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RECEIVED
Dept. of Real Estate

JAN 11 2001

SACRAMENTO LEGAL

5 Attorneys for Petitioner
6 HAUSERMAN REAL ESTATE

7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF PLACER**
10 **NORTH LAKE TAHOE SESSION**

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13 HAUSERMAN REAL ESTATE,

Petitioner,

v.

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16 DEPARTMENT OF REAL ESTATE,

Respondent.

No. S CV 10860

NOTICE OF ENTRY OF ORDER

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19 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

20 **PLEASE TAKE NOTICE THAT** on December 21, 2001, this Court entered its Order on
21 the Stipulation for Final Judgment. A true and correct copy of the Order is attached hereto and
22 made a part hereof by reference.

23
24 Dated: Jan. 8, 2002

WEINTRAUB GENSHEA CHEDIAK SPROUL
A Law Corporation

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28 By: 
Louis A. Gonzalez, Jr., SBN 157373
Attorneys for Petitioner Hauserman Real Estate

DEC 21 2001

JOHN MENDES
EXECUTIVE OFFICER & CLERK
By T.M. GILL Deputy

COPY

1 BILL LOCKYER, Attorney General
of the State of California
2 LAWRENCE K. KEETHE
Supervising Deputy Attorney General
3 JOHN D. SCHELL
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8 **Attorneys for Respondent**
9 **Department of Real Estate**

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF PLACER
12 NORTH LAKE TAHOE SESSION
13

14 HAUSERMAN REAL ESTATE,

Petitioner,

15 v.

16 DEPARTMENT OF REAL ESTATE,

17 Respondent.
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Case No.: S-CV-10860

**STIPULATION FOR FINAL
JUDGMENT AND ORDER**

20 It is hereby stipulated by and between petitioner Hauserman Real Estate, a corporation
21 ("Hauserman Real Estate"), by and through Louis A. Gonzalez, Weintraub, Genschlea, Chediak
22 & Sproul, attorneys of record herein for Hauserman Real Estate, and respondent Department of
23 Real Estate ("the Department"), by and through the Attorney General of the State of California,
24 attorney of record herein for the Department, as follows:

25 1. On May 27, 1998, in Case No. H-3364 SAC, before the Department of Real
26 Estate of the State of California, an Accusation ("the Accusation") was filed by the Department
27 against Hauserman Real Estate and others, and hearing was thereafter held on the Accusation
28 before an administrative law judge of the Office of Administrative Hearings.

1 2. On July 26, 2000, the Administrative Law Judge issued a proposed decision
2 ("Proposed Decision") in said proceedings which ordered, among other things, that the license
3 and license rights of Hauserman Real Estate be suspended "for a period of five (5) days from the
4 effective date of this Decision," but provided for the suspension to be stayed subject to
5 conditions specified therein, including payment of a \$250.00 monetary penalty "delivered to the
6 Department prior to the effective date of the Decision in this matter," and payment, after the
7 effective date of the decision, the cost of a follow-up audit.

8 3. On August 16, 2000, the Real Estate Commissioner issued her decision ("the
9 Decision") in said proceedings, by its terms to become effective at 12 o'clock noon on September
10 14, 2000, adopting the Proposed Decision.

11 4. On September 13, 2000, a Petition for Reconsideration and a Request for
12 Immediate Stay of the Decision were filed in said proceedings on behalf of Hauserman Real
13 Estate. On September 14, 2000, the Real Estate Commissioner issued her order staying the
14 effective date of the Decision to 12 o'clock noon on October 16, 2000.

15 5. No order was issued after September 14, 2000, either further extending the
16 effective date or granting reconsideration of the Decision. On October 16, 2000, the Real Estate
17 Commissioner issued her Order Denying Reconsideration of the Decision.

18 6. Hauserman Real Estate failed to deliver any portion of the \$250.00 monetary
19 penalty to the Department prior to 12 o'clock noon on October 16, 2000. On October 16, 2000,
20 the license and license rights of Hauserman Real Estate were suspended pursuant to the Decision
21 for the five-day period commencing October 16, 2000. On October 16, 2000, a Petition for Writ
22 of Mandate was filed herein on behalf of Hauserman Real Estate. A dispute has arisen between
23 Hauserman Real Estate and the Department regarding the notice of the Department's Order
24 Denying Reconsideration of the Decision and the suspension of Hauserman Real Estate's license
25 and licensing rights.

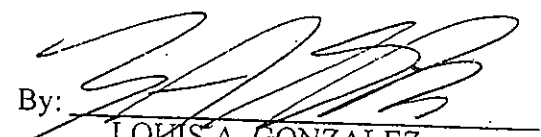
26 7. The parties hereto intend by this Stipulation For Final Judgment And Order to
27 provide Hauserman Real Estate an additional opportunity to petition as provided in section
28 10175.2 of the Business and Professions Code ("the Code") to stay imposition of a suspension of

1 its license and license rights upon the terms and conditions specified in the Proposed Decision,
2 and also to fully and finally settle and dispose of the Petition for Writ of Mandate filed herein on
3 behalf of Hauserman Real Estate.

4 8. The parties hereto hereby stipulate and request that the Court enter the Final
5 Judgment And Order set forth below, and agree to abide by the terms thereof.

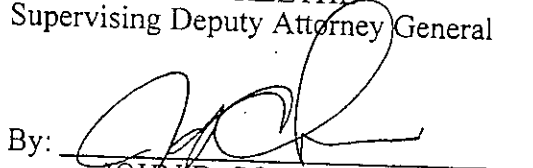
6
7 HAUSERMAN REAL ESTATE
8 Petitioner

9 Dated: October 3, 2001

10 By: 
11 LOUIS A. GONZALEZ
12 Attorney for Petitioner

13 BILL LOCKYER, Attorney General
14 of the State of California
15 LAWRENCE K. KEETHE
16 Supervising Deputy Attorney General

17 Dated: September 6, 2001

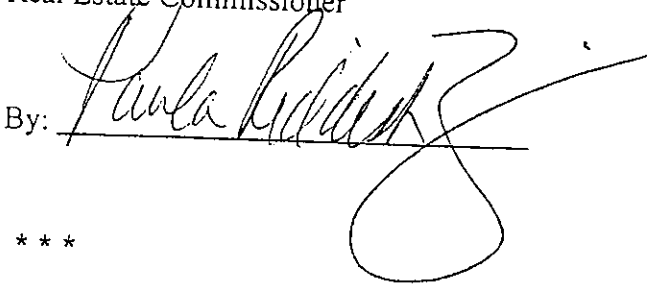
18 By: 
19 JOHN D. SCHELL
20 Deputy Attorney General
21 Attorney for Respondent

22 * * *

23 I hereby consent to entry of the Final Judgment and Order set forth below.

24 PAULA REDDISH ZINNEMANN
25 Real Estate Commissioner

26 Dated: 11/15/01

27 By: 

28 * * *

FINAL JUDGMENT AND ORDER

UPON REQUEST AND STIPULATION OF THE PARTIES, AND GOOD CAUSE
APPEARING, IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

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1. These proceedings are hereby remanded to the Department of Real Estate for further proceedings consistent with this Final Judgment and Order.

2. The effective date of the Decision of August 16, 2000, entered against Hauserman Real Estate in Case No. H-3364 SAC, is hereby extended to thirty (30) days after the issuance of this Final Judgment and Order. (1-20-02)

3. The Real Estate Commissioner shall grant the petition of Hauserman Real Estate provided for in section 10175.2 of the Business and Professions Code upon the terms and conditions specified in the Proposed Decision.

4. The Petition for Writ of Mandate filed herein on behalf of Hauserman Real Estate shall be and hereby is dismissed with prejudice.

5. Each of the parties hereto shall bear its own attorney's fees and costs incurred herein.

IT IS SO ORDERED.

James Garbolino

Dated: DEC 21 2001

JUDGE OF THE SUPERIOR COURT

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PROOF OF SERVICE

I am a citizen of the United States, employed in the City and County of Sacramento, California. My business address is 400 Capitol Mall, 11th Floor, Sacramento, California 95814. I am over the age of 18 years and not a party to, nor interested in, the within action. On this date, I caused to be served the following documents in the following manner:

NOTICE OF ENTRY OF ORDER

X United States mail by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing mail in accordance with this office's practice whereby the mail is deposited in a United States mailbox after the close of the day's business.

_____ By personally delivering, or causing to be delivered, a true copy thereof to the person and at the address set forth below.

_____ Via overnight courier.

_____ Via facsimile.

Lawrence Keethe
Office of the Attorney General
P.O. Box 944255
Sacramento, CA 94244

James Beaver
Department of Real Estate
P.O. Box 18700
Sacramento, CA 95818-7000

I declare under penalty of perjury that the foregoing is true and correct.

Executed on Jan. 8, 2002, at Sacramento, California.

Tena Reynolds
Tena Reynolds

FILED

OCT 16 2000

DEPARTMENT OF REAL ESTATE

Laurie G. Ziser

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-3364 SAC
HAUSERMAN REAL ESTATE, et al.,)	OAH NO. N-1998070563
Respondents.)	

ORDER DENYING RECONSIDERATION

On August 16, 2000, a Decision was rendered in the above-entitled matter. The Decision is to become effective October 16, 2000.

On September 13, 2000, Respondent petitioned for reconsideration of the Decision of August 16, 2000.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of August 16, 2000, and reconsideration is hereby denied.

IT IS HEREBY ORDERED October 16, 2000.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

John R. Kibbator

FILED

SEP 14 2000

DEPARTMENT OF REAL ESTATE

By *Lucia A. Zinnemann*

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-3364 SAC
)	
HAUSERMAN REAL ESTATE, et al.,)	
)	
Respondents.)	

ORDER STAYING EFFECTIVE DATE

On August 16, 2000, a Decision was rendered in the above-entitled matter to become effective September 14, 2000.

IT IS HEREBY ORDERED that the effective date of the Decision of the Real Estate Commissioner of August 16, 2000, is stayed for a period of thirty (30) days.

The Decision of the Real Estate Commissioner of August 16, 2000, shall become effective at 12 o'clock noon on October 16, 2000.

DATED: September 14, 2000

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

John R. Beaton

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

HAUSERMAN REAL ESTATE,
a corporation,
DANIEL MARTIN HAUSERMAN, Jr.,
THOMAS ANSON MILLS,
DAVID McKEAN WIDMER,
MICHAEL GARRATT DUNSFORD,
PATRICIA J. GUILFORD,
TIMOTHY REX HAUSERMAN,
and
OTTO HUB,

Respondents.

No. H-3364 SAC

OAH No. N1998070563

PROPOSED DECISION

Administrative Law Judge Muriel Evens, State of California, Office of Administrative Hearings, heard this matter in Sacramento, California, on December 14 - 18 and 21, 1998; April 5 - 9, 12 - 15 and 19 - 20; May 20 - 21 and June 1 - 2, 1999. In June 1999, respondents moved to dismiss the Accusation. The parties submitted the brief on the matter. On February 22, 2000, the ruling on the Motion to Dismiss was consolidated with the Proposed Decision and the parties were given an opportunity to brief the full issues in the matter. The briefs were received and the matter submitted on June 5, 2000.

James Beaver, Counsel, represented complainant Charles W. Koenig, a Deputy Real Estate Commissioner.

Weintraub, Genshlea & Sproul, by Louis Gonzalez, Attorney at Law, represented respondents Daniel and Timothy Hauserman and Hauserman Real Estate.

Porter Simon, by James Simon, Attorney at Law, represented respondents Thomas Anson Mills, Michael Garratt Dunsford, Patricia J. Guilford and Otto Hub.

Respondent David McKean Widmer resolved the allegations against him by stipulation with the Department. He was then no longer a party to this matter.

ISSUES

1. Did respondents violate Business and Professions Code section 10177.4 (referral of customers for compensation) in their relationship with First American Title Company?
2. Did respondent Hauserman Real Estate violate Business and Professions Code sections 10145 (handling of trust funds) and 10177(d) (willful disregard or violation of the Real Estate Law or Regulations) and California Code of Regulations, Title 10, section 2831(trust fund records), by failing to keep a record in columnar form of trust funds received, but not deposited into any trust bank account?
3. Did respondent Dan Hauserman fail to exercise reasonable supervision over the acts of respondent Hauserman Real Estate, in violation of Business and Professions Code sections 10159.2 (corporate officer in charge responsible for supervision and control of activities) and 10177(d) (willful disregard or violation of the Real Estate Law), (g) (negligence or incompetence) and (h) (failure to exercise reasonable supervision and control)?

FACTUAL FINDINGS

1. At all relevant times, respondent Hauserman Real Estate was licensed by the Department as a corporate real estate broker by and through respondent Daniel Martin Hauserman, Jr. (Dan Hauserman), as designated officer-broker of respondent Hauserman Real Estate, to qualify the corporation and to act for the corporation as a real estate broker.

At all relevant times, respondent Dan Hauserman was licensed by the Department as a real estate broker individually and as the designated officer-broker of respondent Hauserman Real Estate. As the designated officer-broker, respondent Dan Hauserman was responsible for the supervision of the activities of the officers, agents, real estate licensees and employees of respondent Hauserman Real Estate for which a real estate license is required.

At all relevant times, Thomas Anson Mills was licensed by the Department as a real estate broker.

At all relevant times, Michael Garratt Dunsford, Patricia J. Guilford, Timothy Rex Hauserman and Otto Hub were licensed by the Department as real estate salespersons, in the employ of either respondent Dan Hauserman or respondent Hauserman Real Estate.

2. Business and Professions Code section 10177.4 allows the Commissioner to discipline a licensee who:

“(a) ...claims, demands, or receives a commission, fee, or other consideration, as compensation or inducement, for referral of customers to any escrow agent..., title insurer, controlled escrow company, or underwritten company.....”

The following are not considered to be “other consideration”:

“(b) Furnishing of documents, services, information, ... or items of a like nature which are customary in the real estate business and which relate to the product or services of the furnisher and which are available on a similar and essentially equal basis to all customers or the agents of the customers of the furnisher.”

Hauserman Real Estate is a large brokerage in Tahoe City, with the primary focus on the sale of second or vacation homes. In almost all cases at least one party does not reside in the Tahoe area, and often both parties reside at a distance. While respondents have used various escrow/title companies, the company of choice in most cases has been First American Title. The agents have found their service to be the best, and their multi-branch size allows parties to the transactions to be able to find a branch near their homes in the Bay area, or elsewhere, when they need to close escrow. In Tahoe City, the First American office is located in a shopping center upstairs of respondents. Respondent Hauserman Real Estate is the largest client of First American in Tahoe City.

In the early to mid-90s, some title companies, including Old Republic, Commonwealth Title, North American Title and Fidelity Title, began providing escrow coordination services to real estate firms. These services assisted realtors through the escrow process to accurately and efficiently close transactions. By 1996, escrow coordination services were offered in Southern California, the Bay Area, from Santa Clara County to Sonoma County, and in Fresno, Sacramento and Placer counties. First American Title started its program when parties complained they could not get hold of escrow officers. The program was well received by the buyers and sellers, and First American Title believed it reduced errors by involving the escrow assistant at the real estate office.

After it was already in operation elsewhere, in 1996 First American Title decided to expand its escrow coordination program, the Preferred Provider Program (PPP) to Tahoe City. First American Title staff met with respondent Dan Hauserman and a partner in or about July 1996 to see if respondent Hauserman Real Estate would be interested. First American Title staff was then invited to meet with the Hauserman Real Estate staff to present the PPP. At each of the meetings, First American Title staff represented that the program had been operating in others areas, had been checked out and had been approved by State regulators. Respondent Dan Hauserman then advised his staff that they could use the PPP if

they wanted to. Hauserman Real Estate was the only brokerage in the area where First American Title rented space to place an "in-house" coordinator, Diane Austin. Hauserman Real Estate had previously provided a substantial amount of business for First American Title. First American Title determined that the amount of existing business from Hauserman Real Estate justified an in-house coordinator. As an in-house coordinator, Austin had a desk and telephone and place designated for her to work. She was not there full-time, as she also worked out of the main office upstairs in the shopping center. Other brokerages, which did not have the quantity of escrows as Hauserman Real Estate, were offered the services of a "mobile" coordinator, whose duties were the same as Austin's, but who did not spend as much time in any one brokerage office. It is not uncommon for a brokerage to prefer the services of a particular escrow assistant or officer at a title/escrow company.

At all relevant times, Austin was employed by First American Title. Her duties as an escrow coordinator would begin upon the opening of the escrow following the signing of the purchase contract by the parties to the real estate transaction. In preparing the sale for closure, Austin would assist the agent in organizing the file and checking for signatures. At the direction of the agent, she would include in her regular correspondence with a party various documents for signature. The documents included, at various times, disclosure statements and purchase contracts, among others. Austin gave no explanation of the documents, but just requested that the item be signed and returned, for example. In the case of the purchase contract, Austin requested an original signature, when the parties had previously exchanged the contract by facsimile. Also at the request of an agent, Austin might contact a pest control or home inspection company, selected by the party, to arrange for an inspection. There was no evidence Austin engaged in any activity requiring a real estate license. She did provide extra service to the realtors and the clients. Escrow assistants from other escrow companies also did these tasks performed by Austin. However, these tasks were performed more regularly by Austin, as opposed to occasionally by employees of escrow companies without coordinator services. The services Austin provided all assisted in moving the sale through escrow faster and with fewer complications.

At all relevant times, neither the Department of Real Estate nor the Department of Insurance had any rule or regulation specifying the relationship between escrow coordinators and real estate licensees. Neither Department had brought any matter against any licensee regarding the use of escrow coordinators, except this matter by the Department of Real Estate.

There was no evidence respondents claimed, demanded or received a commission or fee in their use of First American Title as an escrow company. Hauserman Real Estate did receive some rent from First American. The amount was carefully calculated to represent the pro rata share of rent, utilities, copying costs, etc. incurred by Austin. Respondents did receive coordinator services that had previously been provided to other licensees by various title companies elsewhere in California, and were just starting in North Tahoe. These same services offered to Hauserman Real Estate were offered by First American Title to other realtors in the North Tahoe area. The Department argues that Austin's services were

“compensation or inducement for referral of customers.” The Department believes that is the reasonable inference to be drawn from the circumstantial evidence. Whatever the motivation of First American, there was no evidence respondent Hauserman Real Estate altered its practices or accepted any compensation or inducement for referral of customers to First American. In fact, the evidence was that the amount of business given by Hauserman agents to First American was about the same before Austin’s services were even discussed, during Austin’s services and after her services ceased.

3. Title 10, California Code of Regulations, section 2831 instructs licensees in maintaining trust fund records.

“(a) Every broker shall keep a record of all trust funds received, including uncashed checks held pursuant to instructions of his or her principal. This record, including records maintained under an automated data processing system, shall set forth in chronological sequence the following information in columnar form:

“(1) Date trust funds received.

“(2) From whom trust funds received.

“(3) Amount received.

“(4) ...

“(c) Maintenance of journals of account cash receipts and disbursements, or similar records, or automated data processing systems, including computer systems,... in accordance with generally accepted accounting principles, shall constitute compliance with subdivision (a)....

“(e) A broker is not required to keep records pursuant to this section of checks which are written by a principal, given to the broker and made payable to third parties for the provision of services, including but not limited to escrow, credit and appraisal services, when the total amount of such checks for any transaction from that principal does not exceed \$1,000.00....”

As almost all the home sales in the Tahoe area include at least one party who resides outside the area, contracts are signed and sent by facsimile, with hard copies to follow. The standard Real Estate Purchase Contract and Receipt for Deposit was designed for the buyer to be local and present a deposit. The custom in the North Tahoe area was for a deposit to be listed as received, as required by the form, but with the buyer’s agent advising that the check

would be in the mail, and was not in hand. As a result, the date of the contract and check would not necessarily be the date received by the agent.

Respondent Hauserman Real Estate required that deposit checks be made out to the escrow company, and the deposit checks were forwarded there. Some deposit checks, especially deposit increases, were sent directly by the buyer to the escrow company. Respondent Hauserman Real Estate did not have a method of noting in the file or elsewhere whether a deposit was sent directly to the escrow company.

Respondent Hauserman Real Estate maintained a required log of trust funds received, but not placed in the broker's trust account. Regulation 2831 does not set any specific timelines for logging the receipt of funds. Where numerous agents are making entries, it would be expected that some might be out of order by a few days. In some instances, agents chose to leave a line open between entries for ease of entry, and other agents filled in behind them. As a result, the Hauserman Real Estate chronological log listed entries in general, but not precise, order of receipt. Rule 2831 does permit the use of computer systems, which can re-sort data to place information in precise chronological order, even if not entered into the system in such order. No evidence was offered as to the purpose for the requirement for sequencing, or whether the Department had an interest in noting precise order for date of hand entries that it did not have for computer entries.

a. In the Lipnosky to Fee transaction (Exhibit 25), the buyer lived in Walnut Creek. The purchase offer was made by facsimile on April 23, 1997 and accepted April 24, 1997. The deposit check for \$2000 was dated April 24, 1997 (a Thursday). Respondent Hub logged it in at respondent Hauserman Real Estate and forwarded it to First American on April 28, 1997 (a Monday). He did not recall whether the check was mailed or brought in to him. The duty to log does not arise until the check is actually received. There was no evidence of the date the check was actually received at Hauserman Real Estate. There was a subsequent increase in the deposit for this transaction, which was not logged. However, the Department did not establish that the second deposit check was ever received at Hauserman Real Estate.

b. In Berchthold to Shaw (Exhibit 26), the buyer lived in Southern California. On or about April 19, 1997, respondent Dunsford advised the seller's agent that the deposit check would be in the mail. The seller's agent asked that the deposit check be delayed, as the sale might involve four parcels and the agent was not sure whether the seller wanted offers on all or some of the parcels. On or about April 28, the sellers accepted the offer. When the buyer sent in the deposit to respondent Dunsford, the buyer had made the check payable to respondent Hauserman Real Estate, rather than to First American. Dunsford immediately returned the check and requested another check for First American. The turn-around of the initial check did not constitute a "receipt" of the check, for the purpose of logging. Shaw sent a check for \$5000, dated May 4, 1997, made payable to First American Title, and addressed to First American at its Tahoe City address. First American received

that check on or about May 7, 1997. Respondent Dunsford did not log in that check, but there was no evidence it was ever received at Hauserman Real Estate.

c. In Stallard to Humfield (Exhibit 27), respondent Dan Hauserman received an initial deposit of \$1000 on April 20, 1997, although it is logged after a deposit received April 28. Respondent was under no duty, at that time to even log the deposit. With the seller's counter offer acceptance by the buyer, the deposit was to be increased by \$3802.49. The buyer faxed the accepted and signed counter offer on May 6, 1997 and indicated a check was in the mail, presumably the deposit increase. However, on May 6, respondent Dan Hauserman spoke with the buyer and told her of a plumbing leak at the property. Rather than sending the deposit increase in the mail, she went up to the property to view the problem. When the repair was satisfactory, she brought the check to respondent Hauserman Real Estate and handed it to Austin, with a prewritten note to respondent Dan Hauserman previously attached. As he did not receive the check, he did not have to log it.

d. In Flippen to Richmond (Exhibit 28), respondent Dan Hauserman received a deposit of \$3000 on June 16, 1997 and logged it after an entry of June 18. A subsequent deposit of \$1000 was received June 23 and logged that date.

e. In Smith to Holland (Exhibit 29), Holland's address is shown as Tahoe City. There was no evidence Holland filed an offer by facsimile. Agent David Widmer, formerly a respondent in this action, acknowledged receipt of a \$5000 check, dated July 7, 1997, with the offer of July 7, 1997. Unlike Berchthold to Shaw in Finding 3(b) above, where the deposit check was immediately returned to the buyer because it had been written to respondent Hauserman Real Estate, here respondent Timothy Hauserman accepted and endorsed the check, which had been written to respondent Hauserman Real Estate. The check was deposited with First American on July 9. The evidence established that respondent Hauserman Real Estate did receive the deposit on or about July 7, however it was not logged prior to being forwarded to First American on July 9, 1997.

f. In Blanchard to Cunningham (Exhibit 30), Cunningham had rented the property for about a year when Blanchard decided to sell. Blanchard contacted respondent Timothy Hauserman who contacted Cunningham. Cunningham decided he wanted to purchase the property and respondent Timothy Hauserman represented both parties. As Blanchard was in Arizona at the time, the original contract documents were handled by facsimile. The deposit check was not received until Cunningham brought it directly to First American when escrow opened. Accordingly, respondent Hauserman Real Estate did not receive the deposit, so there was no duty to log the check.

g. In Tarczy/Turnquist to Elliott (Exhibit 31), respondent Dunsford received a \$1000 deposit check, which he did not log. Respondent had no duty to log a deposit check where the check does not exceed \$1000.

h. In Frizelle to Ryan (Exhibit 35), the Department argues that agent Widmer received on November 21, 1997, a deposit check of \$1000 (number 4007), which was turned over to Austin the same day. The Department then argues that Widmer received a second deposit check of \$4400 (number 4008), also dated November 21, 1997 and given to Austin on December 12, 1997, which was not logged. Respondents agree with the Department that neither check was logged, but argue neither needed to be. Respondents argue there was no duty to log the \$1000 check when received and that the second check was turned over immediately to Austin on December 12, 1997, so therefore not received by Hauserman Real Estate. Neither argument appears consistent with the evidence, at least as to the second check. According to Widmer's testimony and Department exhibit 13, the check log, a check in the Ryan matter for \$4400 was logged as received November 21 and forwarded December 12. Since Widmer had both checks on November 21, he was also obligated to log the check for \$1000.

Throughout the testimony there was much discussion regarding the timeliness of logging deposits. However, the Accusation refers, not to timeliness or chronological order, but to the failure to keep a record in columnar form. Rule 2831 defines the information to be recorded in columnar form, and respondent Hauserman Real Estate did maintain that information for deposits which were in fact logged, albeit sometimes out of strict chronological order.

4. Business and Professions Code section 10159.2 states, in relevant part,

“(a) The officer designated by a corporate broker license pursuant to Section 10211 shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of this division, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required.”

Business and Professions Code section 10177(g) and (h) provide that the Commissioner may discipline a licensee who:

“(g) Demonstrated negligence or incompetence in performing any act for which he or she is required to hold a license.

“(h) As a broker licensee, failed to exercise reasonable supervision over the activities of his other salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.”

The Department offered no competent evidence of standards for supervision of staff by the broker of record. The evidence offered by respondent Dan Hauserman's witness established that respondent Dan Hauserman reviewed agent files, maintained and reviewed

the check log, conducted regular training meetings that staff was required to attend, fined staff for errors in their files, maintained written policies and procedures and was available for consultation. Even agent Widmer, who was responsible for the two failures to log deposit checks set forth in Finding 3, stated respondent Dan Hauserman often reminded the staff of their obligation to log deposit checks. Respondent Dan Hauserman did exercise reasonable supervision over the activities of his staff.

LEGAL CONCLUSIONS

1. The Department argues that respondents sought Austin's services "as compensation or inducement for referral of customers." The Department then argues that:

"It does not matter whether Respondents were in fact influenced or induced to place title or escrow business with First American. It suffices that each Respondent received consideration provided by First American as compensation for referrals or to influence future referrals."

Even if the provision of extra services is viewed as other consideration, the clause "as compensation or inducement" must have some meaning, or, in theory, the clause would not be there. It is an element of the ground for discipline. The Department offered no proof of that element, but claims a "reasonable inference" can be drawn. Such an inference could not be drawn here where the evidence establishes that in fact there was no change in the amount of business provided by respondents to First American. By then arguing that it does not matter whether in fact respondents were influenced or induced to use First American, the Department seems to be arguing that the motivation of First American, rather than the action of respondents, is sufficient to discipline them as real estate licensees.

Providing better service is a way for a business to earn customer loyalty and support. First American Title offered better service to Hauserman Real Estate and its agents and clients, through branch offices around the state and through escrow coordination services. It charged no additional fee for these services. First American did remain the choice of the respondents for many of their transactions because of the quality of its work and the convenience of its branch offices.

Complainant failed to establish a prima facie case of violation of Business and Professions Code section 10177.4, as set forth in Finding 2.

2. The Department charged that respondent Hauserman Real Estate failed to keep a record in columnar form of trust funds received, but not deposited into any trust bank account, as required by Business and Professions Code section 10145 and Regulation 2831. Respondent Hauserman Real Estate clearly kept such a log, but the issue is whether all

deposits required to be recorded were in fact recorded. In two instances involving agent Widmer, Finding 3(e) and (h), checks required to be logged were not.

Complainant did establish a violation of Business and Professions Code section 2831, as set forth in Finding 3.

3. A supervising broker cannot guarantee absolute compliance with all facets of the Real Estate Law and Regulations. Employees are human beings and will make mistakes. Certainly the broker must exercise that level of supervision that increases communications between staff and with clients, minimizes problems, finds patterns of violations and sets a standard and expectation of compliance in the office. The supervisor needs to be present often enough to be aware of how the business is being operated. Here, the evidence established that respondent Dan Hauserman did adequately supervise the Hauserman Real Estate staff. Complainant failed to establish a prima facie case of violation of Business and Professions Code sections 10177(d), 10177(g), 10177(h) or 10159.2.

ORDER

All licenses and licensing rights of respondent Hauserman Real Estate under the Real Estate Law are suspended for a period of five (5) days from the effective date of this Decision; provided, however, that if respondent petitions, said suspension shall be stayed upon condition that:

1. Respondent pays a monetary penalty pursuant to section 10175.2 of the Business and Professions Code at the rate of \$50.00 for each day of the suspension for a total monetary penalty of \$250.00.

2. Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be delivered to the Department prior to the effective date of the Decision in this matter.

3. Pursuant to section 10148 of the Business and Professions Code, respondent Hauserman Real Estate shall pay the Commissioner's reasonable cost for an audit to determine if respondent has corrected the trust fund violation found in paragraph 2 of the Determination of Issues. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons 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. Respondent shall pay such cost within 45 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 his 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 the respondent and the Commissioner. The vacation and the set aside of the stay shall remain in effect until payment is made in full, or until respondent enters into an agreement satisfactory to the Commissioner to provide for payment.

4. No further cause for disciplinary action against the real estate license of respondent occurs within one year from the effective date of the Decision in this matter.

5. If respondent fails to pay the monetary penalty in accordance with the terms and conditions of the Decision, the Commissioner may, without a hearing, order the immediate execution of all or any part of the stayed suspension in which event the respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.

6. If respondent pays the monetary penalty and if no further cause for disciplinary action against the real estate license of respondent occurs within one year from the effective date of the Decision, the stay hereby granted shall become permanent.

DATED: July 26, 2000



MURIEL EVENS
Administrative Law Judge
Office of Administrative Hearings

FILED

SEP 14 2000

DEPARTMENT OF REAL ESTATE

Laurie A. Zinnemann

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)

No. H-3364 SAC)

HAUSERMAN REAL ESTATE,)
a corporation;)

OAH NO. N-1998070563)

DANIEL MARTIN HAUSERMAN, JR.;)
THOMAS ANSON MILLS;)
DAVID McKEAN WIDMER;)
MICHAEL GARRATT DUNSFORD;)
PATRICIA J. GUILFORD;)
TIMOTHY REX HAUSERMAN;)
and OTTO HUB,)

DISMISSAL)

Respondents.)

The Accusation herein filed on May 27, 1998, is

DISMISSED as to Respondents DANIEL MARTIN HAUSERMAN, JR., THOMAS ANSON MILLS, MICHAEL GARRATT DUNSFORD, PATRICIA J. GUILFORD, TIMOTHY REX HAUSERMAN, and OTTO HUB.

IT IS SO ORDERED this 12 day of September, 2000.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish Zinnemann

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

FILED
JAN 15 1999
DEPARTMENT OF REAL ESTATE

Laurie A. Zain

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-3364 SAC
12 DAVID McKEAN WIDMER) OAH No. 199720137
13 Respondent.) STIPULATION AND AGREEMENT

14 It is hereby stipulated by and between Respondent
15 DAVID McKEAN WIDMER (hereinafter "Respondent"), individually and
16 by and through Louis A. Gonzalez, Weintraub, Genschlea & Sproul,
17 attorneys of record herein for Respondent, and the Complainant,
18 acting by and through James L. Beaver, Counsel for the
19 Department of Real Estate, as follows for the purpose of
20 settling and disposing of the Accusation filed on May 27, 1998
21 in this matter (hereinafter "the Accusation") as against
22 Respondent:

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

H-3364 SAC

DAVID McKEAN WIDMER

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

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

7 3. On June 11, 1998, Respondent filed a Notice of
8 Defense pursuant to Section 11505 of the Government Code for the
9 purpose of requesting a hearing on the allegations in the
10 Accusation. Respondent hereby freely and voluntarily withdraws
11 said Notice of Defense. Respondent acknowledge that Respondent
12 understands that by withdrawing said Notice of Defense
13 Respondent will thereby waive Respondent's right to require the
14 Commissioner to prove the allegations in the Accusation at a
15 contested hearing held in accordance with the provisions of the
16 APA and that Respondent will waive other rights afforded to
17 Respondent in connection with the hearing such as the right to
18 present evidence in defense of the allegations in the Accusation
19 and the right to cross-examine witnesses.

20 4. Respondent, pursuant to the limitations set
21 forth below, hereby admits that the factual allegations in
22 Paragraphs I through IX of the Accusation are true and correct
23 and the Real Estate Commissioner shall not be required to
24 provide further evidence to prove such allegations.

25 5. It is understood by the parties that the Real
26 Estate Commissioner may adopt the Stipulation and Agreement as
27 his decision in this matter, thereby imposing the penalty and
sanctions on Respondent's real estate license and license rights



1 as set forth in the "Order" below. In the event that the
2 Commissioner in his discretion does not adopt the Stipulation
3 and Agreement, it shall be void and of no effect, and Respondent
4 shall retain the right to a hearing and proceeding on the
5 Accusation under all the provisions of the APA and shall not be
6 bound by any admission or waiver made herein.

7 6. Except for any cause for Accusation arising out
8 of the transactions described in paragraph IX of the Accusation,
9 the Order or any subsequent Order of the Real Estate
10 Commissioner made pursuant to this Stipulation and Agreement
11 shall not constitute an estoppel, merger or bar to any further
12 administrative or civil proceedings by the Department of Real
13 Estate with respect to any matters which were not specifically
14 alleged to be causes for accusation in this proceeding.

15 DETERMINATION OF ISSUES

16 By reason of the foregoing stipulations, admissions
17 and waivers and solely for the purpose of settlement of the
18 pending Accusation without hearing, it is stipulated and agreed
19 that the following Determination of Issues shall be made:

20 I

21 The acts and omissions of Respondent described in the
22 Accusation are grounds for the suspension or revocation of the
23 licenses and license rights of Respondent under the provisions of
24 Section 10177.4 of the Code in conjunction with section 10177(d)
25 of the Code.

26 ///

27 ///



ORDER

I

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2
3 All licenses and licensing rights of Respondent DAVID
4 McKEAN WIDMER under the Real Estate Law are suspended for a
5 period of five (5) days from the effective date of the Decision
6 in this matter; provided, however, that if Respondent petitions,
7 said suspension (or a portion thereof) shall be stayed upon
8 condition that:

9 1. Respondent pays a monetary penalty pursuant to
10 Section 10175.2 of the Business and Professions Code at the rate
11 of \$200.00 for each day of the suspension for a total monetary
12 penalty of \$1,000.00.

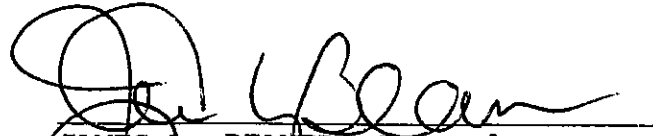
13 2. Said payment shall be in the form of a cashier's
14 check or certified check made payable to the Recovery Account of
15 the Real Estate Fund. Said check must be delivered to the
16 Department prior to the effective date of the Decision in this
17 matter.

18 3. No further cause for disciplinary action against
19 the real estate license of Respondent occurs within one year from
20 the effective date of the Decision in this matter.

21 4. If Respondent fails to pay the monetary penalty in
22 accordance with the terms and conditions of the Decision, the
23 Commissioner may, without a hearing, order the immediate
24 execution of all or any part of the stayed suspension in which
25 event the respondent shall not be entitled to any repayment nor
26 credit, prorated or otherwise, for money paid to the Department
27 under the terms of this Decision.


1 5. If Respondent pays the monetary penalty and if no
2 further cause for disciplinary action against the real estate
3 license of Respondent occurs within one year from the effective
4 date of the Decision, the stay hereby granted shall become
5 permanent.

6 Dec 15, 1998
DATED


JAMES L. BEAVER, Counsel
Department of Real Estate
* * *

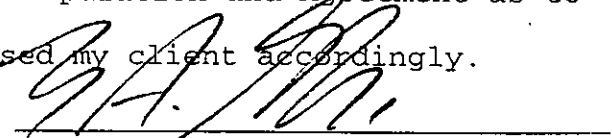
9 I have read the Stipulation and Agreement and have
10 discussed its terms with my attorney and its terms are
11 understood by me and are agreeable and acceptable to me. I
12 understand that I am waiving rights given to me by the
13 California Administrative Procedure Act (including but not
14 limited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

21 12/15/98
DATED


DAVID MCKEAN WIDMER
Respondent
* * *

24 I have reviewed the Stipulation and Agreement as to
25 form and content and have advised my client accordingly.

26 12/15/98
DATED


LOUIS A. GONZALEZ
Attorney for Respondent
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The foregoing Stipulation and Agreement is hereby
adopted by as my Decision in this matter and shall become
effective at 12 o'clock noon on February 4, 1999

IT IS SO ORDERED December 28, 1998.

Real Estate Commissioner

Betty R. Ludeman
BY: Betty R. Ludeman
Assistant Commissioner

FILED
SEP. 18 1998

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Laurie A. Ziss

In the Matter of the Accusation of

HAUSERMAN REAL ESTATE,
et al.,

}

Case No. H-3364 SAC

OAH No. N-1998070563

Respondent

FIRST AMENDED
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, 560 J Street, Suite 340/360,
Sacramento, CA 95814

on December 14 - 23, 1998, 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

By James L. Beaver
JAMES L. BEAVER Counsel

Dated: September 18, 1998

FILED
AUG 18 1998

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Laurie A. Zin

In the Matter of the Accusation of

HAUSERMAN REAL ESTATE,
et al.,

}

Case No. H-3364 SAC

OAH No. N-1998070563

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
Office of Administrative Hearings, 560 J Street, Suite 340/360,
Sacramento, CA 95814

on November 2 - 6, 1998, 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: August 18, 1998

By James L. Beaver
JAMES L. BEAVER Counsel

1 JAMES L. BEAVER, Counsel (SBN 60543)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789
6 -or- (916) 227-0788

FILED
MAY 27 1998
DEPARTMENT OF REAL ESTATE

Laurie A. Zain

7 BEFORE THE DEPARTMENT OF REAL ESTATE

8 STATE OF CALIFORNIA

9 * * *

10	In the Matter of the Accusation of)	
)	NO. H-3364 SAC
11	HAUSERMAN REAL ESTATE,)	
	a corporation;)	<u>ACCUSATION</u>
12	DANIEL MARTIN HAUSERMAN, JR.;)	
	THOMAS ANSON MILLS;)	
13	DAVID McKEAN WIDMER;)	
	MICHAEL GARRATT DUNSFORD;)	
14	PATRICIA J. GUILFORD;)	
	TIMOTHY REX HAUSERMAN;)	
15	and OTTO HUB,)	
)	
16	Respondent.)	

17
18 The Complainant, Charles W. Koenig, a Deputy Real Estate
19 Commissioner of the State of California, for cause of Accusation
20 against HAUSERMAN REAL ESTATE, a corporation; DANIEL MARTIN
21 HAUSERMAN, JR.; THOMAS ANSON MILLS; DAVID McKEAN WIDMER; MICHAEL
22 GARRATT DUNSFORD; PATRICIA J. GUILFORD; TIMOTHY REX HAUSERMAN; and
23 OTTO HUB (hereinafter "Respondents"), is informed and alleges as
24 follows:

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I

Respondents are presently licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (hereinafter "Code").

II

The Complainant, Charles W. Koenig, a Deputy Real Estate Commissioner of the State of California, makes this Accusation against Respondents in his official capacity.

III

At all times herein mentioned, Respondent HAUSERMAN REAL ESTATE (hereinafter "HRE") was and now is licensed by the Department of Real Estate of the State of California (hereinafter "the Department") as a corporate real estate broker by and through Respondent DANIEL MARTIN HAUSERMAN, JR. (hereinafter "DANIEL HAUSERMAN") as designated officer-broker of Respondent HRE to qualify said corporation and to act for said corporation as a real estate broker.

IV

At all times herein mentioned, Respondent DANIEL HAUSERMAN was and now is licensed by the Department as a real estate broker, individually and as designated officer-broker of Respondent HRE. As said designated officer-broker, Respondent DANIEL HAUSERMAN was at all times mentioned herein responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate licensees and employees of Respondent HRE for which a license is required.

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V

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2 At all times herein mentioned, Respondents THOMAS ANSON
3 MILLS (hereinafter "MILLS") and DAVID McKEAN WIDMER (hereinafter
4 "WIDMER") were and now are licensed by the Department as real
5 estate brokers.

6 VI

7 At all times herein mentioned, Respondents MICHAEL
8 GARRATT DUNSFORD (hereinafter "DUNSFORD"); PATRICIA J. GUILFORD
9 (hereinafter "GUILFORD"); TIMOTHY REX HAUSERMAN (hereinafter
10 "TIMOTHY HAUSERMAN"); and OTTO HUB (hereinafter "HUB") were and
11 now are licensed by the Department as real estate salespersons.

12 VII

13 Whenever reference is made in an allegation in this
14 Accusation to an act or omission of Respondent HRE, such
15 allegation shall be deemed to mean that the officers, directors,
16 employees, agents and real estate licensees employed by or
17 associated with Respondent HRE committed such act or omission
18 while engaged in the furtherance of the business or operations of
19 such corporate Respondent and while acting within the course and
20 scope of their corporate authority and employment.

21 VIII

22 At all times herein mentioned, Respondents engaged in
23 the business of, acted in the capacity of, advertised and assumed
24 to act as real estate brokers in the State of California within
25 the meaning of Section 10131(a) of the Code, including the
26 operation and conduct of a real estate resale brokerage with the
27 public wherein, on behalf of others, for compensation or in



1 expectation of compensation, Respondents sold and offered to sell,
2 bought and offered to buy, solicited prospective sellers and
3 purchases of, solicited and obtained listings of, and negotiated
4 the purchase and sale of real property.

5 IX

6 From on or about April 18, 1997 until on or about
7 December 11, 1997, in course of the real estate brokerage
8 activities described in Paragraph VIII, above, including but not
9 limited to the real estate resale transactions listed below,
10 Respondents and each of them claimed, demanded and received
11 consideration consisting of the personal services of Diane Austin,
12 a full time employee of First American Title Insurance Company,
13 Tahoe City, California, as compensation or inducement for referral
14 of buyers and sellers of residential real property to First
15 American Title Insurance Company as escrow agent and title insurer
16 in real estate resale transactions:

17 (a) Sale from Lipnosky to Fee of real property at 1415
18 Commonwealth Drive, Kings Beach, California, Respondent HUB,
19 selling agent;

20 (b) Sale from Berchtold to Shaw of real property at
21 7340 River Road, Tahoe City, California, Respondent DUNSFORD,
22 selling agent;

23 (c) Sale from Stallard to Humfeld of real property at
24 5615 Dakar Road, Carnelian Bay, California, Respondent MILLS,
25 listing agent and Respondent DANIEL HAUSERMAN, selling agent;

26 ///
27 ///

1 (d) Sale from Richmond to Flippen of real property at
2 3670 LaCrosse Drive, Carnelian Bay, California, Respondent DANIEL
3 HAUSERMAN, listing and selling agent;

4 (e) Sale from Smith to Holland of real property at 785
5 Cascade Circle, Homewood, California, Respondent WIDMER, selling
6 agent;

7 (f) Sale from Blanchard to Cunningham of real property
8 at 685 Ward Creek Boulevard, Tahoe City, California, Respondent
9 TIMOTHY HAUSERMAN, listing and selling agent;

10 (g) Sale from Tarczy/Turnquist to Elliott of real
11 property at 340 Leota Way, Tahoe City, California, Respondent
12 DUNSFORD, listing agent, and Respondent HUB, selling agent;

13 (h) Sale from French to Jackson of real property at 325
14 Tomahawk Street, Tahoma, California, Respondent GUILFORD, listing
15 agent, and Respondent DANIEL HAUSERMAN, selling agent;

16 (i) Sale from Patrick to Raia of real property at 5660
17 Zimba Court, Carnelian Bay, California, Respondent WIDMER, selling
18 agent;

19 (j) Sale from Hotele to Schmidt of real property at 4003
20 Courchevel, Tahoe City, California, Respondent DANIEL HAUSERMAN,
21 selling agent;

22 (k) Sale from Frizzelle to Ryan of real property at
23 8166 Cutthroat Avenue, Brockway Vista, California, Respondent
24 WIDMER, selling agent; and

25 (l) Sale from Engle to Barnum & Celillo of real
26 property at 7087 Bear Avenue, Tahoma, California.

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X

In so acting as a real estate broker, as described in Paragraph VIII, above, Respondent HRE accepted or received funds in trust (hereinafter "trust funds") from or on behalf of buyers and sellers and others in connection with the real estate resale brokerage activities described in Paragraph VIII, above, and thereafter from time to time made disbursements of said trust funds.

XI

Between on or about April 18, 1997 and on or about December 11, 1997, in connection with the collection and disbursement of said trust funds, Respondent HRE failed to keep a record in columnar form of trust funds received, but not deposited into any trust bank account as required by Section 2831 of the Regulations.

XII

Respondent DANIEL HAUSERMAN failed to exercise reasonable supervision over the acts of Respondent HRE in such a manner as to allow the acts and omissions on the part of Respondent HRE described in Paragraphs IX through XI, inclusive, above, to occur.

XIII

The facts alleged above are grounds for the suspension or revocation of the licenses and license rights of Respondents under the following provisions of the Code and/or the Regulations:

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(a) As to Paragraph IX and each Respondent, under Section 10177.4 of the Code in conjunction with Section 10177(d) of the Code;

(b) As to Paragraph XI and Respondent HRE, under Section 2831 of the Regulations and Section 10145 of the Code in conjunction with Section 10177(d) of the Code; and

(c) As to Paragraph XII and Respondent DANIEL HAUSERMAN, under Section 10177(g) and/or Section 10177(h) of the Code and Section 10159.2 of the Code in conjunction with Section 10177(d) of the Code.

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 Respondents under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further relief as may be proper under other provisions of law.


CHARLES W. KOENIG
Deputy Real Estate Commissioner

Dated at Sacramento, California
this 27th day of May, 1998.