

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

FILED  
NOV 14 2000

DEPARTMENT OF REAL ESTATE

By *Kathleen Contreras*

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

10 \* \* \*

11 In the Matter of the Accusation of )  
12 CALPACIFIC, INC., and )  
13 RICHARD WAYNE JONES, ) NO. H-2553 SD  
14 Respondents. ) STIPULATION AND AGREEMENT

15 It is hereby stipulated by and between CALPACIFIC,  
16 INC., and RICHARD WAYNE JONES (hereafter Respondents),  
17 represented by Anna M. Mueller, Attorney at Law, Incorvaia &  
18 Associates, and the Complainant, acting by and through Deidre L.  
19 Johnson, Counsel for the Department of Real Estate, as follows  
20 for the purpose of settling and disposing the Accusation filed on  
21 March 7, 2000, in this matter:

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

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 March 27, 2000, 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 as

1 to Respondents contained in the Accusation. In the interests of  
2 expedience and economy, Respondents choose not to contest these  
3 allegations, but to remain silent and understand that, as a  
4 result thereof, these factual allegations, without being admitted  
5 or denied, will serve as the basis for the disciplinary action  
6 stipulated to herein. The Real Estate Commissioner shall not be  
7 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, by  
11 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 #SD-990001 and SD-990006, report dated  
17                     September 2, 1999, in the amount of \$5,100.00;  
18           (b) Future follow-up audit, for not more than  
19                     \$5,100.00.

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  
2 APA and shall not be bound by any admission or waiver made  
3 herein.

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

11 DETERMINATION OF ISSUES

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

17 I

18 The acts and/or omissions of Respondent CALPACIFIC,  
19 INC., as stipulated above, constitute grounds for disciplinary  
20 action against the real estate license and license rights of  
21 Respondent under the provisions of Sections 10145 and 10161.8  
22 California Business and Professions Code, and Sections 2726,  
23 2752, 2831.1, 2832.1, and 2834 of Title 10, California Code of  
24 Regulations, in conjunction with Section 10177(d) of the Code.

25 II

26 The acts and/or omissions of Respondent RICHARD WAYNE  
27 JONES, 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 CALPACIFIC, INC., and RICHARD WAYNE JONES shall be  
6 suspended for a period of sixty (60) days from the effective date  
7 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) Pursuant to Section 10148 of the Business and  
2 Professions Code, Respondents shall pay the  
3 Commissioner's reasonable costs for audits as  
4 a result of the trust fund violations found  
5 herein, as follows:

6 (a) Audits #SD-990001 and SD-990006,  
7 report dated September 2, 1999,  
8 in the amount of \$5,100.00;

9 (b) Future follow-up audit, for not  
10 more than \$5,100.00.

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

21 Respondents shall pay the costs of the prior  
22 audit as provided in subsection (a) above on  
23 or before the effective date of the Decision.  
24 Respondents shall pay the costs of the future  
25 follow-up audit as provided in subsection (b)  
26 above within sixty (60) days of receiving an  
27 invoice from the Commissioner detailing the

1 activities performed during the audit and the  
2 amount of time spent performing those  
3 activities. The Commissioner may, in her  
4 discretion, vacate and set aside the stay  
5 order, if payment is not timely made as  
6 provided for herein, or as provided for in a  
7 subsequent agreement between Respondents and  
8 the Commissioner. The vacation and the set  
9 aside of the stay shall remain in effect until  
10 payment is made in full, or until Respondents  
11 enter into an agreement satisfactory to the  
12 Commissioner to provide for payment. Should  
13 no order vacating the stay be issued, either  
14 in accordance with this condition or condition  
15 B(2) herein, the stay imposed herein shall  
16 become permanent.

17  
18  
19  
20  
21 September 19, 2000  
DATED

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

22  
23 \* \* \*

24  
25 I have read the Stipulation and Agreement, have  
26 discussed it with my counsel, and its terms are understood by me  
27 and are agreeable and acceptable to me. I understand that I am

1 waiving rights given to me by the California Administrative  
2 Procedure Act, and I willingly, intelligently and voluntarily  
3 waive those rights, including the right of requiring the  
4 Commissioner to prove the allegations in the Accusation at a  
5 hearing at which I would have the right to cross-examine  
6 witnesses against me and to present evidence in defense and  
7 mitigation of the charges.

8  
9 CALPACIFIC, INC.  
Respondent

10  
11 9-18-00  
DATED

By:

Richard Wayne Jones  
RICHARD WAYNE JONES

12  
13  
14  
15 9-18-00  
DATED

Richard Wayne Jones  
RICHARD WAYNE JONES  
Respondent

16  
17  
18 APPROVED AS TO FORM:

19  
20  
21 9-18-00  
DATED

A. M. Mueller  
ANNA M. MUELLER  
Counsel for the Respondents

22  
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26 \* \* \*

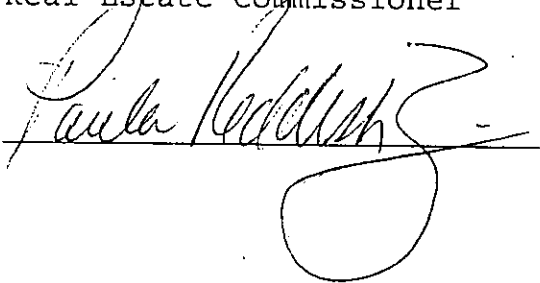


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The foregoing Stipulation and Agreement is hereby  
adopted as my Decision and shall become effective at 12 o'clock  
noon on December 4, 2000.

• IT IS SO ORDERED October 23, 2000.

PAULA REDDISH ZINNEMANN  
Real Estate Commissioner



FILED  
JUL 20 2000

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

In the Matter of the Accusation of

CALPACIFIC, INC., and  
RICHARD WAYNE JONES,

}

Case No. H-2553 SD

OAH No. L-2000060046

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 \_\_\_\_\_

Office of Administrative Hearings, 1350 Front Street,

Room 6022, San Diego, California 92101

on September 20, 2000, 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 20, 2000

By Deidre L. Johnson  
DEIDRE L. JOHNSON Counsel

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

FILED  
MAR 07 2009

DEPARTMENT OF REAL ESTATE

By Juan Armenta

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

11 \* \* \*

12 In the Matter of the Accusation of )  
13 CALPACIFIC, INC., and )  
14 RICHARD WAYNE JONES, ) NO. H-2553 SD  
15 Respondents. ) ACCUSATION  
16 )

17 The Complainant, J. Chris Graves, a Deputy Real Estate  
18 Commissioner of the State of California, for causes of Accusation  
19 against CALPACIFIC, INC., and RICHARD WAYNE JONES, is informed  
20 and alleges as follows:

21 PRELIMINARY ALLEGATIONS

22 I

23 The Complainant, J. Chris Graves, a Deputy Real Estate  
24 Commissioner of the State of California, makes this Accusation  
25 against Respondents in his official capacity and not otherwise.

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II

Respondents CALPACIFIC, INC., and RICHARD WAYNE JONES are presently licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereafter the Code).

III

At all times herein mentioned, Respondent CALPACIFIC, INC. (hereafter CPI) was and is licensed by the Department of Real Estate (hereafter the Department) as a real estate broker corporation, individually and doing business as CALPACIFIC MORTGAGE CONSULTANTS.

IV

At all times herein mentioned, Respondent RICHARD WAYNE JONES (hereafter JONES) was, and presently is licensed by the Department as an individual real estate broker, and as the designated broker officer of CPI.

V

At all times herein mentioned, Respondent CPI engaged in the business of, acted in the capacity of, advertised and/or assumed to act as a real estate broker within the State of California, including the operation and conduct of a mortgage loan brokerage business with the public wherein lenders and/or borrowers were solicited for loans secured directly or collaterally by liens on real property, and wherein such loans were arranged, negotiated, processed, and consummated on behalf of others, for or in expectation of compensation.

1 FIRST CAUSE OF ACTION

2 VI

3 Beginning in or about July of 1999, the Department  
4 conducted an audit of the books and records of CPI. During the  
5 course of the mortgage loan activities described above, CPI  
6 received and disbursed funds in trust on behalf of others,  
7 including but not limited to third-party lender funds, and  
8 deposited or caused the deposit of the trust funds into a bank  
9 account at Imperial Bank in San Diego, California, Account No.  
10 11071988, entitled "CalPacific Mortgage Consultants Escrow  
11 Division Trust Account."

12 VII

13 In connection with the collection and disbursement  
14 of the above trust funds, CPI failed to deposit and maintain  
15 the funds in the trust account, or in a neutral escrow  
16 depository, or to deliver them into the hands of the owners  
17 of the funds, in such a manner that as of June 30, 1999,  
18 there was a trust fund shortage in the approximate sum of  
19 \$3,403.06.

20 VIII

21 In connection with the receipt and disbursement of  
22 trust funds as above alleged, CPI:

- 23 (a) Failed to maintain a separate record for each  
24 beneficiary or transaction containing all  
25 information required by Section 2831.1 of the  
26 Regulations, including but not limited to daily  
27 balances;

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

7 (c) Failed to prepare and deliver to borrowers, or cause  
8 to be delivered, a written borrower disclosure  
9 statement as required by Section 10240 containing all  
10 of the information required by Section 10241 of the  
11 Code prior to the borrower becoming obligated to the  
12 complete the loan, and/or failed to retain timely  
13 executed copies of such statements with the records  
14 of the company.

15 IX

16 Within the last three years, Respondent CPI  
17 authorized or permitted withdrawals to be made from the trust  
18 account on the signatures of PALMA JARVIS, DEBBIE TURNBULL, and  
19 RENEE FERREIA, unlicensed employees of CPI. At no time herein  
20 were they, or any of them, duly bonded with the requisite  
21 fidelity bond insurance coverage, pursuant to Section 2834 of  
22 Title 10, California Code of Regulations (hereafter the  
23 Regulations).

24 X

25 Respondent CPI failed to timely notify the Department  
26 of the employment of certain real estate salesperson licensees,  
27 including but not limited to DARYL INGLE and TODD STRUYK.

1 XI

2 Respondent CPI failed to have written agreements with  
3 its agents, covering material aspects of the relationship such as  
4 supervision, duties and compensation, including but not limited  
5 to the following, whether licensed as a salesperson or as a  
6 broker under a broker-salesperson agreement: TONY STRUYK,  
7 GREGG RUDENBERG, JULIE ORIOL, CRAIG BRAMLETT, TODD STRUYK, and  
8 DARYL INGLE.

9 XII

10 The acts and/or omissions of Respondent CPI as alleged  
11 above constitute grounds for disciplinary action against CPI  
12 under the following provisions:

- 13 (a) As to Paragraph VII, under Section 10145 of the  
14 Code in conjunction with Section 10177(d) of the  
15 Code.
- 16 (b) As to Paragraph VIII(a), under Section 2831.1 of the  
17 Regulations in conjunction with Section 10177(d) of  
18 the Code.
- 19 (c) As to Paragraph VIII(b), under Section 2832.1 of the  
20 Regulations in conjunction with Section 10177(d) of  
21 the Code.
- 22 (d) As to Paragraph VIII(c), under Sections 10240 and 10241  
23 of the Code in conjunction with Section 10177(d) of  
24 the Code.
- 25 (e) As to Paragraph IX, under Section 2834 of the  
26 Regulations in conjunction with Section 10177(d) of  
27 the Code.

1 (f) As to Paragraph X, under Section 10161.8 of the Code  
2 and Section 2752 of the Regulations, in conjunction  
3 with Section 10177(d) of the Code.

4 (g) As to Paragraphs XI, under Section 2726 of the  
5 Regulations in conjunction with Section 10177(d) of  
6 the Code.

7  
8 SECOND CAUSE OF ACTION

9 XIII

10 At all times above mentioned, Respondent JONES was  
11 responsible, as the designated officer of CPI, for the  
12 supervision and control of the activities conducted on behalf of  
13 the corporation by its officers and employees. JONES failed to  
14 exercise reasonable supervision and control over the mortgage  
15 loan broker activities of CPI. In particular, JONES permitted,  
16 ratified and/or caused the conduct described in the First Cause  
17 of Action above to occur, and failed to take reasonable steps,  
18 including but not limited to the maintenance of proper trust and  
19 licensing records, and the implementation of policies, rules,  
20 procedures, and systems to ensure the compliance of the company  
21 with the Real Estate Law.

22 XIV

23 The above acts and/or omissions of JONES constitute  
24 grounds for disciplinary action under the provisions of Section  
25 10177(h) of the Code.

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27 ///



