BEFORE THE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

DEPARTMENT OF REAL ESTATE

APR 1 5 2004

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In the Matter of the Accusation of)

CYNTHIA LEE WRISTEN,

NO. H-3830 SAC

DECISION

Respondent.

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on March 17, 2004, and the findings of fact set forth herein, which are based on one or more of the following: (1) Respondent's express admissions; (2) affidavits; and (3) other evidence.

FINDINGS OF FACT

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On April 7, 2003, Charles W. Koenig made the Accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent, and Notice of Defense was mailed, by certified mail, to Respondent's last known mailing address on file with the Department on June 4, 2003.

On January 26, 2004, no Notice of Defense having been filed herein within the time prescribed by Section 11506 of the Government Code, Respondent's default was entered herein.

ΙI

Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereinafter "Code") as a real estate broker.

III

Within the last three years, Respondent engaged in activities on behalf of others for which a real estate license is required, for or in expectation of compensation, and leased or rented, offered to lease or rent, solicited prospective tenants for, collected rents on, and/or managed certain real properties in California. During the course of the activities described above, Respondent received and disbursed funds in trust on behalf of others.

v

Beginning in November of 2002, the Department conducted an audit of the above business activities of Respondent for the time period of January 1, 2002 through August 31, 2002.

VI

Within the last three years, Respondent deposited the above trust funds into a checking account at Bank of the West in Sacramento, California, bearing account number 252-003017, in the name of "Wristen Property Management Trust" (hereafter referred to as "Trust Account 1").

VII

In connection with the collection and disbursement of trust funds, Respondent failed to deposit and maintain the trust funds in a trust account or neutral escrow depository, or to deliver them into the hands of the owners of the funds, as required by Section 10145 of the Code, in such a manner that as of July 31, 2002, there was a trust fund shortage in the approximate sum of \$14,920.60 in Trust Account 1.

VIII

Respondent failed to obtain the prior written consents of the principals for the reduction of the aggregate balance of trust funds in Account 1 to an amount less than the existing aggregate trust fund liability to the owners of said funds in conformance with Section 2832.1 of the Regulations.

IΧ

In connection with the receipt and disbursement of trust funds as above alleged, and as set forth in Audit No. SC-020037, dated November 12, 2002, and accompanying working papers and exhibits, Respondent:

- (a) Failed to maintain a written control record of all trust funds received and disbursed containing all information required by Section 2831 of the Regulations, including but not limited to recordation of all deposits, recordation of dates of receipt, and recordation of accurate dates of deposit of trust funds;
- (b) Failed to reconcile the balance of separate beneficiary or transaction records with the control records of trust funds received and disbursed at least once a month, and/or failed to maintain a record of such reconciliations as required by Section 2831.2 of the Regulations for Trust Account 1; and,

~ 2 -

(c) Permitted Teresa Vasquez, a person who neither held a California real estate license nor was bonded, to be a signatory on Trust Account 1 in violation of Section 2834 of the Regulations.

DETERMINATION OF ISSUES

Ι

The acts and/or omissions of Respondent as alleged above constitute grounds for the suspension or revocation of Respondent's license rights under the following provisions:

- (a) As alleged in Paragraph VII, under Section 10145 of the Code in conjunction with Section 10177(d) of the Code;
- (b) As alleged in Paragraph VIII, under Section 10145 of the Code and Section 2832.1 of the Regulations in conjunction with Section 10177(d) of the Code;
- (c) As alleged in Paragraph IX(a), under Section 10145 of the Code and Section <u>2831</u> of the Regulations in conjunction with Section 10177(d) of the Code;
- (d) As alleged in Paragraph IX(b), under Section 10145 of the Code and Section 2831.2 of the Regulations in conjunction with Section 10177(d) of the Code; and,
- (e) As alleged in Paragraph IX(c), under Section 2834 of the Regulations in conjunction with 10177(d) of the Code.

ΙI

The standard of proof applied was clear and convincing proof to a reasonable certainty.

ORDER

All licenses and licensing rights of CYNTHIA LEE WRISTEN, under the provisions of Part I of Division 4 of the Business and Professions Code, are revoked.

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This Decision shall become effective at 12 o'clock noon on May 5_____, 2004.

March 25 , 2004 DATED:

JOHN R. LIBERATOR Acting Real Estate Commissioner

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1 2 3	Department of Real Estate P. O. Box 187000 Sacramento, CA 95818-7000 MAR 1 7 2004
4	Telephone: (916) 227-0789 DEPARTMENT OF REAL ESTATE
5	Theole Elas
6	Variation of the second s
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. 8	BEFORE THE DEPARTMENT OF REAL ESTATE
9	STATE OF CALIFORNIA
10	* * *
11	In the Matter of the Accusation of)
12) NO. H-3830 SAC CYNTHIA LEE WRISTEN,)
13) <u>DEFAULT_ORDER</u> Respondent.)
14)
15	Respondent, CYNTHIA LEE WRISTEN, having failed to file
16	a Notice of Defense within the time required by Section 11506 of
17	the Government Code, is now in default. It is, therefore,
18	ordered that a default be entered on the record in this matter.
19	IT IS SO ORDERED January 26, 2004.
20	JOHN R. LIBERATOR Chief Deputy Commissioner
21	
22	By: MMM/////
23	STEVEN J. ELVIS Regional Manager
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20	
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1	MICHAEL B. RICH, Counsel
2	Department of Real Estate MAY 3 1 2003
3	Sacramento, CA 95818-7000 DEPARTMENT OF REAL ESTATE
4	Telephone: (916) 227-0789
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8	BEFORE THE DEPARTMENT OF REAL ESTATE
9	STATE OF CALIFORNIA
10	* * *
11	In the Matter of the Accusation of)
12) NO. H- 3830 SAC)
13	CYNTHIA LEE WRISTEN,) ACCUSATION
14	Respondents.
15	
16	The Complainant, CHARLES W. KOENIG, a Deputy Real
17	Estate Commissioner of the State of California, for Cause of
18	Accusation against CYNTHIA LEE WRISTEN doing business under the
19	fictitious business name of C. L. WRISTEN REAL ESTATE MANAGEMENT
20	is informed and alleges as follows:
21	I
22	Respondent CYNTHIA LEE WRISTEN (hereafter referred to
23	as "Respondent") is presently licensed and/or has license rights
24	under the Real Estate Law, Part 1 of Division 4 of the California
25	Business and Professions Code (hereafter the "Code").
26	///
27	111
	- 1 -

1 2 The Complainant, CHARLES W. KOENIG, a Deputy Real 3 Estate Commissioner of the State of California, makes this 4 Accusation against Respondent in his official capacity and not 5 otherwise. 6 III 7 At all times herein mentioned, Respondent was and is 8 licensed by the Department as a real estate broker. 9 IV 10 Within the last three years, Respondent engaged in 11 activities on behalf of others for which a real estate license is 12 required, for or in expectation of compensation, and leased or 13 rented, offered to lease or rent, solicited prospective tenants 14 for, collected rents on, and/or managed certain real properties 15 in California. During the course of the activities described 16 above, Respondent received and disbursed funds in trust on behalf 17 of others. 18 V 19 Beginning in November of 2002, the Department conducted 20 an audit of the above business activities of Respondent for the 21 time period of January 1, 2002 through August 31, 2002. 22 VI 23 Within the last three years, Respondent deposited the 24 above trust funds into a checking account at Bank of the West in 25 Sacramento, California, bearing account number 252-003017, in the 26 name of "Wristen Property Management Trust" (hereafter referred 27 to as "Trust Account 1").

II

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1 VII 2 In connection with the collection and disbursement of 3 trust funds, Respondent failed to deposit and maintain the trust 4 funds in a trust account or neutral escrow depository, or to 5 deliver them into the hands of the owners of the funds, as required by Section 10145 of the Code, in such a manner that as 6 7 of July 31, 2002, there was a trust fund shortage in the 8 approximate sum of \$14,920.60 in Trust Account 1. 9 VIII 10 Respondent failed to obtain the prior written consents 11 of the principals for the reduction of the aggregate balance of 12 trust funds in Account 1 to an amount less than the existing 13 aggregate trust fund liability to the owners of said funds 14 in conformance with Section 2832.1 of the Regulations. 15 IX 16 In connection with the receipt and disbursement of trust 17 funds as above alleged, and as set forth in Audit No. SC-020037, 18 dated November 12, 2002, and accompanying working papers and 19 exhibits, Respondent: 20 (a) Failed to maintain a written control record of all 21 trust funds received and disbursed containing all 22 information required by Section 2831 of the 23 Regulations, including but not limited to 24 recordation of all deposits, recordation of dates 25 of receipt, and recordation of accurate dates of 26 deposit of trust funds; 27 111

- 3 -

1 (b) Failed to reconcile the balance of separate 2 beneficiary or transaction records with the control records of trust funds received and 3 disbursed at least once a month, and/or failed 4 5 to maintain a record of such reconciliations б as required by Section 2831.2 of the Regulations 7 for Trust Account 1; and, 8 (c) Permitted Teresa Vasquez, a person who neither held 9 a California real estate license nor was bonded, to 10 be a signatory on Trust Account 1 in violation of 11 Section 2834 of the Regulations. 12 Х 13 The acts and/or omissions of Respondent as alleged 14 above constitute grounds for disciplinary action under the 15 following provisions: 16 (a) As alleged in Paragraph VII, under Section 17 10145 of the Code in conjunction with Section 18 10177(d) of the Code; 19 (b) As alleged in Paragraph VIII, under Section 10145 of the Code and Section 2832.1 of the Regulations 20 21 in conjunction with Section 10177(d) of the Code. 22 (c) As alleged in Paragraph IX(a), under Section 23 10145 of the Code and Section 2831 of the 24 Regulations in conjunction with Section 10177(d) 25 of the Code; 26 As alleged in Paragraph IX(b), under Section 10145 (d) 27 of the Code and Section 2831.2 of the Regulations 4 -

1	in period with Conting 10177(d) of the Code
1	in conjunction with Section 10177(d) of the Code;
3	and, (e) As alleged in Paragraph IX(c), under Section 2834
4	(e) As alleged in Paragraph IX(c), under Section 2834 of the Regulations in conjunction with 10177(d) of
5	the Code.
6	WHEREFORE, Complainant prays that a hearing be
7	conducted on the allegations of this Accusation and that upon
8	proof thereof a decision be rendered imposing disciplinary action
9	against the license and all license rights of Respondent under
10	the Real Estate Law (Part 1 of Division 4 of the Business and
11	Professions Code), and for such other and further relief as may
12	be proper under other provisions of law.
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15	(harlio Lienia
16	CHARLES W. KOENIG Deputy Real Estate Commissioner
17	Dated at Sacramento, California
18	this day of, 2003
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