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FILED
JAN 19 2005

DEPARTMENT OF REAL ESTATE

By Juan Arredondo

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA
* * *

In the Matter of the Accusation of)	No. H-7729 SF
)	
ZOYA LEE SMITHTON,)	
)	
)	
)	
Respondent.)	

ORDER GRANTING REINSTATEMENT OF LICENSE

On March 16, 2000, an Order was rendered herein revoking the real estate broker license of Respondent, but granting Respondent the right to the issuance of a restricted real estate broker license. A restricted real estate broker license was issued to Respondent on April 17, 2000, and Respondent has operated as a restricted licensee since that time.

On April 22, 2004, Respondent petitioned for reinstatement of said real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered the petition of Respondent and the evidence and arguments in support thereof including Respondent's

1 record as a restricted licensee. Respondent has demonstrated to
2 my satisfaction that Respondent meets the requirements of law for
3 the issuance to Respondent of an unrestricted real estate broker
4 license and that it would not be against the public interest to
5 issue said license to Respondent.

6 NOW, THEREFORE, IT IS ORDERED that Respondent's
7 petition for reinstatement is granted and that a real estate
8 broker license be issued to Respondent if Respondent satisfies
9 the following condition within nine months from the date of this

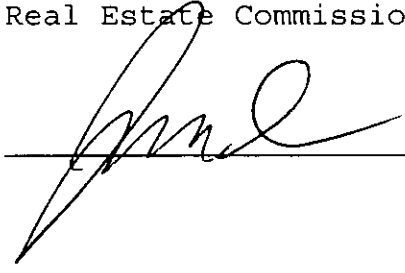
10 Order:

- 11 1. Submittal of a completed application and payment of
12 the fee for a real estate broker license.

13 This Order shall be effective immediately.

14 DATED: 1-6-05

15 JEFF DAVI
16 Real Estate Commissioner

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1 sufficient rehabilitation to warrant the reinstatement of
2 Respondent's real estate broker license.

3 In response to a question in the petition application,
4 "Have you ever been a defendant in any civil court litigation,
5 including small claims court? If yes, give details below ...",
6 Respondent answered "No". Respondent failed to disclose in her
7 petition the following civil court litigation: Tenderloin Housing
8 Clinic, Inc v. Smithton, et al., San Francisco Superior Court No.
9 SCV316118.

10 Respondent's concealment of facts and lack of candor,
11 demonstrate that Respondent has not changed her attitude from
12 that which existed at the time the disciplinary action was taken
13 in this matter.

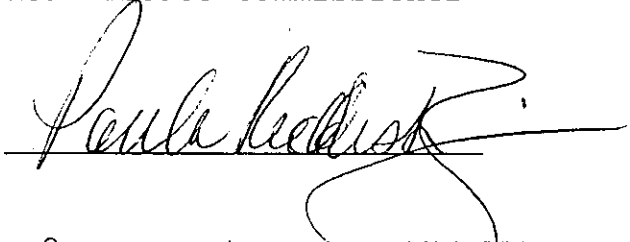
14 Further, Respondent employed Vanessa Gonzalez as a
15 real estate salesperson to perform acts for which a real estate
16 license is required from December 1999 to May 2001, during which
17 time Ms. Gonzalez's real estate salesperson license was suspended.

18 NOW, THEREFORE, IT IS ORDERED that Respondent's
19 petition for reinstatement of her real estate broker license is
20 denied.

21 This Order shall become effective at 12 o'clock
22 noon on May 28, 2002.

23 DATED: April 26, 2002

24 PAULA REDDISH ZINNEMANN
25 Real Estate Commissioner

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1 shall instead and in place thereof be submitted solely on the
2 basis of the provisions of this Stipulation and Agreement.

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

7 3. On July 22, 1999, Respondent filed her 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 her Notice of Defense. Respondent acknowledges that by
12 withdrawing said Notice of Defense she will thereby waive her
13 right to require the Commissioner to prove the allegations in the
14 Accusation at a contested hearing held in accordance with the
15 provisions of the APA and that she will waive other rights
16 afforded to her in connection with the hearing such as the right
17 to present evidence in defense of the allegations in the
18 Accusation and the right to cross-examine witnesses.

19 4. This Stipulation is based on the factual
20 allegations contained in the Accusation. In the interests of
21 expedience and economy, Respondent chooses not to contest these
22 allegations, but to remain silent and understands that, as a
23 result thereof, these factual allegations, without being admitted
24 or denied, will serve as a prima facie basis for the disciplinary
25 action stipulated to herein. The Real Estate Commissioner shall
26 not be required to provide further evidence to prove said factual
27 allegations.

1 5. It is understood by the parties that the Real
2 Estate Commissioner may adopt the Stipulation and Agreement as
3 her Decision in this matter, thereby imposing the penalty and
4 sanctions on Respondent's real estate license(s) and license
5 rights as set forth in the below "Order". In the event that the
6 Commissioner in her discretion does not adopt the Stipulation and
7 Agreement, it shall be void and of no effect, and Respondent
8 shall retain the right to a hearing and proceeding on the
9 Accusation under all the provisions of the APA and shall not be
10 bound by any admission or waiver made herein.

11 6. The Order or any subsequent Order of the Real
12 Estate Commissioner made pursuant to this Stipulation and
13 Agreement shall not constitute an estoppel, merger or bar to any
14 further administrative or civil proceedings by the Department of
15 Real Estate with respect to any matters which were not
16 specifically alleged to be causes for accusation in this
17 proceeding.

18 7. Respondent has received, read, and understands the
19 "Notice Concerning Costs of Subsequent Audits". Respondent
20 understands that by agreeing to this Stipulation and Agreement in
21 Settlement, the findings set forth below in the DETERMINATION OF
22 ISSUES become final, and that the Commissioner may charge
23 Respondent for the cost of any audit conducted pursuant to
24 Section 10148 of the Business and Professions Code to determine
25 if the violations have been corrected. The maximum costs of said
26 audit will not exceed \$5,894.90.

27 ///

1 Commissioner may by appropriate order suspend the right
2 to exercise any privileges granted under the restricted
3 license in the event of:

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

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

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

19 D. Respondent shall pay, pursuant to Section 10148 of the
20 Business and Professions Code, the Commissioner's reasonable
21 cost for an audit to determine if Respondent has corrected
22 the trust fund violations as set forth in the Determination
23 of Issues above. In calculating the amount of the
24 Commissioner's reasonable costs, the Commissioner may use the
25 estimated average hourly salary for all persons performing
26 audits of real estate brokers, and shall include an
27 allocation for travel costs, including mileage, time to and

1 from the auditor's place of work, and per diem. The
2 Commissioner's reasonable costs shall in no event exceed
3 \$5,894.90.

4 (a) Respondent shall pay such cost within 60 days of
5 receipt of an invoice from the Commissioner
6 detailing the activities performed during the audit
7 and the amount of time spent performing those
8 activities;

9 (b) If Respondent fails to pay, within 60 days from
10 receipt of the invoice specified above, the
11 Commissioner's reasonable costs for an audit to
12 determine if Respondent has corrected the
13 violations found as set forth in the Determination
14 of Issues above, the Commissioner may order the
15 indefinite suspension of Respondent's real estate
16 licenses and license rights. The suspension shall
17 remain in effect until payment is made in full, or
18 until Respondent enters into an agreement
19 satisfactory to the Commissioner to provide for
20 such payment. The Commissioner may impose further
21 reasonable disciplinary terms and conditions upon
22 Respondent's real estate license and license rights
23 as part of any such agreement.

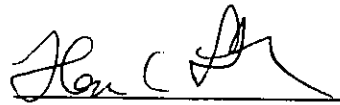
24 E. Respondent shall, within six (6) months from the effective
25 date of the restricted license, take and pass the
26 Professional Responsibility Examination administered by the
27 Department including the payment of the appropriate

1 examination fee. If Respondent fails to satisfy this
2 condition, the Commissioner may order the suspension of the
3 restricted license until Respondent passes the examination.

4 F. Respondent shall, within nine (9) months from the effective
5 date of this ORDER, present evidence satisfactory to the
6 Real Estate Commissioner that she has, since the most recent
7 issuance of an original or renewal real estate license,
8 taken and successfully completed the continuing education
9 requirements of Article 2.5 of Chapter 3 of the Real Estate
10 Law for renewal of a real estate license. If Respondent
11 fails to satisfy this condition, the Commissioner may order
12 the suspension of the restricted license until Respondent
13 presents such evidence. The Commissioner shall afford
14 Respondent the opportunity for a hearing pursuant to the
15 Administrative Procedure Act to present such evidence.

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

20
21 February 10, 2000
22 DATED

21 
22 THOMAS C. LASKEN, Counsel
23 DEPARTMENT OF REAL ESTATE


23 * * *

24 I have read the Stipulation and Agreement, and its
25 terms are understood by me and are agreeable and acceptable to
26 me. I understand that I am waiving rights given to me by the
27 California Administrative Procedure Act (including but not

1 limited to Sections 11506, 11508, 11509, and 11513 of the
2 Government Code), and I willingly, intelligently, and
3 voluntarily waive those rights, including the right of
4 requiring the Commissioner to prove the allegations in the
5 Accusation at a hearing at which I would have the right to
6 cross-examine witnesses against me and to present evidence in
7 defense and mitigation of the charges.

8 1-21-2000


9 DATED


10 Zoya Lee Smithton
Respondent

11 I have reviewed the Stipulation and Agreement in
12 Settlement as to form and content and have advised my clients
13 accordingly.

14 January 21, 2000

15 DATED


16 DAVID P. WASSERMAN
Attorney for Respondent

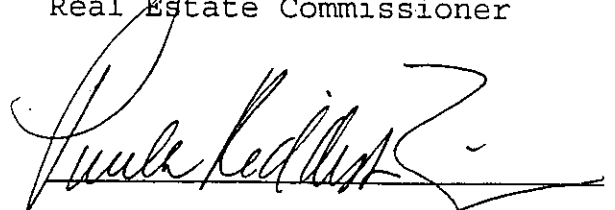
17 * * *

18 The foregoing Stipulation and Agreement is hereby
19 adopted by the Real Estate Commissioner as his Decision and
20 Order and shall become effective at 12 o'clock noon on

21 April 17, 2000.

22 IT IS SO ORDERED March 16, 2000.

23
24 PAULA REDDISH ZINNEMANN
Real Estate Commissioner

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26 
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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

DEC 7 1999

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

In the Matter of the Accusation of

ZOYA LEE SMITHTON,

}

Case No. H-7729 SF

OAH No. N-1999090152

Respondent

FIRST CONTINUED
NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at _____

The Office of Administrative Hearings, the Elihu Harris State

Building, 1515 Clay Street, Suite 206, Oakland, California 94612

on January 25, 2000, at the hour of 9:00 AM,
or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: December 7, 1999

By Thomas C. Lasken
THOMAS C. LASKEN Counsel

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
OCT 25 1999

DEPARTMENT OF REAL ESTATE

By Laurie A. Zain

In the Matter of the Accusation of

ZOYA LEE SMITHTON,

Case No. H-7729 SF

OAH No. N-1999090152

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, The Elihu Harris State

Building, 1515 Clay Street, Suite 206, Oakland, California 94612

on November 12, 1999, at the hour of 9:00 AM,

or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: October 20, 1999

By Thomas C. Lasken
THOMAS C. LASKEN Counsel

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

5 Telephone: (916) 227-0789

FILED

JUL 20 1999

DEPARTMENT OF REAL ESTATE

By Jean [Signature]

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 ZOYA LEE SMITHTON,)
13 Respondent.)

NO. H-7729 SF

ACCUSATION

14
15 The Complainant, Les R. Bettencourt, a Deputy Real
16 Estate Commissioner of the State of California, for cause of
17 Accusation against ZOYA LEE SMITHTON, is informed and alleges as
18 follows:

19 I

20 The Complainant, Les R. Bettencourt, a Deputy Real
21 Estate Commissioner of the State of California, makes this
22 Accusation in his official capacity.

23 II

24 At all times herein mentioned, ZOYA LEE SMITHTON
25 ("Respondent") was, and presently is, licensed, and/or has license
26 rights under the Real Estate Law, Part 1 of Division 4 of the
27 Business and Professions Code ("Code").

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III

At all times mentioned herein, Respondent engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker within the State of California, within the meaning of Section 10131(b) of the Code, including the operation and conduct of a real estate property management business with the public, wherein Respondent, for or in expectation of a compensation, leased or rented or offered to lease or rent, or solicited listings of, places for rent; solicited prospective tenants for, negotiated rental agreements for, and collected rents from, real properties owned by another or others; and, otherwise managed real properties in California.

IV

During the course of the real property management activities described in Paragraph III above, Respondent received and disbursed funds held in trust on behalf of another or others.

V

Within the three-year period immediately preceding the filing of this Accusation, Respondent maintained the following trust accounts:

Bank of America
1525 Market Street
San Francisco, CA. 94103

1. Account No. 02991-03876
Title: The American Property Exchange Trust Account
(hereinafter "Trust #1")
2. Account No. 02997-17776
Title: AMMS dba The American Property Exchange Trust
Account
(hereinafter "Trust #2")

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IX

In connection with Trust #3, as of December 31, 1997, Respondent had a trust account overage of \$22,162.45, due to broker funds improperly deposited in said account. Respondent thereby commingled her own money with the money of others which was received and held by her.

X

During the audit period, in connection with the receipt and disbursement of trust funds, as to Trusts #1 and #2, Respondent failed to maintain columnar records of all the trust funds received and disbursed in the manner required by Section 2831 of Title 10, California Code of Regulations (hereinafter "Regulations").

XI

During the audit period, in connection with the receipt and disbursement of trust funds, as to Trusts #1 and #2, Respondent failed to maintain separate records for each beneficiary or transaction, accounting for all trust funds received, deposited, and disbursed, in conformance with Section 2831.1 of the Regulations.

XII

During the audit period, in connection with the receipt and disbursement of trust funds, as to Trusts #1 and #2, Respondent failed to reconcile the balances of all separate beneficiary or transaction records maintained with the record of all trust funds received and disbursed at least once a month, in violation of Section 2831.2 of the Regulations.

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XIII

During the audit period, none of the trust accounts identified in Paragraph V above were in the name of Respondent as trustee at a bank or other financial institution as required by Section 2832 of the Regulations.

XIV

During the audit period, in connection with the receipt and disbursement of trust funds, Respondent allowed withdrawal from trust accounts #1, #2, and #3 by unlicensed persons who did not have fidelity bond coverage, in violation of Section 2834 of the Regulations.

XV

Respondent's acts and omissions alleged above in Paragraphs VII and VIII constitute cause for discipline under Section 10177(d) of the Code in conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations.

XVI

Respondent's acts and omissions alleged above in Paragraph IX above constitute cause for discipline under Section 10176(e) of the Code.


XVII

Respondent's acts and omissions alleged above in Paragraphs X through XIV constitute cause for discipline under the provisions of Section 10177(d) of the Code.

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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 Respondent, 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 the provisions of law.


LES R. BETTENCOURT
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 24th day of June, 1999.