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.

10-18-93
DATED

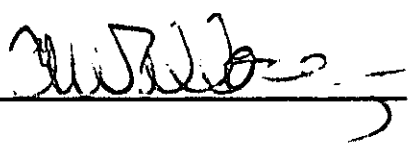

CHRIS W. JOLLY
Respondent

* * *

The foregoing Stipulation and Agreement for Settlement is hereby adopted by the Real Estate Commissioner as Decision and Order and shall become effective at 12 o'clock noon on December 13, 1993.

IT IS SO ORDERED 11/12, 1993.

CLARK WALLACE
Real Estate Commissioner



FILED
NOV 12 1993
DEPARTMENT OF REAL ESTATE

By *Laurie A. Zier*

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
JAMES W. BOURNE,) No. H-1166 FRESNO
Respondent.) OAH No. N-42902

ORDER FURTHER STAYING EFFECTIVE DATE
AS TO RESPONDENT JAMES W. BOURNE

On September 23, 1993, a Decision was rendered in the above-entitled matter to become effective October 20, 1993.

On October 13, 1993, respondent JAMES W. BOURNE petitioned for reconsideration of the Decision of September 23, 1993. Pursuant to said petition, a thirty (30) day stay of the decision was granted to expire November 19, 1993.

Additional time is needed to evaluate the petition, which was timely filed; therefore, I am granting a further stay of the effective date of the September 23, 1993 decision solely for the purpose of considering the petition.

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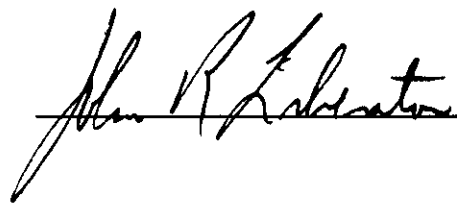
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IT IS HEREBY ORDERED that the effective date of the Decision of the Commissioner of September 23, 1993 is stayed for an additional ten (10) days.

The Decision of September 23, 1993 shall become effective at 12 o'clock noon on November 29, 1993.

DATED: 11/10/93

CLARK WALLACE
Real Estate Commissioner



FILED
OCT 14 1993
DEPARTMENT OF REAL ESTATE

By Lucie A. Zain

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

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|--------------------------------------|-------------------|
| In the Matter of the Accusation of) | |
| CHRIS W. JOLLY,) | No. H-1166 FRESNO |
| JAMES W. BOURNE,) | OAH No. N-42902 |
| Respondent.) | |

ORDER STAYING EFFECTIVE DATE

On September 23, 1993, a Decision as to respondent JAMES W. BOURNE only was rendered in the above-entitled matter to become effective October 20, 1993.

IT IS HEREBY ORDERED that the effective date of the Decision of September 23, 1993 is stayed for a period of thirty (30) days.

The Decision of September 23, 1993 shall become effective at 12 o'clock noon on November 19, 1993.

DATED: October 13, 1993

CLARK WALLACE
Real Estate Commissioner

John R. Liberstor

BY: **John R. Liberstor**
Chief Deputy Commissioner

FILED
SEP 30 1993
DEPARTMENT OF REAL ESTATE

By Laurie A. Zyan

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

| | | |
|------------------------------------|---|-------------------|
| In the Matter of the Accusation of |) | |
| |) | No. H-1166 FRESNO |
| CHRIS W. JOLLY, |) | |
| JAMES W. BOURNE, |) | OAH No. N-42902 |
| |) | |
| Respondents. |) | |

DECISION

The Proposed Decision dated September 10, 1993,
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.

The Decision shall become effective at 12 o'clock noon
on October 20, 1993.

IT IS SO ORDERED

9/23, 1993

CLARK WALLACE
Real Estate Commissioner

Clark Wallace

of Realty World Investors Realty of Visalia. Respondent's real estate salesperson license is scheduled to expire on May 21, 1994.

III

On January 14, 1991 Chris Jolly, another real estate salesperson working on behalf of Realty World Investors Realty, obtained an exclusive listing from David and Tammra Larkin for the sale of their property located at 761 Alpha Street, Tulare ("the property"). Because the listing resulted from joint canvassing efforts of the Larkins' neighborhood made by both Jolly and respondent, Jolly shared the listing with respondent.

At their initial meeting on January 14, David Larkin told Jolly he was a correctional officer working at the Corcoran State Prison. Within a week of the listing, respondent also became aware of Larkin's position and assignment.

IV

In late February 1991 an offer to purchase the property was made by Anthony M. Scalzo and Sherri Aul. At or about the time the offer was presented to the Larkins, respondent and Jolly learned Scalzo was an inmate at Corcoran State Prison. Scalzo had been convicted in September 1990 of voluntary manslaughter. With an enhancement due to the use of a firearm, Scalzo had been sentenced to 13 years in prison. He had begun serving his sentence on September 21, 1990 and was transferred to Corcoran State Prison the following month.

Although they knew Scalzo was an inmate at Corcoran, neither respondent nor Jolly knew what crime he had committed. Based upon information received from Gilbert Moorhead, the salesperson representing the buyers, respondent believed Scalzo had been convicted of some kind of computer crime.

V

When respondent and Jolly first learned of Scalzo's status, they made a conscious decision to withhold this information from the Larkins until they researched the question of whether or not Scalzo, as a convicted felon, had the right to purchase property. Upon learning that Scalzo had not been sentenced to either life or death, they concluded he did have such a right. Respondent and Jolly continued to withhold from the Larkins the information they had concerning Scalzo's status.

Following a series of counteroffers, the Larkins accepted the offer from Scalzo and Aul. On April 18, 1991 Aul assigned all her rights in the transaction to Scalzo. On April 30, 1991 escrow closed and the property transferred to Scalzo.

VI

David Larkin did not learn that the buyer of his home, Scalzo, was an inmate at Corcoran State Prison until he was so advised by a fellow correctional officer in May 1991. Had he known of Scalzo's status during the course of the transaction he would not have sold the home to him. First, Larkin believed that selling his home to an inmate constituted a conflict of interest and violation of sections 3399, 3400 and 3403 of title 15, California Code of Regulation governing the conduct of correctional employees. Second, Larkin felt that it would compromise his integrity as a correctional officer to sell his home to a prison inmate. Finally, Larkin was concerned for the safety of his wife and family since Scalzo had been convicted of a violent crime.

VII

Jolly testified that when he learned Scalzo was in prison he felt "in a quandry." On the one hand, he felt the Larkins should be told of Scalzo's status. On the other hand, he felt he had some responsibility to protect Scalzo's privacy and feared that if he and respondent disclosed Scalzo was a convicted felon they might be charged with violating confidentiality. Jolly also had some concern that a refusal by Larkin to sell to a convicted felon might constitute discrimination.

Respondent also testified he was concerned with violating Scalzo's privacy rights and of the possibility he and Jolly might be subject to discrimination charges. Ultimately, respondent testified, while he felt he tried to be fair to both sides, he elected not to tell Larkin of Scalzo's status because he did not "want to give him the chance" to discriminate against Scalzo.

Respondent continues to believe he and Jolly did the right thing in not disclosing Scalzo's status to the Larkins because it is now clear that David Larkin would have discriminated against Scalzo by not selling to him. Respondent also questions whether he truly had a fiduciary duty to the Larkins since he never signed the listing agreement and was not formally the agent of record in the transaction.

VIII

The evidence presented demonstrated that respondent, by failing to disclose to the Larkins that the prospective buyer of their home was an inmate incarcerated at the same prison at which David Larkin worked as a correctional officer, made substantial misrepresentations to the Larkins and was negligent in carrying out his duties as a real estate licensee. While not formally the agent of record, respondent nevertheless participated actively in the negotiations leading to the sale of the property and eventually received a commission on the sale.

DETERMINATION OF ISSUES

I

Cause for disciplinary action against respondent exists pursuant to Business and Professions Code sections 10176(a) (making a substantial misrepresentation) and 10177(g) (negligence).

II

Considering respondent's continued inability to recognize that he breached his fiduciary duty to the Larkins and, in the name of preventing "discrimination" against Scalzo, deprived the Larkins of knowledge which was vital to them in a number of ways, the following order is determined to be warranted.

ORDER

All licenses and licensing rights of respondent James W. Bourne under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson 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

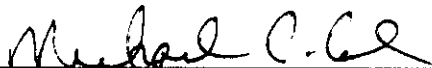
respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.

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 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:
 - a. That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
 - b. 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.
4. Respondent shall, within nine (9) months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has taken and successfully completed the courses specified in subdivisions (a) and (b) of Section 10170.5 of the Real Estate Law for renewal of a real estate license. The restricted license issued pursuant to this Decision shall be deemed to be the first renewal of respondent's real estate salesperson license for the purposes of applying the provisions of Section 10153.4. Upon renewal of the license issued pursuant to this Decision, or upon reinstatement of respondent's real estate salesperson license, respondent shall submit evidence of having 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.

5. Respondent 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.
6. 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 one (1) year has elapsed from the effective date of this decision.

DATED: September 10, 1993



MICHAEL C. COHN
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Accusation of

CHRIS W. JOLLY,
JAMES W. BOURNE,

By Kathleen Contreras

Case No. H-1166 FRESNO

OAH No. N-42902

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at The
Department of Water Resources, 3374 E. Shields,
Fresno, California 93726

on Tuesday, August 31, 1993, at the hour of 9:00 AM,
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: April 22, 1993

DEPARTMENT OF REAL ESTATE

By Roland Adickes
ROLAND ADICKES *Counsel*

1 ROLAND ADICKES, Counsel
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789

FILED
FEB 11 1993
DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

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7
8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13)
14 CHRIS W. JOLLY,)
15 JAMES W. BOURNE,)
16 Respondents.)

NO. H-1166 FRESNO
ACCUSATION

17 The Complainant, Jerry E. Fiscus, a Deputy Real Estate
18 Commissioner of the State of California for cause of Accusation
19 against CHRIS W. JOLLY and JAMES W. BOURNE (hereinafter
20 "Respondents") is informed and alleges as follows:

21 1.

22 The Complainant, Jerry E. Fiscus, a Deputy Real Estate
23 Commissioner of the State of California, makes this Accusation in
24 his official capacity.

25 2.

26 Respondents each are licensed and/or have license rights
27 under the Real Estate Law, Part 1 of Division 4 of the California

1 Business and Professions Code (hereinafter "Code") as a real
2 estate salesperson.

3 3.

4 On or about January 14, 1991, Respondents signed a
5 listing contract on behalf of Realty World Investors Realty by
6 which this brokerage firm obtained an exclusive listing for sale
7 of property known as 761 Alpha, in the City of Tulare, California
8 from the then owners of the property, David W. Larkin and Tammra
9 R. Larkin.

10 The brokerage firm and Respondents became the agents of
11 the Larkins by force of this contract and owed the fiduciary duty
12 of an agent to the Larkins. Respondents knew at this time that
13 David Larkin was employed as a corrections officer by the State of
14 California, at the state prison in Corcoran, California.

15 4.

16 During February, March, and April 1991, Respondents
17 presented an offer, prepared a counteroffer for, and presented
18 various counteroffers to the Larkins, and otherwise negotiated the
19 sale of the property from the Larkins to Anthony M. Scalzo.

20 5.

21 In the course of the negotiations, Respondents received
22 information that the buyer, Scalzo, had been convicted of one or
23 more felonies and was incarcerated at the time in the California
24 state prison at Corcoran, California, which was the place of
25 employment of David Larkin.

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6.

The fact that the buyer had been convicted of one or more felonies and was then serving time in the state prison was a fact material to any reasonable person selling his or her home for deciding whether to do business with such a person and whether or not to enter into an agreement to sell the home to such person.

7.

The fact that the buyer had been convicted of felony and was serving time in the state prison at which David Larkin was employed as a corrections officer was highly material to Larkin for the purpose of deciding whether to sell his home to such person, especially due to the nature of Larkin's employment.

8.

Respondents failed to disclose to the Larkins, at any time before escrow had closed, that the buyer Scalzo had been convicted of felony and was then incarcerated at the state prison at Corcoran, California.

9.

Respondents' acts and/or omissions described above are grounds for the suspension or revocation of Respondents' licenses under Sections 10176(a) and/or Section 10177(g) of the Business and Professions Code.

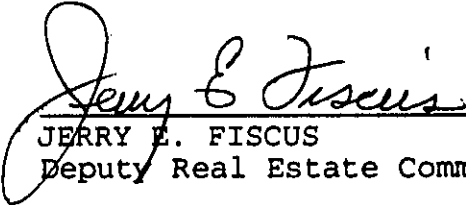
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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof a decision be rendered imposing disciplinary action against all licenses and license rights of Respondent, under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), for a condition of restitution pursuant to Sections 10156.5 and 10156.6 of the Code where complete revocation is not appropriate, and for such other and further relief as may be proper under the provisions of law.



JERRY E. FISCUS
Deputy Real Estate Commissioner

Dated at Fresno, California,
this 3rd day of February, 1993.