

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4
5 Telephone: (916) 227-0789
6
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FILED
JAN 22 2004

DEPARTMENT OF REAL ESTATE

By *Kathleen Contreras*

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

11 * * *

12 In the Matter of the Accusation of)
13)
14 GONELLA REALTY, INC., and) NO. H-1592 FR
15 LOREN MICHAEL GONELLA,)
16) STIPULATION AND AGREEMENT
17 Respondents.)

18 It is hereby stipulated by and between GONELLA REALTY,
19 INC., and LOREN MICHAEL GONELLA (hereafter Respondents),
20 represented by Thomas C. Lasken, Attorney at Law, and the
21 Complainant, acting by and through Deidre L. Johnson, Counsel
22 for the Department of Real Estate, as follows for the purpose of
23 settling and disposing the Accusation filed on May 16, 2003, in
24 this matter:

25 1. All issues which were to be contested and all
26 evidence which was to be presented by Complainant and Respondents
27 at a formal hearing on the Accusation, which hearing was to be
held in accordance with the provisions of the Administrative
Procedures Act (APA), shall instead and in place thereof be

1 submitted solely on the basis of the provisions of this
2 Stipulation and Agreement.

3 2. Respondents have received, read and understand the
4 Statement to Respondent, and the Discovery Provisions of the APA
5 filed by the Department of Real Estate in this proceeding.

6 3. On May 29, 2003, Respondents filed their Notice
7 of Defense pursuant to Section 11505 of the Government Code for
8 the purpose of requesting a hearing on the allegations in the
9 Accusation. Respondents hereby freely and voluntarily withdraw
10 said Notice of Defense. Respondents acknowledge that they
11 understand that by withdrawing said Notice of Defense they will
12 each thereby waive their rights to require the Commissioner to
13 prove the allegations in the Accusation at a contested hearing
14 held in accordance with the provisions of the APA, and that they
15 will waive other rights afforded to them in connection with the
16 hearing such as the right to present evidence in defense of the
17 allegations in the Accusation and the right to cross-examine
18 witnesses.

19 4. Respondents, pursuant to the limitations set forth
20 below, hereby admit that the factual allegations in Paragraphs I
21 through V of the Accusation filed in this proceeding are true and
22 correct and the Real Estate Commissioner shall not be required to
23 provide further evidence of such allegations.

24 5. Without admitting the truth of the allegations
25 contained in the remaining paragraphs of the Accusation,
26 Respondents stipulate that they will not interpose a defense
27 thereto. This Stipulation is based on the factual allegations

1 as to Respondents contained in the Accusation. In the interests
2 of expedience and economy, Respondents choose not to contest the
3 remaining allegations, but to remain silent, and understand that
4 as a result thereof, these factual allegations, without being
5 admitted or denied, will serve as the basis for the disciplinary
6 action stipulated to herein. The Real Estate Commissioner shall
7 not be required to provide further evidence to prove said factual
8 allegations.

9 6. Respondents have received, read and understand the
10 "Notice Concerning Costs of Audits." Respondents understand,
11 by agreeing to this Stipulation and Agreement, and after the
12 findings set forth below in the "Determination of Issues" become
13 final, that the Commissioner may charge Respondents for the costs
14 of the following audits that have been and may be conducted
15 pursuant to Section 10148 of the Business and Professions Code:

- 16 (a) Audits #FR-01-0034/01-0041, report dated
17 June 18, 2002, for not more than \$3,192.20;
18 (b) Future follow-up audit, for not more than
19 \$4,185.00.

20 7. It is understood by the parties that the Real
21 Estate Commissioner may adopt the Stipulation and Agreement as
22 the decision in this matter thereby imposing the penalty and
23 sanctions on the real estate licenses and license rights of
24 Respondents, and each of them, as set forth in the below "Order".
25 In the event that the Commissioner in her discretion does not
26 adopt the Stipulation and Agreement, it shall be void and of no
27 effect, and Respondents shall retain the rights to a hearing and

1 proceeding on the Accusation under all the provisions of the APA
2 and shall not be bound by any admission or waiver made herein.

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

10 DETERMINATION OF ISSUES

11 By reason of the foregoing stipulations, admissions
12 and waivers, and for the purpose of settlement of the pending
13 Accusation as to Respondents without a hearing, it is stipulated
14 and agreed that the following determination of issues shall be
15 made:

16 I

17 The acts and/or omissions of Respondent GONELLA REALTY,
18 INC., as stipulated above, constitute grounds for disciplinary
19 action against the real estate license and license rights of
20 Respondent under the provisions of Sections 10145 of the
21 California Business and Professions Code (hereafter the Code),
22 and Sections 2831.2, 2832.1, and 2834 of Title 10, California
23 Code of Regulations, in conjunction with Section 10177(d) of the
24 Code.

25 II

26 The acts and/or omissions of Respondent LOREN MICHAEL
27 GONELLA, as stipulated above, constitute grounds for disciplinary

1 action against the real estate license and license rights of
2 Respondent under the provisions of Section 10177(h) of the Code.

3 ORDER

4 A. All real estate licenses and license rights of
5 Respondents GONELLA REALTY, INC., and LOREN MICHAEL GONELLA shall
6 be suspended for a period of thirty (30) days from the effective
7 date of the Decision.

8 B. Said suspensions are stayed for a period of two
9 (2) years as to each Respondent upon the following terms and
10 conditions:

11 (1) Respondents shall obey all laws, rules and
12 regulations governing the rights, duties and
13 responsibilities of a real estate licensee in
14 the State of California;

15 (2) The Commissioner may, if a final subsequent
16 determination is made, after hearing or upon
17 stipulation, that cause for disciplinary
18 action against the licenses of Respondents,
19 or either of them, has occurred within two
20 (2) years from the effective date of the
21 Decision, vacate and set aside the stay order
22 and reimpose all or a portion of the stayed
23 suspension as to that Respondent. Should
24 no order vacating the stay be made pursuant
25 to this condition, the stay imposed herein as
26 to each Respondent shall become permanent;
27 and,

1 (3) Respondent LOREN MICHAEL GONELLA shall, prior
2 to the effective date of this Decision, submit
3 proof satisfactory to the Commissioner of
4 having taken and completed the continuing
5 education course on trust fund accounting
6 and handling specified in paragraph (3) of
7 subdivision (a) of Section 10170.5 of the
8 Business and Professions Code from an approved
9 continuing education course provider. Said
10 course may have been completed within one
11 hundred and twenty (120) days prior to the
12 effective date of the order herein. If
13 Respondent fails to satisfy this condition,
14 the Commissioner may order the suspension of
15 Respondent's license until the Respondent
16 presents such evidence. The Commissioner
17 shall afford Respondent the opportunity for
18 hearing pursuant to the Administrative
19 Procedure Act to present such evidence.

20 (4) Pursuant to Section 10148 of the Business and
21 Professions Code, Respondents shall pay the
22 Commissioner's reasonable costs for audits as
23 a result of the trust fund violations found
24 herein, as follows:

25 (a) Audits #FR-01-0034/01-0041, report
26 dated June 18, 2002, for not more
27 than \$3,192.20;

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(b) Future follow-up audit, for not more than \$4,185.00.

Both Respondents shall be jointly and severally liable for payment of the entire amounts of said costs. In calculating the amount of the Commissioner's reasonable costs, the Commissioner may use the estimated average hourly salary for all Department personnel performing audits of real estate brokers, and shall include an allocation for travel costs, including mileage, time to and from the auditor's place of work and per diem.

Respondents shall pay such costs within sixty (60) days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may, in her discretion, vacate and set aside the stay order, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between Respondents and the Commissioner. The vacation and the set aside of the stay shall remain in effect until payment is made in full, or until Respondents enter into an agreement satisfactory to the Commissioner to provide for payment. Should no order

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vacating the stay be issued, either in
accordance with this condition or condition
B(2) herein, the stay imposed herein shall
become permanent.

September 24, 2003
DATED

Deidre L. Johnson
DEIDRE L. JOHNSON
Counsel for the Complainant

* * *

I have read the Stipulation and Agreement, have
discussed it with my counsel, 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, 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.

GONELLA REALTY, INC.
Respondent

9/18/03
DATED

By: *Loren Michael Gonella*
LOREN MICHAEL GONELLA

9/18/03
DATED

Loren Michael Gonella
LOREN MICHAEL GONELLA
Respondent

1 APPROVED AS TO FORM:

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September 15, 2003
DATED

Thomas C. Lasken
THOMAS C. LASKEN
Counsel for the Respondents

* * *

The foregoing Stipulation and Agreement is hereby
adopted as my Decision and shall become effective at 12 o'clock
noon on February 11, 2004.

IT IS SO ORDERED October 29, 2003.

PAULA REDDISH ZINNE MANN
Real Estate Commissioner

Paula Reddish Zinnemann

FILED
JUL 23 2003

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

DEPARTMENT OF REAL ESTATE

By 

In the Matter of the Accusation of

GONELLA REALTY, INC., and
LOREN MICHAEL GONELLA,

} Case No. H-1592 FR

} OAH No. N-2003060430

Respondents

NOTICE OF HEARING ON ACCUSATION

To the above named respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at

THE OFFICE OF ADMINISTRATIVE HEARINGS

560 J STREET, SUITES 340/360

SACRAMENTO, CALIFORNIA 95814

on **SEPTEMBER 17, 2003**, at the hour of **9:00 AM**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.


You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

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

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

DEPARTMENT OF REAL ESTATE

Dated: JULY 7, 2003

By 
DEIDRE L. JOHNSON, Counsel

RE 501 (Rev. 8/97)

1 DEIDRE L. JOHNSON, Counsel
State Bar No. 66322
2 Department of Real Estate
P. O. Box 187000
3 Sacramento, CA 95818-7000
4 Telephone: (916) 227-0789
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MAY 16 2003

DEPARTMENT OF REAL ESTATE

By *Kathleen Contreras*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

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11 In the Matter of the Accusation of)
12 GONELLA REALTY, INC., and) NO. H-1592 FR
13 LOREN MICHAEL GONELLA,) ACCUSATION
14 Respondents.)
15

16 The Complainant, JOHN SWEENEY, a Deputy Real Estate
17 Commissioner of the State of California, for causes of Accusation
18 against GONELLA REALTY, INC., and LOREN MICHAEL GONELLA is
19 informed and alleges as follows:

20 PRELIMINARY ALLEGATIONS

21 I

22 The Complainant, JOHN SWEENEY, a Deputy Real Estate
23 Commissioner of the State of California, makes this Accusation
24 against Respondents in his official capacity and not otherwise.

25 II

26 Respondents GONELLA REALTY, INC., and LOREN MICHAEL
27 GONELLA are presently licensed and/or have license rights under

1 the Real Estate Law, Part 1 of Division 4 of the California
2 Business and Professions Code (hereafter the Code).

3 III

4 At all times herein mentioned, Respondent GONELLA
5 REALTY, INC. (hereafter GRI) was and is licensed by the
6 Department of Real Estate (hereafter the Department) as a real
7 estate broker corporation, with Respondent LOREN MICHAEL GONELLA
8 as its designated broker officer.

9 IV

10 At all times herein mentioned, Respondent LOREN MICHAEL
11 GONELLA (hereafter GONELLA) was and is licensed by the Department
12 as an individual real estate broker, and as the designated broker
13 officer of GRI. GONELLA was and is the majority shareholder of
14 GRI and directed and controlled its activities.

15 V

16 At least within the last three years, GRI engaged
17 in activities on behalf of others for which a real estate
18 license is required, including but not limited to activities
19 under Section 10131(b) of the Code, for or in expectation of
20 compensation, and leased or rented, offered to lease or rent,
21 solicited prospective tenants, collected rents on, and/or
22 managed certain real properties in California.

23 FIRST CAUSE OF ACCUSATION

24 VI

25 Beginning in March of 2002, the Department conducted an
26 audit of the business activities of GRI for a period of time from
27 about May 1, 1999, to May 1, 2002, as more particularly set forth

1 in Audit Report FR-01-0034/01-0041, dated June 18, 2002, and all
2 accompanying working papers and exhibits. During the course of
3 the activities described in Paragraph V above, GRI received and
4 disbursed funds in trust on behalf of others, and deposited the
5 trust funds into at least seven bank accounts at WestAmerica
6 Bank in Merced, California, including but not limited to Trust
7 Account No. 262-95420-9 (hereafter Trust Account #1) in the name
8 of "Gonella Realty Inc., Combined Trust Account", used primarily
9 for the receipt and disbursement of trust funds related to the
10 company's property management activities

11 VII

12 In connection with the collection and disbursement of
13 the above trust funds, GRI failed to deposit and maintain the
14 trust funds allocated to Trust Account #1 in said account, or in
15 a neutral escrow depository, or to deliver them into the hands
16 of the owners of the funds as required by Section 10145 of the
17 Code, in such a manner that as of April 30, 2002, there was a
18 trust fund shortage in the approximate sum of \$1,395.33.

19 VIII

20 In connection with the receipt and disbursement of
21 trust funds as above alleged, Respondent GRI:

22 (a) Failed to reconcile the balance of separate
23 beneficiary or transaction records with the
24 control records of trust funds received and
25 disbursed for Trust Account #1 at least once a
26 month, and/or failed to maintain a record of such
27 reconciliations as to each bank account in

1 conformance with Section 2831.2 of Title 10,
2 California Code of Regulations (hereafter the
3 Regulations); and

4 (b) Failed to obtain the prior written consent of the
5 principals for the reduction of the aggregate
6 balance of trust funds in Trust Account #1 to an
7 amount less than the existing aggregate trust
8 fund liability to the owners of said funds, in
9 conformance with Section 2832.1 of the Regulations.

10 IX

11 Within the last three years, Respondent GRI authorized
12 withdrawals to be made from some or all of the trust accounts
13 referred to in Paragraph VI above on the signature of DORIS
14 GONELLA, an unlicensed employee, when she was not duly bonded
15 with the requisite fidelity bond insurance coverage to conduct
16 such trust account activities on behalf of Respondent GRI, as
17 required by Section 2834 of the Regulations.

18 X

19 The acts and/or omissions of Respondent GRI as alleged
20 above constitute grounds for disciplinary action under the
21 following provisions:

22 (a) As to Paragraph VII, under Section 10145 of the
23 Code in conjunction with Section 10177(d) of
24 the Code;

25 (b) As to Paragraph VIII(a), under Section 2831.2 of
26 the Regulations in conjunction with Section
27 10177(d) of the Code;

1 (c) As to Paragraph VIII(b), under Section 2832.1 of
2 the Regulations in conjunction with Section
3 10177(d) of the Code; and

4 (d) As to Paragraph IX, under Section 2832.1 of the
5 Regulations in conjunction with Section 10177(d)
6 of the Code.

7 SECOND CAUSE OF ACCUSATION

8 XI


9 Within the last three years, Respondent GONELLA failed
10 to exercise reasonable supervision over the property management
11 activities of GRI. In particular, GONELLA permitted, ratified
12 and/or caused the conduct described above to occur and failed
13 to take reasonable steps, including but not limited to the
14 establishment of policies, rules, procedures, and systems to
15 review, oversee, inspect and manage the trust account records of
16 GRI; and a system for monitoring compliance with such policies,
17 rules, procedures and systems, to ensure compliance by the
18 company with the Real Estate Law.

19 XII

20 The acts and/or omissions of Respondent GONELLA alleged
21 in Paragraph XIV above constitute cause for disciplinary action
22 pursuant to Section 10177(h) of the Code.

23 WHEREFORE, Complainant prays that a hearing be
24 conducted on the allegations of this Accusation and that upon
25 proof thereof a decision be rendered imposing disciplinary action
26 against all licenses and license rights of Respondents under the
27 Real Estate Law (Part 1 of Division 4 of the Business and

1 Professions Code), and for such other and further relief as may
2 be proper under other provisions of law.

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5 
6 JOHN SWEENEY
7 Deputy Real Estate Commissioner

8 Dated at Fresno, California,
9 this 17th day of April, 2003

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