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MAY 08 2002

DEPARTMENT OF REAL ESTATE

By Juan Lopez

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
)
)
PAUL D. MARTIN,) NO. H-2464 SD
)
Respondent.)
)
)

ORDER DENYING REINSTATEMENT OF LICENSE

On December 20, 1999, a Decision After Rejection was rendered herein revoking the real estate salesperson license of Respondent, 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 February 24, 2000.

On January 11, 2001, Respondent petitioned for reinstatement of said license and the Attorney General of the State of California has been given notice of the filing of said petition.

1 I have considered Respondent's petition and the
2 evidence and arguments in support thereof. Respondent has
3 failed to demonstrate to my satisfaction that Respondent has
4 undergone sufficient rehabilitation to warrant the
5 reinstatement of Respondent's real estate salesperson license.
6 Less than three months have elapsed from February 25, 2002, the
7 date the opinion was issued in Paul D. Martin et al. V.
8 Department of Real Estate Court of Appeal, Fourth Appellate
9 District No. D036704. Until February 2002, Respondent has
10 questioned the basis for disciplinary action in this matter,
11 referring to the violations found as a "minor and inadvertent
12 three-month lapse in licensure". Respondent continues to
13 minimize the nature of the conduct that led to the disciplinary
14 action. Consequently, Respondent has not demonstrated a change
15 in attitude from that which existed at the time of the conduct
16 in question and Respondent has not presented evidence of
17 compliance with Section 2911(m) of the Regulations. An
18 insufficient period of time has elapsed since February 2002,
19 to demonstrate the rehabilitation necessary for the
20 reinstatement of Respondent's unrestricted license. As a
21 result, I am not satisfied that Respondent is sufficiently
22 rehabilitated to receive an unrestricted real estate
23 salesperson license.

24 NOW, THEREFORE, IT IS ORDERED that Respondent's
25 petition for reinstatement of his real estate salesperson
26 license is denied.

27 ///

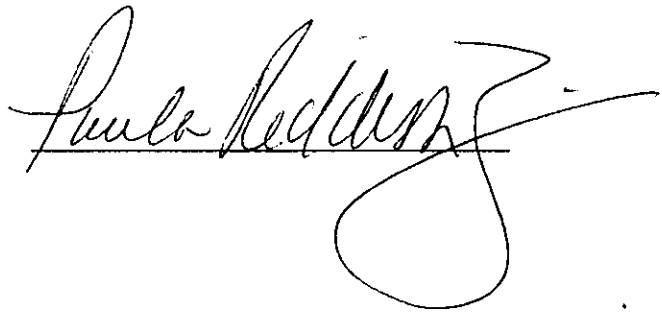
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This Order shall be effective at 12 o'clock noon on

May 28, 2002.

DATED: April 24, 2002

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



1 DEPARTMENT OF REAL ESTATE
2 P. O. Box-187000
3 Sacramento, CA 95818-7000
4
5 Telephone: (916) 227-0789
6
7

FILED
FEB 28 2001

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 WILLIAM TRAVIS PRATER,) NO. H-2464 SD
13 Respondent.)
14)

15 ORDER SUSPENDING RESTRICTED REAL ESTATE LICENSE

16 TO: WILLIAM TRAVIS PRATER:

17 On February 24, 2000, a restricted real estate broker
18 license was issued by the Department of Real Estate to you,
19 Respondent WILLIAM TRAVIS PRATER (hereinafter "you"), on the
20 terms, conditions, and restrictions set forth in the Real
21 Estate Commissioner's Decision of December 20, 1999 in Case No.
22 H-2464 SD (hereinafter "the Decision"). The Decision granted
23 you the right to the issuance of a restricted real estate
24 broker license subject to the provisions of Section 10156.7 of
25 the Business and Professions Code and to enumerated additional
26 terms, conditions, and restrictions imposed under authority of
27 Section 10156.6 of said Code. Among those terms, conditions,

1 and restrictions, you were required to submit, within 9 months
2 from the effective date of the restricted license, evidence of
3 having completed 45 hours of approved continuing education
4 offerings as set forth in Section 10170 et seq. of the Business
5 and Professions Code. The Commissioner has determined that, as
6 of November 24, 2000, you have failed to satisfy this
7 condition, and thus you are in violation of Section 10177(k) of
8 the Business and Professions Code.

9 NOW, THEREFORE, IT IS ORDERED under authority of
10 Section 10156.7 of the Business and Professions Code of the
11 State of California that the restricted real estate broker
12 license heretofore issued to you, and the exercise of any
13 privileges thereunder, is hereby suspended until such time as
14 you provide proof satisfactory to the Department of compliance
15 with the "condition" referred to above, or pending final
16 determination made after hearing (see "Hearing Rights" set
17 forth below). Furthermore, you have no right to renew your
18 restricted license if this "condition" is not satisfied by the
19 date your restricted license expires.

20 IT IS FURTHER ORDERED that all license certificates
21 and identification cards issued by the Department which are in
22 your possession be immediately surrendered by personal
23 delivery or by mailing in the enclosed, self-addressed
24 envelope to:

25 DEPARTMENT OF REAL ESTATE
26 ATTN: FLAG SECTION
27 P. O. Box 187000
 Sacramento, CA 95818-7000

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

FILED
DEC 15 2000

DEPARTMENT OF REAL ESTATE

By *Kathleen Contreras*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 WILLIAM TRAVIS PRATER,) NO. H-2464 SD
13 Respondent.)
14 _____)

15 ORDER SUSPENDING RESTRICTED REAL ESTATE LICENSE

16 TO: WILLIAM TRAVIS PRATER:

17 On February 24, 2000, a restricted real estate
18 broker license was issued by the Department of Real Estate to
19 you, Respondent WILLIAM TRAVIS PRATER (hereinafter "you"), on
20 the terms, conditions, and restrictions set forth in the Real
21 Estate Commissioner's Decision of December 20, 1999, in Case
22 No. H-2464 SD (hereinafter "the Decision"). This Decision
23 granted you the right to the issuance of a restricted real
24 estate broker license subject to the provisions of Section
25 10156.7 of the Business and Professions Code and to enumerated
26 additional terms, conditions, and restrictions imposed under
27 authority of Section 10156.6 of said Code. Among those terms,

1 conditions, and restrictions, you were required to take and
2 pass the Professional Responsibility Examination within six
3 (6) months from the effective date of the restricted license.
4 The Commissioner has determined that, as of August 24, 2000,
5 you have failed to satisfy this condition, and thus you are in
6 violation of Section 10177(k) of the Business and Professions
7 Code.

8 NOW, THEREFORE, IT IS ORDERED under authority of
9 Section 10156.7 of the Business and Professions Code of the
10 State of California that the restricted real estate broker
11 license heretofore issued to you, and the exercise of any
12 privileges thereunder, is hereby suspended until such time as
13 you provide proof satisfactory to the Department of compliance
14 with the "condition" referred to above, or pending final
15 determination made after hearing (see "Hearing Rights" set
16 forth below). Furthermore, you have no right to renew your
17 restricted license if this "condition" is not satisfied by the
18 date your restricted license expires.

19 IT IS FURTHER ORDERED that all license certificates
20 and identification cards issued by the Department which are in
21 your possession be immediately surrendered by personal
22 delivery or by mailing in the enclosed, self-addressed
23 envelope to:

24 DEPARTMENT OF REAL ESTATE
25 ATTN: FLAG SECTION
26 P. O. Box 187000
 Sacramento, CA 95818-7000

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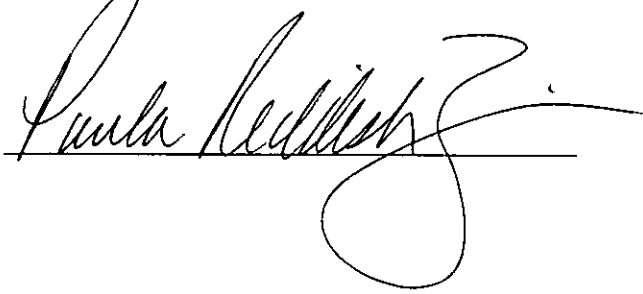
HEARING RIGHTS: Pursuant to the provisions of
Section 10156.7 of the Business and Professions Code, you have
the right to a hearing to contest the Commissioner's
determination that you are in violation of Section 10177(k).
If you desire a hearing, you must submit a written request.
The request may be in any form, as long as it is in writing
and indicates that you want a hearing. Unless a written
request for a hearing, signed by or on behalf of you, is
delivered or mailed to the Department at:

DEPARTMENT OF REAL ESTATE
ATTN: THOMAS C. LASKEN, LEGAL SECTION
P. O. Box 187000
Sacramento, CA 95818-7000

within 20 days after the date that this Order was mailed to or
served on you, the Department will not be obligated or
required to provide you with a hearing.

This Order shall be effective immediately.
IT IS SO ORDERED December 12, 2000.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



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FILED

FEB 15 2000

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
PAUL D. MARTIN;)	No. H-2464 SD
WILLIAM T. PRATER; and,)	OAH NO. L-199903032
PEAK FINANCIAL MORTGAGE)	
SERVICES)	
Respondents.)	

ORDER DENYING RECONSIDERATION

On December 20, 1999, a Decision After Rejection was rendered in the above-entitled matter. The Decision is to become effective on February 24, 2000.

On January 13, 2000, Respondents petitioned for reconsideration of the Decision of December 20, 1999.

I have given due consideration to the petition of Respondents. I find no good cause to reconsider the Decision of December 20, 1999, and reconsideration is hereby denied.

IT IS SO ORDERED February 14, 2000.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish Zinnemann

FILED

FEB 9 2000

DEPARTMENT OF REAL ESTATE

By *Kathleen Contreras*

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
)
PAUL D. MARTIN,)
WILLIAM T. PRATER, and,)
PEAK FINANCIAL MORTGAGE)
SERVICES.)
)
Respondents.)

NO. H-2464 SD

OAH NO. L-1999030032

ORDER FURTHER STAYING EFFECTIVE DATE

On December 20, 1999, a Decision After Rejection was rendered in the above-entitled matter to become effective January 13, 2000.

On January 13, 2000, Respondents petitioned for reconsideration of the Decision After Rejection of December 20, 1999. Pursuant to said petition, a thirty (30) stay of the decision was granted to expire February 14, 2000.

Additional time is needed to evaluate the petition and therefore I am granting a further stay of the effective date of the December 20, 1999 decision, solely for the purpose of considering the petition.

1 IT IS HEREBY ORDERED that the effective date of the
2 Decision of the Commissioner of December 20, 1999, is stayed for
3 an additional ten (10) days.

4 The Decision After Rejection of the Real Estate
5 Commissioner of December 20, 1999, shall become effective at 12
6 o'clock noon on February 24, 2000.

7 DATED: February 9, 2000

8
9 PAULA REDDISH ZINNEBANN
Real Estate Commissioner

10
11
12 By:  _____

13 JOHN R. LIBERATOR
14 Chief Deputy Commissioner
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FILED

JAN 13 2000

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
PAUL D. MARTIN,)	
WILLIAM T. PRATER, and,)	NO. H-2464 SD
PEAK FINANCIAL MORTGAGE)	
SERVICES.)	OAH NO. L-1999030032
Respondents.)	

ORDER STAYING EFFECTIVE DATE

On December 20, 1999, a Decision After Rejection was rendered in the above-entitled matter to become effective January 13, 2000.

On January 13, 2000, Respondents petitioned for reconsideration of the Decision After Rejection of December 20, 1999.

IT IS HEREBY ORDERED that the effective date of the Decision After Rejection of the Real Estate Commissioner of December 20, 1999, is stayed for a period of thirty (30) days.

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The Decision After Rejection of the Real Estate
Commissioner of December 20, 1999, shall become effective at
12 o'clock noon on February 14, 2000.

DATED: January 13, 2000

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

By: John R. Liberator
JOHN R. LIBERATOR
Chief Deputy Commissioner

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FILED

DEC 24 1999

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)

PAUL D. MARTIN,)
WILLIAM T. PRATER, and)
PEAK FINANCIAL MORTGAGE)
SERVICES,)

Respondents.)

NO. H-2464 SD
OAH NO. L-1999030032

DECISION AFTER REJECTION

The matter came for hearing before Alan S. Meth, Administrative Law Judge of the Office of Administrative Hearings, in San Diego, California, on June 18, 1999.

Thomas C. Lasken, Counsel, represented the Complainant.

Robert J. Gaglione, Attorney at Law, represented Respondents.

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

On July 12, 1999, the Administrative Law Judge submitted a Proposed Decision, which I declined to adopt as my Decision herein. Pursuant to Section 11517(c) of the Government

1 Code of the State of California, Respondents were served with
2 notice of my determination not to adopt the Proposed Decision of
3 the Administrative Law Judge along with a copy of said Proposed
4 Decision. Respondents were notified that the case would be
5 decided by me upon the record, the transcript of proceedings held
6 on June 18, 1999, and upon any written argument offered by
7 Respondent and Complainant.

8 Complainant and Respondents have submitted written
9 argument.

10 I have given careful consideration to the record in
11 this case including the transcript of proceedings of June 18,
12 1999, and the written arguments.

13 The following shall constitute the Decision of the Real
14 Estate Commissioner in this proceeding:

15 FINDINGS OF FACT

16 The Findings of Fact contained in Paragraphs 1 through
17 4 of the Proposed Decision dated July 12, 1999, are hereby
18 adopted as a part of this Decision with the following additions:

19 5. Respondent MARTIN continued to perform acts
20 requiring a real estate license after the expiration of his real
21 estate license by soliciting borrowers or lenders for or
22 negotiating loans secured directly or collaterally by real
23 property. Respondent PEAK continued to employ and compensate
24 Respondent MARTIN for those activities after Respondent MARTIN's
25 license had expired. Respondent PRATER, as the qualifying
26 designated officer of Respondent PEAK, failed to exercise
27 reasonable supervision and control of the activities conducted on

1 behalf of Respondent PEAK by its salespersons in allowing
2 Respondent PEAK to employ Respondent MARTIN to perform activities
3 requiring a real estate license when Respondent MARTIN's
4 salesperson license was expired.

5 6. Contrary to the facts and legal conclusions
6 asserted in Paragraph 6 of the Proposed Decision, there is no
7 penalty for persons allowing their real estate licenses to
8 expire. Licensees may allow their licenses to expire and never
9 renew them, and they would never be penalized. The law simply
10 assesses a greater renewal fee for those who do not renew while
11 their license is still current but while they still have a 2-year
12 late renewal right. Those who do not renew their licenses before
13 the 2-year late renewal period expires have no renewal right. If
14 they wish to be licensed, they must meet the same educational and
15 experience requirements as for persons who have never been
16 licensed and take and pass the qualifying examination.

17 7. Contrary to the finding in Paragraph 6 of the
18 Proposed Decision, there is evidence that Respondent Martin
19 acted improperly. Respondent Martin acted improperly by
20 performing acts requiring a real estate license while unlicensed.
21 In fact, Respondent Martin's conduct in so acting while
22 unlicensed is a criminal offense. See Sections 10137 and 10139
23 of the Business and Professions Code ("Code"). The same
24 considerations apply to the statement in Paragraph 7 of the
25 Proposed Decision that Respondent "Martin was not an unlicensed
26 salesperson, he was a licensed salesperson who did not renew his
27 license in a timely fashion." A person who does not hold a

1 current valid real estate license is unlicensed. The fact
2 that such a person may be able to pay a greater fee and renew
3 the license on a late basis without having to qualify all over
4 again for original issuance of a license does not change that
5 fact.

6 8. Paragraph 7 of the Proposed Decision contains
7 several erroneous statements of fact and law concerning
8 Respondent Peak and Respondent Prater. Respondent Prater was
9 not Respondent Martin's employing broker; Respondent Peak was.
10 Respondent Peak was the only legal person subject to a fine
11 under Section 10139.5 of the Code. Respondent Peak is the only
12 legal person who employed Respondent Martin in violation of
13 Sections 10137 and 10138 of the Code. Respondent Peak held its
14 own real estate license for which it was required to pay license
15 fees and it was responsible for all activities conducted under
16 that license. Respondent Prater's culpability in this case is
17 based on his failure to properly supervise the activities of a
18 corporation for which he was responsible under Section 10159.2
19 of the Code, namely Respondent Peak.

20
21 DETERMINATION OF ISSUES

22 I

23 Cause exists to revoke or suspend the licenses and
24 license rights of Respondent PEAK FINANCIAL MORTGAGE SERVICES
25 under Sections 10137 and 10138 of the Code by reason of Findings
26 2 through 8.

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II

Cause exists to revoke or suspend the licenses and license rights of Respondent WILLIAM T. PRATER under Section 10177(h) of the Code by reason of Findings 2 through 8.

III

Cause exists to revoke or suspend the licenses and license rights of Respondent PAUL D. MARTIN under Sections 10137 and 10177(d) of the Code by reason of Findings 2 through 8.

ORDER

I

AS TO RESPONDENT
PEAK FINANCIAL MORTGAGE SERVICES

- A. The real estate broker license and all license rights of Respondent PEAK under the Real Estate Law are revoked.
- B. A restricted real estate broker license shall be issued to Respondent PEAK pursuant to Section 10156.5 of the Code, if Respondent makes application therefor and pays to the Department the appropriate fee for said license within ninety (90) days from the effective date of this ORDER.
- C. The restricted license issued to Respondent PEAK shall be subject to all the provisions of Section 10156.7 of the Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of the Code:
 - (1) The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right

1 to exercise any privileges granted under the restricted
2 license in the event of:

3 (a) The conviction of Respondent (including a plea of
4 nolo contendere) to a crime which bears a
5 significant relation to Respondent's fitness or
6 capacity as a real estate licensee; or,

7 (b) The receipt of evidence that Respondent has
8 violated provisions of the California Real Estate
9 Law, Subdivided Lands Law, Regulations of the Real
10 Estate Commissioner or conditions attaching to the
11 restricted license.

12 (2) Respondent PEAK shall not be eligible to apply for
13 issuance of an unrestricted real estate license nor the
14 removal of any of the conditions, limitations or
15 restrictions attaching to the restricted license until
16 one (1) year has elapsed from the date of issuance of a
17 restricted license to Respondent.

18 D. Respondent PEAK shall pay a fine of \$5,000.00 pursuant to
19 Section 10139.5 of the Code in the form of a cashier's check
20 or certified check made payable to the Recovery Account of
21 the Real Estate Fund. Said check must be delivered to the
22 Department prior to the effective date of the Order in this
23 matter. If Respondent fails to pay said fine when due, the
24 Commissioner may order the indefinite suspension of
25 Respondent's real estate license and license rights. The
26 suspension shall remain in effect until payment is made in
27 full, or until Respondent enters into an agreement

1 satisfactory to the Commissioner to provide for such
2 payment. The Commissioner may impose further reasonable
3 disciplinary terms and conditions upon Respondent's real
4 estate license and license rights as part of any such
5 agreement.

6 E. Any restricted real estate broker license issued to
7 Respondent PEAK may be suspended or revoked for a violation
8 by Respondent PEAK of any of the conditions attaching to the
9 restricted license.

10 II

11 AS TO RESPONDENT
12 WILLIAM T. PRATER

13 A. The real estate broker license and all license rights of
14 Respondent PRATER under the Real Estate Law are revoked.

15 B. A restricted real estate broker license shall be issued to
16 Respondent PRATER pursuant to Section 10156.5 of the Code,
17 if Respondent makes application therefor and pays to the
18 Department the appropriate fee for said license within
19 ninety (90) days from the effective date of this ORDER.

20 C. The restricted license issued to Respondent PRATER shall be
21 subject to all the provisions of Section 10156.7 of the
22 Code and to the following limitations, conditions and
23 restrictions imposed under authority of Section 10156.6 of
24 the Code:

25 (1) The license shall not confer any property right in the
26 privileges to be exercised, and the Real Estate
27 Commissioner may by appropriate order suspend the right

1 to exercise any privileges granted under the restricted
2 license in the event of:

3 (a) The conviction of Respondent (including a plea
4 of nolo contendere) to a crime which bears a
5 significant relation to Respondent's fitness or
6 capacity as a real estate licensee; or,

7 (b) The receipt of evidence that Respondent has
8 violated provisions of the California Real Estate
9 Law, Subdivided Lands Law, Regulations of the Real
10 Estate Commissioner or conditions attaching to the
11 restricted license.

12 (2) Respondent shall not be eligible to apply for issuance
13 of an unrestricted real estate license nor the removal
14 of any of the conditions, limitations or restrictions
15 attaching to the restricted license until one (1) year
16 has elapsed from the date of issuance of a restricted
17 license to Respondent.

18 D. Respondent PRATER shall, within nine (9) months from the
19 effective date of this ORDER, present evidence satisfactory
20 to the Real Estate Commissioner that he has, since the most
21 recent issuance of an original or renewal real estate
22 license, taken and successfully completed the continuing
23 education requirements of Article 2.5 of Chapter 3 of the
24 Real Estate Law for renewal of a real estate license. If
25 Respondent fails to satisfy this condition, the Commissioner
26 may order the suspension of his restricted license until
27 Respondent presents such evidence. The Commissioner shall

1 afford Respondent the opportunity for a hearing pursuant
2 to the Administrative Procedure Act to present such
3 evidence.

4 E. Respondent PRATER shall, within six (6) months from the
5 effective date of the restricted license, take and pass the
6 Professional Responsibility Examination administered by
7 the Department including the payment of the appropriate
8 examination fee. If Respondent fails to satisfy this
9 condition, the Commissioner may order the suspension of
10 the restricted license until Respondent passes the
11 examination.

12 F. Any restricted real estate broker license issued to
13 Respondent may be suspended or revoked for a violation by
14 Respondent of any of the conditions attaching to the
15 restricted license.

16 III

17 AS TO
18 RESPONDENT PAUL D. MARTIN

19 A. The real estate salesperson license and all license rights
20 of Respondent MARTIN under the Real Estate Law are revoked.

21 B. A restricted real estate salesperson license shall be issued
22 to Respondent MARTIN pursuant to Section 10156.5 of the
23 Code, if Respondent makes application therefor and pays to
24 the Department the appropriate fee for said license within
25 ninety (90) days from the effective date of this ORDER.

26 C. The restricted license issued to Respondent MARTIN shall be
27 subject to all the provisions of Section 10156.7 of the

1 Code and to the following limitations, conditions and
2 restrictions imposed under authority of Section 10156.6 of
3 the Code:

4 (1) The license shall not confer any property right in the
5 privileges to be exercised, and the Real Estate
6 Commissioner may by appropriate order suspend the right
7 to exercise any privileges granted under the restricted
8 license in the event of:

9 (a) The conviction of Respondent (including a plea of
10 nolo contendere) to a crime which bears a
11 significant relation to Respondent's fitness or
12 capacity as a real estate licensee; or,

13 (b) The receipt of evidence that Respondent has
14 violated provisions of the California Real Estate
15 Law, Subdivided Lands Law, Regulations of the
16 Real Estate Commissioner or conditions attaching
17 to the restricted license.

18 (2) Respondent shall not be eligible to apply for issuance
19 of an unrestricted real estate license nor the removal
20 of any of the conditions, limitations or restrictions
21 attaching to the restricted license until one (1) year
22 has elapsed from the date of issuance of a restricted
23 license to Respondent.

24 D. Respondent MARTIN shall, within nine (9) months from the
25 effective date of this ORDER, present evidence satisfactory
26 to the Real Estate Commissioner that he has, since the most
27 recent issuance of an original or renewal real estate

1 license, taken and successfully completed the continuing
2 education requirements of Article 2.5 of Chapter 3 of the
3 Real Estate Law for renewal of a real estate license. If
4 Respondent fails to satisfy this condition, the Commissioner
5 may order the suspension of his restricted license until
6 Respondent presents such evidence. The Commissioner shall
7 afford Respondent the opportunity for a hearing pursuant to
8 the Administrative Procedure Act to present such evidence.

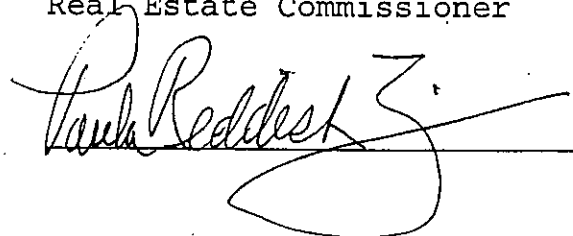
9 E. Respondent MARTIN shall, within six (6) months from the
10 effective date of the restricted license, take and pass the
11 Professional Responsibility Examination administered by the
12 Department including the payment of the appropriate
13 examination fee. If Respondent fails to satisfy this
14 condition, the Commissioner may order the suspension of the
15 restricted license until Respondent passes the examination.

16 F. Any restricted real estate salesperson license issued to
17 Respondent MARTIN may be suspended or revoked for a
18 violation by Respondent of any of the conditions attaching
19 to the restricted license.

20 This Decision shall become effective at 12 o'clock noon
21 on January 13, 2000.

22 IT IS SO ORDERED December 20, 1999.

23
24 PAULA REDDISH ZINNEMANN
25 Real Estate Commissioner
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FILED

AUG 12 1999

DEPARTMENT OF REAL ESTATE

By Matthew Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) No. H-2464 SD
PAUL D. MARTIN; WILLIAM T.,)
PRATER; and PEAK FINANCIAL,) L-1999030032
MORTGAGE SERVICES,)
Respondents.)

NOTICE

TO: Respondents PAUL D. MARTIN, WILLIAM T. PRATER, and PEAK
FINANCIAL MORTGAGE SERVICES, and ROBERT J. GAGLIONE, their
Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision
herein dated July 12, 1999, of the Administrative Law Judge is
not adopted as the Decision of the Real Estate Commissioner. A
copy of the Proposed Decision dated July 12, 1999, is attached
for your information.

In accordance with Section 11517(c) of the Government
Code of the State of California, the disposition of this case
will be determined by me after consideration of the record herein

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

In the Matter of the Accusation Of:

PAUL D. MARTIN;
WILLIAM T. PRATER; and
PEAK FINANCIAL MORTGAGE
SERVICES

Respondent.

Case No. H-2464 SD

OAH No. L-1999030032

PROPOSED DECISION

On June 18, 1999, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Thomas C. Lasken, Staff Counsel, represented complainant.

Robert J. Gaglione, Attorney At Law, represented respondents.

The matter was submitted on June 18, 1999.

FACTUAL FINDINGS

1. J. Chris Graves, Deputy Real Estate Commissioner of the State of California (hereafter, "Department") filed Accusation No. H-2464 in his official capacity on December 21, 1998. Respondents filed Notices of Defense on January 5, 1999.

2. The Department issued real estate broker license number 00218994 to respondent William Prater. He is licensed as an officer of Peak Financial Mortgage Services (hereafter, "Peak"). The officer license expired on September 17, 1997 and was issued as of December 22, 1997.

The Department issued real estate salesperson license number 00979159 to respondent Paul D. Martin, and his employing broker was Peak. He was terminated from the employ of Peak as of September 18, 1997 due to the expiration of the employing broker's license. His salesperson license expired on November 8, 1997. On February 17, 1998, the salesperson license was issued in the employ of Peak.

The Department issued real estate corporation license number 01044367 to respondent Peak. The license expired on September 17, 1997 with respondent Prater as the designated officer. The license was issued on December 22, 1997 with respondent Prater as the designated officer.

Respondent Martin is the president of Peak and worked for it as a salesperson. Prater became the broker in 1993.

3. In January 1998, Sue and Thomas Lyon received a postcard in the mail from respondent Martin describing an offer of low refinancing rates. Mr. Lyon called respondent Martin on January 14, and they set up a meeting for January 15. During the telephone conversation, Mr. Lyon gave respondent Martin some information about himself and their home, and based on that information, respondent Martin completed a residential loan application and other related documents. He gave them to the Lyons on January 15, but they did not sign them and ultimately decided they did not want to refinance their home through respondent Martin.

4. The Lyons filed a complaint with the Department, and Luke S. Martin, a deputy real estate commissioner, was assigned to investigate it. In February 1998, Deputy Martin called respondent Martin and they set up a meeting. The meeting was held on March 16, 1998, and it included respondent Prater.

At the meeting, respondent Prater gave Deputy Martin a letter dated March 6, 1998. Respondent Prater wrote that respondent Martin "was originating loans with an expired license because of a juvenile oversight on his part." He indicated Peak closed its offices and went out of business in February 1995, and respondent Martin did not begin working again until October 1997, when some of his friends asked him to refinance their mortgages. According to respondent Prater, this led respondent Martin into doing some test mailing. Respondent Prater pointed out that respondent Martin had not been paid a commission by Peak for any loan originations since reopening the business, and any income earned by Peak had gone to pay expenses of the corporation.

Along with this letter, respondent Martin submitted a list of loans which had originated since his license expired. This list included 9 properties on which loans had closed and 8 properties on which the loans were open. Respondent Martin was cooperative throughout the interview, provided Deputy Martin with considerable additional financial information Deputy Martin requested, and admitted he allowed his license to expire due to oversight.

5. Business and Professions Code section 10201 provides the holder of a license who fails to renew the license prior to its expiration may renew it within two years upon proper application and payment of a late renewal fee. Section 10210 provides the renewal

fee for a broker license shall not exceed \$300, while section 10215 provides the renewal fee for a salesperson license shall not exceed \$245. Section 10211 provides there is no additional license fee if the licensee is a corporation; the license entitles one officer of the corporation to act on the corporation's behalf and engage in the business of real estate broker.

In 1998, the Department by regulation imposed a license fee on a broker of \$285 and a late license renewal fee of \$427, and imposed a license fee on a salesperson of \$240, and a late license fee of \$360. Tit. 10, Cal. Code of Regulations, section 2716.

6. Respondent Martin did not renew his salesperson license before it expired. He renewed it three months later, and presumably paid the late license fee of \$360 provided by regulation. No evidence was offered to suggest a greater penalty is required. While he engaged in the business of a real estate salesperson during a time when his license had expired, and a complaint against his activities was made by Mr. and Mrs. Lyons, there is no evidence he acted improperly. Thus, there is no reason to impose on respondent a penalty greater than the monetary penalty provided by regulation for any licensee who fails to renew his or her license on time. A public reproof is therefore a sufficient penalty for respondent Martin's failure to timely renew his license.

7. Title 10, California Code of Regulations, section 2725 imposes on a broker the requirement to exercise reasonable supervision over the activities of his or her salespersons. A broker may not employ or compensate any person for performing any acts which require a real estate license. A corporate broker licensee is responsible for the supervision and control of all employees, including its salespersons, to secure full compliance with the provisions of the Real Estate Law. Bus. & Prof. Code §§ 10137, 10159.2. Ensuring a salesperson is properly licensed and had a current license would seem to be one of the basic requirements imposed by these rules. Respondent Prater failed to ensure respondent Martin was properly licensed when he resumed his real estate activities, and therefore is subject to discipline.

Business and Professions Code section 10139.5 provides the Commissioner may impose a fine not to exceed \$10,000 on a broker for violating section 10137 by employing an unlicensed person to solicit borrowers or negotiate loans secured by liens on real property. That is what respondent Martin did. However, Martin was not an unlicensed salesperson, he was a licensed salesperson who did not renew his license in a timely fashion. Thus, the penalty on respondent Prater should be commensurate with the penalty the Department has imposed on salespersons for failing to timely renew their licenses. A fine of \$250 is therefore appropriate along with a public reproof.

There is no license fee required of respondent Peak. Its designated officer is respondent Prater, and its sole employee is respondent Martin. Both of them have or will pay penalties for respondent Martin's failure to renew his license on time. It is therefore necessary to impose a separate penalty on respondent Peak.

LEGAL CONCLUSIONS

1. Cause to revoke or suspend the licenses and license rights of respondent Martin for violation of Business and Professions Code sections 10130, 10137, 10139, and 10177(d) was established by reason of Findings 2, 3 and 4

2. Cause to revoke or suspend the licenses and license rights of respondent Prater for violation of Business and Professions Code sections 10159.2 and 10177(h), and Title 10, California Code of Regulations, section 2725, was established by reason of Findings 2, 3, 4, 6, and 7.

3. Cause to revoke or suspend the licenses and license rights of respondent Peak for violation of Business and Professions Code sections 10137 and 10138 was established by reason of Findings 2, 3 and 4. However, by reason of Findings 5, 6, and 7, because respondent Martin has already paid the appropriate penalty for his failure to timely renew his license, and respondent Prater will be fined in this proceeding for his failure to properly ensure that respondent Martin was licensed, and both are publicly reprovved, there is no reason to impose any additional penalty on respondent Peak.

ORDER

- NOT ADOPTED*
1. Respondent Paul D. Martin is hereby publicly reprovved.
 2. The accusation filed against respondent Peak Financial Mortgaged Services is hereby dismissed.
 3. Respondent William T. Prater is hereby fined the sum of \$250.00. Respondent Prater shall pay the fine to the Commissioner of Real Estate within thirty (30) days of the effective date of this decision. Further, respondent William T. Prater is hereby publicly reprovved.

DATED: MAY 12 1999



ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings

FILED

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

MAY 14 1999

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

PAUL D. MARTIN;
WILLIAM T. PRATER; and,
PEAK FINANCIAL MORTGAGE
SERVICES;

}

By Katherine Contreas

Case No. H-2464 SD

OAH No. L-1999030032

Respondent

FIRST CONTINUED
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 Office of Administrative Hearings, 1350 Front Street,

Room 6022, San Diego, California 92101

on June 18, 1999, 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: May 4, 1999

By Thomas C. Lasken
THOMAS C. LASKEN Counsel

FILED

APR 21 1999

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

In the Matter of the Accusation of
PAUL D. MARTIN;
WILLIAM T. PRATER; and,
PEAK FINANCIAL MORTGAGE
SERVICES;

}

Case No. H-2464 SD

OAH No. L-1999030032

Respondent

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DEPARTMENT OF REAL ESTATE

Dated: April 21, 1999

By Thomas C. Lasken
THOMAS C. LASKEN Counsel

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

5 Telephone: (916) 227-0789

FILED

DEC 21 1998

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 PAUL D. MARTIN;)
13 WILLIAM T. PRATER; and,)
14 PEAK FINANCIAL MORTGAGE)
SERVICES;)
Respondents.)

NO. H-2464 SD

ACCUSATION

15 The Complainant, J. Chris Graves, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against PAUL D. MARTIN (hereinafter "Respondent MARTIN");
18 WILLIAM T. PRATER (hereinafter "Respondent PRATER"); and, PEAK
19 FINANCIAL MORTGAGE SERVICES (hereinafter "Respondent PFMS"); is
20 informed and alleges as follows:

21 I

22 The Complainant, J. Chris Graves, a Deputy Real Estate
23 Commissioner of the State of California, makes this Accusation in
24 his official capacity.

25 II

26 Respondent PFMS is presently licensed and/or has license
27 rights under the Real Estate Law, Part 1 of Division 4 of the



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

3 III

4 Respondent PRATER is presently licensed and/or has
5 license rights under the Code as a real estate broker.

6 IV

7 Respondent MARTIN is presently licensed and/or has
8 license rights under the Code as a real estate salesperson.

9 V

10 At all times herein mentioned, Respondents PFMS, PRATER,
11 and MARTIN were performing acts requiring a real estate license.

12 VI

13 At all times herein mentioned, Respondent PFMS was
14 licensed by and through Respondent PRATER as its designated broker
15 officer.

16 VII

17 Within the three years immediately preceding the filing
18 of this Accusation, Respondent MARTIN was employed by Respondent
19 PFMS to perform acts requiring a real estate license. Respondent
20 MARTIN's license expired on or about November 8, 1997, and
21 remained expired until on or about February 26, 1998, when said
22 license was renewed.

23 VIII

24 During the above period when Respondent MARTIN's license
25 was expired, Respondent PFMS employed and compensated Respondent
26 MARTIN for performing acts requiring a real estate, including the
27 solicitation of borrowers and negotiation of loans secured



1 directly or collaterally by real property, and Respondent MARTIN
2 received and accepted compensation from Respondent PFMS for said
3 acts.

4 IX

5 The facts alleged in Paragraph VIII above constitute
6 violation of Sections 10137 and 10138 of the Code, and are cause
7 under Sections 10137 and 10138 of the Code for the suspension or
8 revocation of all licenses and license rights of Respondent PFMS
9 under the Real Estate Law.

10 X

11 The facts alleged in Paragraph VIII above constitute
12 violation of Sections 10130, 10137, and 10139 of the Code, and are
13 cause under Sections 10137 and 10177(d) of the Code for the
14 suspension or revocation of all licenses and license rights of
15 Respondent MARTIN under the Real Estate Law.

16 XI

17 During the period from on or about November 8, 1997,
18 through on or about February 26, 1998, Respondent PRATER, as
19 designated broker-officer for Respondent PFMS, failed to exercise
20 reasonable supervision and control over the licensed activities of
21 Respondent PFMS as required by Section 10159.2 of the Code. Such
22 failure is cause for the suspension or revocation of Respondent
23 PRATER's licenses and/or license rights under Section 10177(h) of
24 the Code.

25 ///

26 ///

27 ///



