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FILED
MAR 23 1993

BEFORE THE DEPARTMENT OF REAL ESTATE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By *Victoria Dillon*
Victoria Dillon

* * *

In the Matter of the Accusation of)
)
LOCATORS, INC.,)
ANDREW WIELING, JR., and)
LINDA LEE SPURLOCK,)
)
Respondent (s).)
_____)

No. H- 6675 SF
OAH N 40951

DECISION

The Proposed Decision dated February 22, 1993
of the Administrative Law Judge of the Office of Administrative
Hearings is hereby adopted as the decision of the Real Estate
Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon
on April 12, 1993.

IT IS SO ORDERED March 18, 1993.

CLARK WALLACE
Real Estate Commissioner

John R. Liberator
BY: John R. Liberator
Chief Deputy Commissioner

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

III

At all times mentioned herein, Locators was licensed by the Department of Real Estate ("Department") as a real estate corporation through Wieling as its designated officer.

IV

At all times mentioned herein, Wieling was licensed by the Department as a real estate broker in his individual capacity and as the designated officer of Locators.

V

On July 20, 1987, Spurlock was licensed by the Department as a conditional real estate salesperson under the provisions of Business and Professions Code section 10153.4. Her license was automatically suspended effective January 21, 1989 because the Department had not received evidence of her successful completion of two courses listed in Business and Professions Code section 10153.2. On February 24, 1989, the Department sent a notice of suspension to Spurlock at her address of record advising her of the license suspension. The license was reinstated effective August 23, 1990, upon receipt of a transcript showing completion of the required courses. On September 4, 1990, Spurlock's license was activated as an employee of Locators.

VI

In July and August 1990, the Department conducted an investigative audit on Locators' books and records for the period of January 21, 1989 through June 30, 1990. Locators maintained two trust accounts at Imperial Bank in Oakland for the receipt and disbursement of trust funds, account #18-008-351 designated "Locators, Inc. Realtor Rental Trustee Account" ("trust account 351") and account #18-008-343 designated "Locators, Inc. Realtor Trustee Account" ("trust account 343").

VII

As of June 30, 1990, trust account 351 had an adjusted balance of \$19,491.76 and trust fund accountability of \$20,678.24, causing a trust fund shortage of \$1,186.48.

VIII

The Department's audit found the following deficiencies for the period from January 21, 1989 through June 30, 1990:

1. Locators failed to maintain a columnar control record of all trust funds received and paid out for trust accounts 351 and 343.
2. Locators failed to reconcile the balance of all separate beneficiary or transaction records with the columnar control record of all trust funds received and disbursed.
3. Wieling failed to review, initial and date at least 10 documents which were used in property management and sales transactions which had a material effect on the rights and obligations of the principals, or to properly delegate his "review and initial" responsibility to a licensed salesperson in writing.
4. Locators failed to notify the Department of the termination of its employment of salespersons Leo Briard and Lillian Gasaway.
5. Locators failed to notify the Department of its employment of salespersons Naim Adranly, Moo Yung Choi and Edith Wilson.
6. Locators was unable to produce for inspection copies of broker-salesperson agreements with salespersons Moo Yung Choi, Deborah Coffman, Emily Collison, Carla Della Zoppa, Eureura Hoffman, William McDermott, Mildred Miglorin and Naval Theodosy.

IX

During the time Spurlock's salesperson license was in a suspended status (January 21, 1989 through August 22, 1990), she performed acts on behalf of Locators which required a license, for or in expectation of compensation, in the following transactions:

<u>Date (Contract or Commission)</u>	<u>Principal</u>
2/89	Lehr/Loza Cyrus/Robak
3/89	Farnsworth/Robertson Acton/Griffith
4/89	Kahlon/Tongvanh Rawnoi/Cierra Langlois/Scalzo

5/89	Kikuchi/Johnson
6/89	Brown/ITT
7/89	Daggs/Bronazich
10/89	Thal/Wood
	Dezuzman/Almadi
	Vanivasing/Hall
2/90	Almirol
3/90	Balestreri/Eckmann
	Nunes/Goodman
	Guerra/Almirol
4/90	Almirol/Donigan
5/90	Salerio/Gaytan
	Gaytan/Estrada
	Lavezzi/Flores
7/90	Tse/Hamilton

X

Spurlock claims that prior to January 20, 1989 she submitted to the Department proper documentation of the required course completion, and she never received the notice of suspension sent to her on February 24, 1989. She had successfully completed Real Estate Practice (fall semester, 1986) and Real Estate Finance (fall semester, 1988) at Contra Costa College. Spurlock had been working at Locators since October 1987, and continued to do so while her license was suspended. The Department did not send Locators or Wieling a notice that Spurlock's license had been suspended. Spurlock and Wieling first found out about the suspension when it was brought to Wieling's attention by the Department auditor. Spurlock then acted promptly to obtain and hand deliver to the Department the course transcript required for license reinstatement.

XI

Wieling failed to exercise reasonable supervision and control of the activities of Locators for which a real estate license is required, and was negligent or incompetent in performing acts for which a real estate license is required, in that he knew or should have known the facts set forth in Findings VII and VIII and he should have taken steps to assure full compliance with the Real Estate Law.

XII

The reason for the shortage in trust account 351 was that four out of 57 rental properties had negative balances totaling \$8,507.29. Because \$3,600.79 in management fees and \$3,720.02 in rental fees had not been disbursed, the account shortage was only \$1,186.48. One rental property had a negative balance of \$7,555.23, due to the fact that a sale was

pending, the owner was overseas and Locators was expecting the arrearages to be paid out of escrow. The owner subsequently paid Locators \$3,000 in October 1990 and the balance in December 1990 when the sale fell through and the property was taken off the market.

Wieling now understands that he cannot use the positive balances for some rental properties to offset the negative balances for others, and has instituted procedures to assure that each property balance stays above zero.

XIII

Although Locators maintained individual ledgers for each rental property and beneficiary, Wieling was not aware of the requirement that trust fund records be maintained in a columnar control format. After the Department's audit, Locators' bookkeeper initiated record keeping changes to meet this requirement as well as the requirement that separate beneficiary or transaction records be reconciled with the columnar control record. Wieling checks the books periodically to make sure Locators' records are in order.

XIV

Wieling has delegated to corporate officer Silvio Addiego (although not in writing as required) his responsibility to review and initial documents such as listing and management agreements, and sale contracts. He claims that Addiego's failure to initial the 10 documents found in the audit was just an oversight. Wieling has discussed this matter with Addiego, and now reviews the pertinent documents twice a month to make sure they have been initialed.

XV

Although Wieling produced copies of salesperson change applications which he asserted that Locators sent to the Department after the termination of employment of salespersons Leo Briard and Lillian Gasaway, it was not established that the Department received these documents. In any event, the notice relating to Briard was untimely, in that it was dated 46 days after the effective date of the termination.

XVI

Wieling produced copies of salesperson change applications which he asserted that Locators sent to the Department upon employment of salespersons Naim Adranly, Moo Yung Choi and Edith Wilson, but it was not established that the Department received these documents.

XVII

Wieling produced copies of broker-salesperson contracts for salespersons Moo Yung Choi, Deborah Coffman, Emily Collison, Carla Della Zoppa, William McDermott and Mildred Miglorin. It was not established why the three which predate the Department's audit were not made available for inspection at that time.

XVIII

Locators has been in business over 30 years, and currently employs approximately 40 salespersons in its main office in El Cerrito and its branch office in Pinole. Wieling has been president of Locators since 1971 and the designated officer for 14 years. He believes that any violations found herein are relatively minor blemishes on an otherwise exemplary record as a licensee.

DETERMINATION OF ISSUES

I

Finding VII: Cause for license discipline of Locators and Wieling was established under Business and Professions Code section 10177(d) by reason of a violation of Business and Professions Code section 10145.

II

Finding VIII, paragraph 1: Cause for license discipline of Locators and Wieling was established under Business and Professions Code section 10177(d) by reason of a violation of Title 10, California Code of Regulations, section 2831.

III

Finding VIII, paragraph 2: Cause for license discipline of Locators and Wieling was established under Business and Professions Code section 10177(d) by reason of a violation of Title 10, California Code of Regulations, section 2831.2.

IV

Finding VIII, paragraph 3: Cause for license discipline of Locators and Wieling was established under Business and Professions Code section 10177(d) by reason of a violation of Title 10, California Code of Regulations, section 2725.

V

Finding VIII, paragraph 4: Cause for license discipline of Locators and Wieling was established under Business and Professions Code section 10177(d) by reason of a violation of Business and Professions Code section 10161.8.

VI

Finding VIII, paragraph 5: Cause for license discipline of Locators and Wieling was established under Business and Professions Code section 10177(d) by reason of a violation of Business and Professions Code section 10161.8 and Title 10, California Code of Regulations, section 2752.

VII

Finding VIII, paragraph 6: Cause for license discipline of Locators and Wieling was established under Business and Professions Code section 10177(d) by reason of a violation of Title 10, California Code of Regulations, section 2726.

VIII

Finding IX: Cause for license discipline of Locators and Wieling was established under Business and Professions Code section 10137.

IX

Finding XI: Cause for license discipline of Wieling was established under Business and Professions Code sections 10177(g) and 10177(h).

X

Finding IX: Cause for license discipline of Spurlock was established under Business and Professions Code section 10177(d) by reason of a violation of Business and Professions Code section 10130.

XI

Although Spurlock was employed by Locators as a real estate salesperson while her license was suspended, neither she nor Wieling was aware of the license suspension. Spurlock had completed her educational requirements and believed that she had done what was necessary to assure the continued validity of her license. The shortage in Locators' trust account found during the Department's audit was not caused by any diversion

of funds for personal gain, but rather by accounting practices which have since been corrected. Because of these extenuating or mitigating circumstances, the relatively minor nature of the rest of the violations, and the fact that the violations occurred almost three years ago, the continued licensure of Locators, Wieling and Spurlock on a restricted basis would not be contrary to the public interest.

ORDER

LOCATORS, INC.:

All licenses and licensing rights of respondent Locators, Inc. under the Real Estate Law are revoked pursuant to Determination of Issues I through VIII separately and for all of them; provided, however, a restricted real estate corporation license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

1. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event that an officer, director or person owning or controlling 10 percent or more of respondent's stock is convicted of or enters a plea of nolo contendere to a crime which is substantially related to the activities of a real estate licensee.
2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until one year has elapsed from the effective date of this Decision.

ANDREW WIELING, JR.:

All licenses and licensing rights of respondent Andrew Wieling, Jr. under the Real Estate Law are revoked pursuant to Determination of Issues I through IX separately and for all of them; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

1. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until one year has elapsed from the effective date of this Decision.
4. Respondent shall, within six months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the

restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

LINDA LEE SPURLOCK:

All licenses and licensing rights of respondent Linda Lee Spurlock under the Real Estate Law are revoked pursuant to Determination X; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

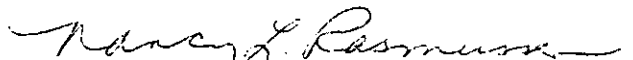
1. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until one year has elapsed from the effective date of this Decision.
4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved

by the Department of Real Estate which shall certify:

- a. That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
 - b. That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.
5. Respondent shall, within six months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED:

February 22, 1993


NANCY L. RASMUSSEN
Administrative Law Judge

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JUN 17 1992

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

DEPARTMENT OF REAL ESTATE

By *Victoria Dillon*
Victoria Dillon

In the Matter of the Accusation of

LOCATORS, INC.,
ANDREW WIELING, JR., and
LINDA LEE SPURLOCK,

}

Case No. H-6675 SF

OAH No. N 40951

Respondents

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

455 Golden Gate Ave., Room 2248, San Francisco, CA 94102

on December 14, 1992 (1/2 Day Hearing), at the hour of 9:00 a.m.,
or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: June 17, 1992

By *John Van Driel*
JOHN VAN DRIEL, Counsel

wd

1 JOHN VAN DRIEL, Counsel
2 Department of Real Estate
3 185 Berry Street, Room 3400
4 San Francisco, CA 94107-1770

FILED
APR 20 1992

DEPARTMENT OF REAL ESTATE

5 Telephone: (415) 904-5917

By *Victoria Dillon*
Victoria Dillon

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H- 6675 SF
12 LOCATORS, INC.,)
13 ANDREW WIELING, JR., and) ACCUSATION
14 LINDA LEE SPURLOCK,)
15 Respondents.)

16 The Complainant, EDWARD V. CHIOLO, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against LOCATORS, INC., ANDREW WIELING, JR., and LINDA LEE
19 SPURLOCK (Respondents) is informed and alleges as follows:

20 I

21 The Complainant, EDWARD V. CHIOLO, a Deputy Real Estate
22 Commissioner of the State of California, makes this Accusation
23 against Respondents in his official capacity.

24 II

25 LOCATORS, INC. (Locators), ANDREW WIELING, JR.
26 (Wieling), and LINDA LEE SPURLOCK (Spurlock) are presently

27

1 licensed and/or have license rights under the Real Estate Law
2 (Part 1 of Division 4 of the Business and Professions Code (Code).

3 III

4 At all times mentioned herein, Locators was licensed by
5 the Department of Real Estate of the State of California
6 (Department) as a real estate corporation through Wieling as its
7 designated officer.

8 IV

9 At all times mentioned herein, Wieling was licensed by
10 the Department as a real estate broker in his individual capacity
11 and as the designated officer of Locators.

12 V

13 Spurlock was licensed by the Department as a conditional
14 real estate salesperson under the provisions of Section 10153.4 of
15 the Code on or about July 20, 1987. She failed to fulfill the
16 requirements of her conditional license and the license was
17 suspended effective January 21, 1989. On or about August 22,
18 1990, the suspension was lifted and the Department's records show
19 that Spurlock was employed by Locators on or about
20 September 4, 1990.

21 VI

22 In July through August 1990, an investigative audit was
23 made by the Department on Locators' books and records for the
24 period of January 21, 1989, through June 30, 1990.

25 The following facts were ascertained by the audit for
26 the period ending June 30, 1990.

27 / / / / /

1 a. Locators maintained two trust accounts at Imperial
2 Bank, Oakland, California, for the receipt and disbursement of
3 trust funds, as that term is defined in Section 10145 of the Code,
4 designated as accounts #18-008-351 named "Locators, Inc. Realtor
5 Rental Trustee Account" (trust account 351), and #18-008-343 named
6 "Locators, Inc. Realtor Trustee Account" (trust account 343).

7 b. Trust account 351 had an adjusted balance of
8 \$19,491.76 and trust fund accountability of \$20,678.24 causing a
9 trust fund shortage of \$1,186.48.

10 c. Locators failed to maintain a columnar control
11 record of all trust funds received and paid out for trust accounts
12 351 and 343 as required by Section 2831 of Title 10, California
13 Code of Regulations (Regulations).

14 d. Locators failed to reconcile separate beneficiary
15 records with the records of all trust funds received as required
16 by Section 2831.2 of the Regulations.

17 e. Wieling failed to review, initial and date
18 documents which were used in property management and sales
19 transactions which had a material effect on the rights and
20 obligations of his principals or to delegate his "review and
21 initial" responsibility to a licensed salesperson in writing, as
22 required by Section 2725 of the Regulations.

23 f. Locators failed to notify the Department of the
24 termination of it's employment of salespersons Leo Briard, Lillian
25 Gasaway and J. C. Jones, as required by Section 10161.8 of the
26 Code.

27 / / / /

1 g. Locators failed to notify the Department of it's
2 employment of salespersons Narim Adlanly, Moo Yung Choi and Edith
3 Wilson, as required by Section 2752 of the Regulations and Section
4 10161.8 of the Code.

5 h. Locators failed to retain for a period of three (3)
6 years from termination, copies of broker-salesperson relationship
7 agreements for salespersons Moo Choi, Deborah Coffman, Emily
8 Collison, Carla Dellazoppa, Eureka Hoffman, William McDermott,
9 Mildred Miglorin and Nawal Theodosy, as required by Section 2726
10 of the Regulations.

11 VII

12 During the time that Spurlock's salesperson license was
13 in a suspended status (1-21-89 through 8-21-90), she performed
14 acts which required a license on behalf of Locators, for or in
15 expectation of compensation, in at least the following
16 transactions, in violation of Section 10130 of the Code.

17	<u>Date</u>	<u>Principal</u>
18	2/89	Lehr/Loza
19		Cyrus/Robak
20	3/89	Farnsworth/Robertson
21		Acton/Griffith
22	4/89	Kahlon/Tongvanh
23		Rawnoi/Cierra
24		Langlois/Scalzo
25	5/89	Kikuchi/Johnson
26	6/89	Brown/ITT
27	7/89	Daggs/Bronazich

1	10/89	Thal/Wood
2		Dezuzman/Almadi
3		Vanivasing/Hall
4	2/90	Almirol
5	3/90	Balestreri/Eckmann
6		Nunes/Goodman
7		Guerra/Almirol
8	4/90	Almirol/Donigan
9	5/90	Salerio/Gaytan
10		Gaytan/Estrada
11		Lavezzi/Flores
12	7/90	Tse/Hamilton

13 VIII

14 At all times mentioned herein, Wieling failed to
15 exercise reasonable supervision and control of the activities of
16 Locators for which a real estate license is required and was
17 negligent or incompetent in performing acts for which a real
18 estate license is required, in that he knew or should have known
19 all the facts alleged above and that he could have and should have
20 taken steps to assure the full compliance of his employees with
21 the Real Estate Law.

22 IX

23 The acts and/or omissions of Locators and Wieling
24 alleged in Paragraphs I through VI violate Sections 10145 and
25 10161.8 of the Code and Sections 2725, 2726, 2752, 2831, 2831.2
26 and 2832.1 of the Regulations and are grounds for disciplinary
27 action under the provisions of Section 10177(d) of the Code.

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X

The acts and/or omissions of Locators and Wieling alleged in Paragraph VII are grounds for disciplinary action under the provisions of Section 10137 of the Code.

XI

The acts and/or omissions of Wieling alleged in Paragraphs I through VIII are grounds for disciplinary action under the provisions of Sections 10177(g) and/or (h) of the Code.

XII

The acts and/or omissions of Spurlock as alleged in Paragraphs V and VII violate Section 10130 of the Code and are grounds for disciplinary action under the provisions of Section 10177(d) of the Code, or in the alternative are grounds for discipline under Section 10177(g) of the Code.

WHEREFORE, the Complainant prays that a hearing be conducted on the allegations of the 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 applicable provisions of law.

Edward V. Chiolo

EDWARD V. CHIOLO
Deputy Real Estate Commissioner

Dated at San Francisco, California,
this 15th day of April, 1992.