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| 4 | JAN 1 9 2005 | |
| 5 | DEPARTMENT OF REAL ESTATE | |
| б | By Juan armot | |
| 7 | | |
| 8 | BEFORE THE DEPARTMENT OF REAL ESTATE | |
| 9 | STATE OF CALIFORNIA | |
| . 10 | * * * | |
| 11 | In the Matter of the Accusation of) No. H-7729 SF | |
| 12 | ZOYA LEE SMITHTON, | |
| 13 |) | |
| . 14 |) Respondent.) | |
| 15 | ORDER GRANTING REINSTATEMENT OF LICENSE | |
| 16 | On March 16, 2000, an Order was rendered herein | |
| 17 | revoking the real estate broker license of Respondent, but | |
| 18 | granting Respondent the right to the issuance of a restricted | |
| . 19 | real estate broker license. A restricted real estate broker | |
| 20 | license was issued to Respondent on April 17, 2000, and | |
| 21 | Respondent has operated as a restricted licensee since that time. | |
| . 22 | On April 22, 2004, Respondent petitioned for | |
| 23 | reinstatement of said real estate broker license, and the | |
| 24 | Attorney General of the State of California has been given notice | |
| 25 | of the filing of said petition. | |
| . 26 | I have considered the petition of Respondent and the | |
| 27 | evidence and arguments in support thereof including Respondent's | |
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record as a restricted licensee. Respondent has demonstrated to my satisfaction that Respondent meets the requirements of law for the issuance to Respondent of an unrestricted real estate broker license and that it would not be against the public interest to issue said license to Respondent. NOW, THEREFORE, IT IS ORDERED that Respondent's petition for reinstatement is granted and that a real estate broker license be issued to Respondent if Respondent satisfies the following condition within nine months from the date of this Order: 1. Submittal of a completed application and payment of the fee for a real estate broker license. <u>This Order shall be effective immediately.</u> 6:05 DATED: JEFF DAVI Real Estate Commissioner

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| 2 | |
| 3 | JUN 2 7 2002 |
| 4 | DEPARTMENT OF REAL ESTATE |
| 5 | Capating (application) |
| 6 | |
| 7 | |
| 8 | BEFORE THE DEPARTMENT OF REAL ESTATE |
| 9 | STATE OF CALIFORNIA |
| 10 | * * * |
| 11 | In the Matter of the Accusation of) |
| 12 | ZOYA LEE SMITHTON,) NO. H-7729 SF |
| 13 | Respondent. |
| 14 | ORDER DENYING RECONSIDERATION |
| 15 | On April 26, 2002, an Order Denying Reinstatement of |
| 16 | License was rendered in the above-entitled matter to become |
| 17 | effective June 27, 2002. |
| 18 | On May 24, 2002, Respondent petitioned for |
| 19 | reconsideration of the Order of April 26, 2002. |
| 20 | I have given due consideration to the petition of |
| 21 | Respondent. I find no good cause to reconsider the Order of |
| 22 | April 26, 2002, and reconsideration is hereby denied. |
| 23 | IT IS HEREBY ORDERED Mue ZT, 2002. |
| 24 25 | PAULA REDDISH ZINNEMANN Real Østate Commissioner |
| 25 | |
| 27 | Haula Malah |
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| 1 2 3 4 5 | E E D MAY 2 8 2002 DEPARTMENT OF REAL ESTATE By Kytthloon Controls |
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| 6 | BEFORE THE DEPARTMENT OF REAL ESTATE |
| 7 | STATE OF CALIFORNIA |
| 8 | * * * |
| 9 | In the Matter of the Accusation of) |
| 10 | ZOYA LEE SMITHTON,) NO. H-7729 SF |
| 11 |) Respondent. |
| 12 | ORDER STAYING EFFECTIVE DATE |
| 13 | On April 26, 2002, an Order Denying Reinstatement of |
| 14 | License was rendered in the above-entitled matter to become |
| 15 | effective on May 28, 2002. On May 24, 2002, Respondent |
| 16 | petitioned for reconsideration of the Order Denying Reinstatement |
| 17 | of License of April 26, 2002. |
| 18 | IT IS HEREBY ORDERED that the effective date of the |
| 19 | Order Denying Reinstatement of License be stayed for a period of |
| 20 | thirty (30) days. The Order Denying Reinstatement of License of |
| · 21 22 | April 26, 2002, shall become effective at 12 o'clock noon on |
| 22 | June 27, 2002. DATED: //////28, 2002. |
| 24 | |
| 25 | PAULA REDDISH ZINNEMANN Real Estate Commissioner |
| 26 | Sail Mark Z |
| 27 | falle helper |
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| 2 | MAY 0 8 2002 |
| - 3 | DEPARTMENT OF REAL ESTATE |
| 4 | By Dean Quino Co |
| 5 | By |
| 6 | |
| 7 | BEFORE THE DEPARTMENT OF REAL ESTATE |
| 8 | STATE OF CALIFORNIA |
| 9 | * * * |
| 10 | In the Matter of the Accusation of) |
| 11 | ZOYA LEE SMITHTON,) NO. H-7729 SF |
| 12 | Respondent.) |
| 13 | ······································ |
| 14 | ORDER DENYING REINSTATEMENT OF LICENSE |
| 15 | On March 16, 2000, an Order was rendered herein |
| 16 | revoking the real estate broker license of Respondent, but |
| 17 | granting Respondent the right to the issuance of a restricted |
| 18 | real estate broker license. A restricted real estate broker |
| 19 | license was issued to Respondent on April 17, 2000, and |
| 20 | Respondent has operated as a restricted licensee since that time. |
| 21 | On June 27, 2000, Respondent petitioned for |
| 22 | reinstatement of said real estate broker license, and the |
| 23 | Attorney General of the State of California has been given notice |
| 24 | of the filing of said petition. |
| 25 | I have considered Respondent's petition and the |
| 26 | evidence and arguments in support thereof. Respondent has failed |
| 27 | to demonstrate to my satisfaction that Respondent has undergone |
| | |

||FILE NO. H-7729 SF

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

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

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

14 Further, Respondent employed Vanessa Gonzalez as a real estate salesperson to perform acts for which a real estate 15 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 2002. noon on May 28 23 DATED: 2002 24 PAULA REDDISH ZINNEMANN Real Estate Commissioner 25 26 auli keddi 27 FILE NO. H-7729 SF ZOYA LEE SMITHTON

| 1 2 | DEPARTMENT OF REAL ESTATE P. O. Box 187000 Sacramento, CA 95818-7000 |
|--------|--|
| 3 | Telephone: (916) 227-0789 |
| 4 | DEPARTMENT OF REAL ESTATE |
| 5 | Katta V-ton |
| 6 | By L. punleen concludes |
| 7 | |
| 8 | BEFORE THE |
| 9 | DEPARTMENT OF REAL ESTATE |
| 10 | STATE OF CALIFORNIA |
| 11 | * * * |
| 12 | In the Matter of the Accusation of)) NO. H-7729 SF |
| 13 | ZOYA LEE SMITHTON,) STIPULATION AND AGREEMENT |
| 14 | Respondent.) |
| 15 | |
| 16 | It is hereby stipulated by and between ZOYA LEE |
| 17 | SMITHTON ("Respondent") acting by and through her attorney, |
| 18 | David P. Wasserman; and the Complainant, acting by and through |
| 19 | Thomas C. Lasken, Counsel for the Department of Real Estate; as |
| 20 | follows, for the purpose of settling and disposing of the |
| 21 | Accusation filed on July 20, 1999, in this matter: |
| 22 | 1. All issues which were to be contested and all |
| 23 | evidence which was to be presented by Complainant and Respondent |
| 24 | at a formal hearing on the Accusation, which hearing was to be |
| 25 | held in acccordance with the provisions of the Administrative |
| 26 | Procedure Act (APA) (Government Code Section 11500 et seq.), |
| 27 | 111 |
| | H-7729 SF - 1 - ZOYA LEE SMITHTON |

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

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.

On July 22, 1999, Respondent filed her Notice of 3. 7 Defense pursuant to Section 11505 of the Government Code for the 8 purpose of requesting a hearing on the allegations in the 9 Respondent hereby freely and voluntarily withdraws 10 Accusation. Respondent acknowledges that by 11 her Notice of Defense. withdrawing said Notice of Defense she will thereby waive her 12 right to require the Commissioner to prove the allegations in the 13 Accusation at a contested hearing held in accordance with the 14 provisions of the APA and that she will waive other rights 15 afforded to her in connection with the hearing such as the right 16 to present evidence in defense of the allegations in the 17 Accusation and the right to cross-examine witnesses. 18

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

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

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

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

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DETERMINATION OF ISSUES

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By reason of the foregoing stipulations, admissions and waivers and solely for the purpose of settlement of the pending Accusation without a hearing, it is stipulated and agreed that the following determination of issues shall be made:

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The conduct of the Respondent, as described in the Accusation, constitutes cause for the suspension or revocation of the real estate license and license rights of Respondent under the provisions of Section <u>10176(e)</u> and <u>10177(d)</u> of the California Business and Professions Code ("Code").

ORDER

| 13 | A. | The real estate broker license and all license rights of |
|----|---------|---|
| | | |
| 14 | | Respondent under the Real Estate Law are revoked. |
| 15 | в. | A restricted real estate broker license shall be issued to |
| 16 | | Respondent pursuant to Business and Professions Code Section |
| 17 | | 10156.5, if Respondent makes application therefor and pays |
| 18 | · | to the Department the appropriate fee for said license |
| 19 | | within ninety (90) days from the effective date of this |
| 20 | | ORDER. |
| 21 | c. | The restricted license issued to Respondent shall be subject |
| 22 | | to all the provisions of Section 10156.7 of the Business and |
| 23 | } | Professions Code and to the following limitations, conditions |
| 24 | | and restrictions imposed under authority of Section 10156.6 |
| 25 | | of said Code: |
| 26 | | (1) The license shall not confer any property right in the |
| 27 | | privileges to be exercised, and the Real Estate |
| | H-7 | 729 SF -4 - ZOYA LEE SMITHTON |

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

- (a) The conviction of Respondent (including a plea of nolo contendere) to a crime which bears a significant relation to Respondent 's fitness or capacity as a real estate licensee; or,
- (b) The receipt of evidence that Respondent has violated provisions of the California Real Estate Law, Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
- (2) Respondent shall not be eligible to apply for issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until one (1) year has elapsed from the date of issuance of a restricted license to Respondent.

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

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

- (a) Respondent shall pay such cost within 60 days of receipt of an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities;
- (b) If Respondent fails to pay, within 60 days from receipt of the invoice specified above, the Commissioner's reasonable costs for an audit to determine if Respondent has corrected the violations found as set forth in the Determination of Issues above, the Commissioner may order the indefinite suspension of Respondent's real estate licenses and license rights. The suspension shall remain in effect until payment is made in full, or until Respondent enters into an agreement satisfactory to the Commissioner to provide for such payment. The Commissioner may impose further reasonable disciplinary terms and conditions upon Respondent's real estate license and license rights 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

H-7729 SF

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examination fee. If Respondent fails to satisfy this 1 condition, the Commissioner may order the suspension of the 2 restricted license until Respondent passes the examination. З 4 F. Respondent shall, within nine (9) months from the effective 5 date of this ORDER, present evidence satisfactory to the Real Estate Commissioner that she has, since the most recent 6 7 issuance of an original or renewal real estate license, taken and successfully completed the continuing education 8 9 requirements of Article 2.5 of Chapter 3 of the Real Estate 10 Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order 11 the suspension of the restricted license until Respondent 12 13 presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the 14 Administrative Procedure Act to present such evidence. 15 16 G. Any restricted real estate broker license issued to Respondent may be suspended or revoked for a violation by Respondent of any of the conditions attaching to the restricted license.

neg 10, 2000 21 22

SKEN. OF REAL ESTATE **MENT**

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

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limited to Sections 11506, 11508, 11509, and 11513 of the 1 Government Code), and I willingly, intelligently, and 2 voluntarily waive those rights, including the right of ٦ requiring the Commissioner to prove the allegations in the 4 Accusation at a hearing at which I would have the right to 5 cross-examine witnesses against me and to present evidence in 6 defense and mitigation of the charges. 7 8 1-21-2000 9 Respondent 10 11 I have reviewed the Stipulation and Agreement in 12 Settlement as to form and content and have advised my clients 13 accordingly. 14 15 Ρ. WASSERMAN ÍD Attorney for Respondent 16 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 <u>April 17</u> 2000. 22 IT IS SO ORDERED 2000. 23 PAULA REDDISH ZINNEMANN 24 Real Estate Commissioner 25 26 ull. 27 H-7729 SF ZOYA LEE SMITHTON

BEFORE THE DEPARTMENT OF REAL ESTAT STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

Katta

In the Matter of the Accusation of

ZOYA LEE SMITHTON.

| | By philoen |
|----------|--------------|
| 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

January 25, 2000 on

_, 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 subpenas 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.

| Dated: | December | 7. | 1999 | |
|--------|----------|----|------|--|
| лиси. | December | 11 | 1222 | |

DEPARTMENT OF REAL ESTATE Bν

Counsel

BEFORE THE DEPARTMENT OF REAL ESTATE STATE OF CALIFORNIA

In the Matter of the Accusation of

ZOYA LEE SMITHTON,

OAH No. <u>N-1999090152</u>

Case No. H-7729 SF

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

OCT 2 5 1999

DEPARTMENT OF REAL ESTATE

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 subpenas 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.

| Dated: | October | 20, | 1999 | |
|--------|---------|-----|------|--|
| | | | | |

DEPARTMENT OF REAL ESTATE

Counsel

| THOMAS C. LASKEN, Counsel |
|--|
| P. O. Box 187000 Sacramento, CA 95818-7000 |
| JUL 2 0 1999 |
| Telephone: (916) 227-0789 DEPARTMENT OF REAL ESTATE |
| By Jean anna |
| |
| |
| BEFORE THE DEPARTMENT OF REAL ESTATE |
| STATE OF CALIFORNIA |
| · * * * |
| In the Matter of the Accusation of)) NO. H-7729 SF |
| ZOYA LEE SMITHTON,) |
|) <u>ACCUSATION</u> Respondent.) |
| ······································ |
| The Complainant, Les R. Bettencourt, a Deputy Real |
| Estate Commissioner of the State of California, for cause of |
| Accusation against ZOYA LEE SMITHTON, is informed and alleges as |
| follows: |
| I I |
| The Complainant, Les R. Bettencourt, a Deputy Real |
| Estate Commissioner of the State of California, makes this |
| Accusation in his official capacity. |
| II |
| At all times herein mentioned, ZOYA LEE SMITHTON |
| ("Respondent") was, and presently is, licensed, and/or has license |
| rights under the Real Estate Law, Part 1 of Division 4 of the |
| Business and Professions Code ("Code"). |
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| 1 | III |
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| 2 | At all times mentioned herein, Respondent engaged in the |
| 3 | business of, acted in the capacity of, advertised or assumed to |
| . 4 | act as a real estate broker within the State of California, within |
| 5 | the meaning of Section 10131(b) of the Code, including the |
| 6 | operation and conduct of a real estate property management |
| . 7 | business with the public, wherein Respondent, for or in |
| . 8 | expectation of a compensation, leased or rented or offered to |
| 9 | lease or rent, or solicited listings of, places for rent; |
| 10 | solicited prospective tenants for, negotiated rental agreements |
| 11 | for, and collected rents from, real properties owned by another or |
| 12 | others; and, otherwise managed real properties in California. |
| 13 | IV |
| . 14 | During the course of the real property management |
| . 15 | activities described in Paragraph III above, Respondent received |
| 16 | and disbursed funds held in trust on behalf of another or others. |
| 17 | V |
| 18 | Within the three-year period immediately preceding the |
| 19 | filing of this Accusation, Respondent maintained the following |
| 20 | trust accounts: |
| 21 | Bank of America 1525 Market Street |
| 22 | San Francisco, CA. 94103 |
| 23 | 1. Account No. 02991-03876 Title: The American Property Exchange Trust Account |
| 24 | Title: The American Property Exchange Trust Account (hereinafter "Trust #1") |
| 25 | 2. Account No. 02997-17776 Title: AMMS dba The American Bronorty Evaluate |
| 26 | Title: AMMS dba The American Property Exchange Trust Account (bereinafter "Trust #2") |
| 27 | (hereinafter "Trust #2") ' |
| | - 2 - |
| | |

3. Account No. 02991-01131 Title: American Management Systems, Inc., dba American Property Exchange Real Estate Trust Account

(hereinafter "Trust #3")

VT

5 Commencing on January 16, 1998, and continuing through March 25, 1998, an investigative audit was made by the Department 6 of Real Estate ("Department") of Respondent's records for the 7 period of January 1, 1997, through December 31, 1997 (hereinafter 8 9 "the audit period"), as those records relate to Respondent's licensed activities in her real estate business. 10

VTT

12 During the audit period, in connection with the collection and disbursement of trust funds, Respondent failed to 13 14 deposit and maintain trust funds in Trust #1 in such manner that as of March 31, 1997, there were a shortages of \$49,164.78 of 15 trust funds. 16

VIII

18 During the audit period, Respondent disbursed, or caused 19 or permitted the disbursement of, trust funds from Trust #1 20 without the prior written consent of every principal who was an owner of the funds in the account, where the disbursement reduced 21 22 the balance of funds in the accounts to an amount that was \$49,164.78 less than the existing aggregate trust fund liability 23 24 of Respondent to all owners of said funds, in violation of Section 25 2832.1 of the Regulations. 26 111

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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.

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⁸ During the audit period, in connection with the receipt ⁹ and disbursement of trust funds, as to Trusts #1 and #2, ¹⁰ Respondent failed to maintain columnar records of all the trust ¹¹ funds received and disbursed in the manner required by Section ¹² 2831 of Title 10, California Code of Regulations (hereinafter ¹³ "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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IX

| 2 | During the audit period, none of the trust accounts |
|----------------|---|
| 3 [,] | identified in Paragraph V above were in the name of Respondent as |
| 4 | trustee at a bank or other financial institution as required by |
| 5 | Section 2832 of the Regulations. |
| 6 | XIV |
| 7 | During the audit period, in connection with the receipt |
| 8 | and disbursement of trust funds, Respondent allowed withdrawal |
| 9. | from trust accounts #1, #2, and #3 by unlicensed persons who did |
| 10 | not have fidelity bond coverage, in violation of Section 2834 of |
| 11 | the Regulations. |
| 12 | xv |
| 13 | Respondent's acts and omissions alleged above in |
| 14 | Paragraphs VII and VIII constitute cause for discipline under |
| 15 | Section 10177(d) of the Code in conjunction with Section 10145 of |
| 16 | the Code and Section 2832.1 of the Regulations. |
| 17 | XVI |
| 18 | Respondent's acts and omissions alleged above in |
| 19 | Paragraph IX above constitute cause for discipline under Section |
| 20 | 10176(e) of the Code. |
| 21 | XVII |
| 22 | Respondent's acts and omissions alleged above in |
| 23 | Paragraphs X through XIV constitute cause for discipline under |
| 24 | the provisions of Section 10177(d) of the Code. |
| 25 | 111 |
| 26 | 111 |
| 27 | 111 |
| | - 5 - |
| | |

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.

BETTENCOURT R . Deputy Real Estate Commissioner

Dated at Oakland, California, this <u>244</u> day of June, 1999.