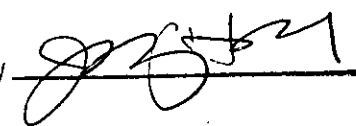


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FILED
NOV 26 2003
DEPARTMENT OF REAL ESTATE
By 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
))
LAWRENCE LOUIS FRANZELLA,) NO. H-7738 SF
))
) Respondent.)
)

ORDER GRANTING REINSTATEMENT OF LICENSE

On March 1, 2000, a Decision was rendered herein
revoking the real estate broker license of Respondent, but
granting Respondent the right to the issuance of a restricted
real estate salesperson license. A restricted real estate
salesperson license was issued to Respondent on March 31, 2000.

On July 11, 2002, 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
record as a restricted licensee. Respondent has demonstrated to

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

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

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

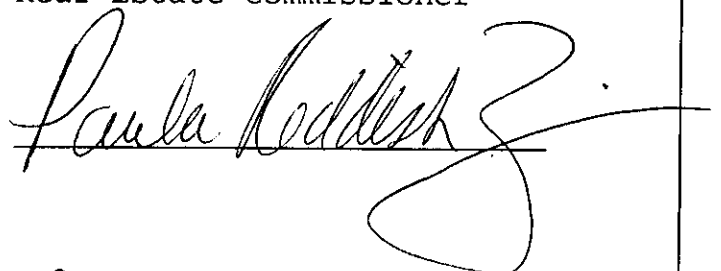
12 2. Submittal of evidence of having, since the most
13 recent issuance of an original or renewal real estate license,
14 taken and successfully completed the continuing education
15 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
16 for renewal of a real estate license.

17 3. Submittal of proof satisfactory to the Commissioner
18 of having taken and completed the trust fund accounting and
19 handling course specified in paragraph (3), subdivision (a) of
20 Section 10170.5 of the Business and Professions Code.

21 This Order shall be effective immediately.

22 DATED: November 12, 2003.

23
24 PAULA REDDISH ZINNEMANN
Real Estate Commissioner

25 
26
27

FILED
MAR 10 2000

DEPARTMENT OF REAL ESTATE

Laurie G. Zisi

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	NO. H-7738 SF
TROTTER-VOGEL REALTY, INC.,)	
LAWRENCE LOUIS FRANZELLA,)	OAH NO. N-1999090147
)	
Respondents.)	

DECISION

The Proposed Decision dated February 9, 2000, 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.

Pursuant to the provisions of Paragraph 1 of the Order as to Respondent TROTTER - VOGEL REALTY, INC. appearing on pages 7 and 8, inclusive, of the Proposed Decision, all licenses and license rights of Respondent TROTTER - VOGEL REALTY, INC. are suspended for a period of forty (40) days from the effective date of this Decision; provided however, that if said Respondent petitions, said suspension (or a portion thereof) shall be stayed upon condition that:

///
///

1. Respondent pays a monetary penalty pursuant to
Section 10175.2 of the Code at the rate of \$250.00 for each day
of the suspension for a total monetary penalty of \$10,000.00.

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

3. No further cause for disciplinary action against
the real estate license of Respondent occurs within two years
from the effective date of the Decision in this matter.

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

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

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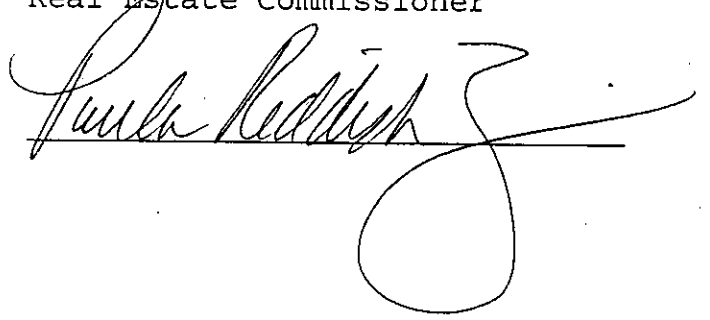
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This Decision shall become effective at 12 o'clock noon
on March 31, 2000.

IT IS SO ORDERED March 1, 2000.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



A handwritten signature in cursive script, reading "Paula Reddish Zinnemann", is written over a horizontal line. The signature is fluid and extends below the line with a large loop.

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

TROTTER-VOGEL REALTY, INC., and
LAWRENCE LOUIS FRANZELLA,

Respondents.

Case No. H-7738 SF

OAH No. N 1999090147

PROPOSED DECISION

Administrative Law Judge Stewart A. Judson, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on January 12, 2000.

James Beaver, Counsel, represented complainant Les R. Bettencourt, a Deputy Real Estate Commissioner of the State of California.

Maxine Monaghan, Esq., represented respondents Trotter-Vogel Realty, Inc., and Lawrence Louis Franzella.

The matter was submitted on January 12, 2000.

FACTUAL FINDINGS

1. Official Notice is taken that Les R. Bettencourt made the accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California.
2. At all times herein mentioned, respondent ERA Trotter-Vogel Realty, Inc. (TVR) was licensed by the Department of Real Estate (the Department) as a corporate real estate broker by and through respondent Lawrence Louis Franzella (Franzella), its designated officer-broker. Franzella acted for TVR as a real estate broker. The dba: ERA Trotter-Vogel Realty was canceled as of May 4, 1998. The dba: Prudential California Realty was added as of said date. This license and the designation of Franzella as the designated officer of Prudential California Realty, TVR, the successor of ERA TVR, expire on June 16, 2001.

3. At all times herein mentioned, Franzella was and now is licensed as a real estate broker individually and as the designated broker-officer of TVR. As TVR's designated broker-officer, Franzella was responsible for supervising the activities of the officers, agents, real estate licensees and employees of TVR for which a license is required.¹ Franzella's real estate broker license expires August 11, 2001.

4. Whenever reference is made to an act or omission of TVR, such act or omission means that the officers, directors, employees, agents and real estate licensees employed by or associated with TVR committed said act or omission while engaged in the furtherance of the business or operation of TVR and while acting within the course and scope of their corporate authority and employment.

5. At all times mentioned herein, respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as real estate brokers within the State of California pursuant to Section 10131(b). Such acts included the operation and conduct of a property management business with the public wherein, on behalf of others and for compensation or in the expectation of compensation, respondents leased or rented, offered to lease or rent, placed for rent, solicited listings of places for rent, and solicited for prospective tenants of real property or improvements thereon, and collected rents from real property or improvements thereon.

6. In acting as real estate brokers, respondents accepted or received funds in trust (trust funds) from or on behalf of owners and tenants in connection with leasing, renting and collection of rents on real property or improvements thereon and thereafter made disbursements of said funds.

7. These trust funds were deposited by respondents into the following bank accounts maintained by respondents:

a) The "Trotter-Vogel Realty, Inc., dba Prudential California Realty" account, No. 145009705, at the San Mateo, California branch of Union Bank of California (Bank Account #1).

b) The "ERA Trotter-Vogel Realty Trust Account," No. 01233-06010, at the San Bruno, California branch of Bank of America (Trust Account #1).

8. From April 13, 1999 through June 4, 1999, the Department audited the accounting records of TVR for the period January 1, 1997 to February 18, 1999 at TVR's office. The audit included an examination of bank statements, canceled checks, deposit book, record of trust funds received and disbursed, separate beneficiary records,

¹ See Business and Professions Code section 10159.2. All statutory references are to said Code unless otherwise noted.

bank signature card, management agreements and invoices. The auditor also interviewed Franzella and his bookkeeper.

9. TVR conducts business through 92 licensees employed under its license. Michael Monzon is the CEO, Franzella is president, John Gieseke is vice-president/treasurer and Brian Boisson is vice-president. Each owns 25% of the corporation, and each is licensed as a real estate broker.

10. As of April 12, 1999, TVR managed 150 residential units and five commercial units for 90 owners. The audit disclosed that TVR collected \$160,000 per month in rent receipts. It charged a monthly management fee of 6% of gross rents or a flat fee of \$50 per property.

11. During the audit period, Bank Account #1 was used for disbursement and deposit of trust funds. Trust Account #1 was used for collection of cash receipts. Trust Account #1 funds were transferred to Bank Account #1 for disbursements. The signatories on both accounts were the four owners and Dottie Anderson. Two signatures were required.

12. The auditor attempted to reconcile Bank Account #1 and Trust Account #1 using cut-off dates of February 18, 1999 and February 27, 1998. The latter date was used to determine when the shortage first occurred. The combined balances were compared with the balances of the separate records and the balance of the records of trust funds received and disbursed on each said date.

13. The audit showed that, as of February 28, 1999, there was a trust fund shortage of \$35,169.60. As of February 27, 1998, the trust fund shortage amounted to \$30,599.88. As to the latter figure, the cause was related to \$550 due to negative property balances and the balance, \$30,049.88, due to unidentified reasons.

14. The cause of the \$4,569.72 increase in shortage between the two cut-off dates was only partially identified due to missing accounting records. Two thousand two hundred seventy-five dollars (\$2,275) of the increase was due to rents collected but not deposited. When asked by the auditor for the 1997 and 1998 daily rent receipt records, TVR's bookkeeper stated they were in storage. She asked Franzella to locate them. However, Franzella was unable to do so. He did not recall filing the records in storage.

15. Based upon his examination of the records made available, the auditor determined that most of the shortage occurred before 1998. The evidence shows that TVR did not reconcile monthly the balances of all separate beneficiary records with the record of all trust funds received and disbursed for both accounts. The evidence also shows that TVR did not designate Bank Account #1 as a trust account in the name of the broker as trustee.

16. The evidence shows that TRV double-billed a property owner for services rendered in removing a stove. Franzella concedes that this "was an over billing by our handyman that quite frankly was not noticed." TVR has instituted more thorough reviews by the property manager of all billings.

17. Initially, the auditor reported to Franzella that the shortage totaled \$39,000. At the auditor's request, Franzella deposited that amount into the trust account. Thereafter, the auditor reduced the amount of the shortage to \$35,169.60. Franzella then asked his own accountant to review the books and records to determine how the shortage occurred. Franzella and his accountant met with the bookkeeper, who was fired shortly thereafter.

18. The Department's auditor determined that all owners were credited with funds received by TVR. However, cash receipts were not deposited into the trust account. On paper, none of the owners showed a loss. If they wanted their money at once, not all of it would be in the account.

19. After Franzella and his accountant met with the bookkeeper, they reported their conversation to the Department's auditor who concluded that the bookkeeper had possibly not deposited cash receipts into the trust account. She was the only employee who had access to cash receipts. The accountant determined that the total of funds missing for the years 1997, 1998 and 1999 amounted to \$34,638.78. The cash balance reported according to the bank's reconciliations dropped steadily but the owner account amount remained the same.

20. Franzella had been acquainted with the bookkeeper since 1977. He sold her and her husband their home a year later. He developed a friendship with them and, in 1986, she came to work at TVR as a receptionist. She then began assisting TVR's then-bookkeeper and became the full-time bookkeeper for property management in 1993. Franzella assisted in training her in her tasks including collections, disbursements and balancing and reconciling trust accounts. By 1993, TVR's records were computerized. The bookkeeper was able to bring up balances directly from the computer. Franzella reviewed her work and was satisfied with her ability to reconcile and balance accounts. Her duties were increased regarding the trust accounts. Franzella believed she performed in an exemplary fashion taking responsibility and following through.

21. Franzella trusted the bookkeeper implicitly. When she took the job full time, Franzella asked for her reconciliations each month. After a while, he just simply asked her if TVR was in balance. He stopped checking the owners' accounts during the last few years of her tenure. He received no complaints from the owners. Following the audit, Franzella filed a complaint with the police department. The matter has been referred to the district attorney.

22. Trust Account #1 was opened in May 1993 during a merger that was not made public at the time. TVR wanted to borrow from a bank not in its area to keep the merger news secret. Franzella met with Union Bank officials in his office and explained TVR's needs. Union insisted upon TVR establishing a bank account with it (Bank of California). TVR agreed to move its trust account to Bank of California after the loan was made. TVR retained its Bank of America account (Trust Account #1) because a Bank of California branch was not easily available to it. TVR would deposit cash into Trust Account #1 and then issue a check to the Bank of California account.

23. When the Department's auditor contacted Union Bank, it provided a signature card that did not show the account as a trust account. The evidence shows that Franzella considered this account as a trust account.² Franzella contacted Union Bank when informed by the auditor of the account's status and arranged for a new signature card to be signed and labeled properly as a trust account.

24. TVR now balances and matches its trust account monthly against the owners' outstanding balances. This is reviewed monthly by TVR's accountant. TVR utilizes a special management property program on its computer that generates all property owners' accounts on a monthly basis and indicates what is owed to each owner. The accountant verifies that the figures are in balance.

25. Cash receipts are deposited into Trust Account #1. A cash control sheet is now maintained. The property manager receives the cash and notes on the control sheet each cash deposit, totals the amounts and signs the control sheet. The bookkeeper then recounts the funds received, verifies the amount and signs the control sheet. The control sheet remains with the property manager, and the bookkeeper makes the deposit.

26. Franzella has completed bookkeeping courses and understands how bank reconciliations are accomplished. He concedes that, throughout the last several years, daily cash receipts were not deposited directly into Trust Account #1. Had TVR been reconciling its trust account each month, the shortage would have been discovered. Franzella was responsible for TVR's actions regarding its trust account. He admits he did not discharge properly his responsibility for supervising the accounting activities of the firm and assuring that shortages did not occur.

27. Franzella was licensed initially as a real estate salesperson in February 1975. He joined TVR in 1976. He is a certified residential specialist and a member of the San Mateo County Association of Realtors, San Francisco Association of Realtors, California Association of Realtors and National Association of Realtors. He has, since

² Respondents did not offer into evidence a copy of the signature card for this account showing it as a trust account.

1980, held offices in these and other professional organizations. He served as a San Bruno City Councilman from 1987 to 1995 and Vice-Mayor of San Bruno from 1989 to 1993. He was chosen Life Member-Million Dollar Club in 1977, awarded Realtor of the Year in 1983 and 1985 and received the Diamond Sales Award in 1988.

LEGAL CONCLUSIONS

1. The evidence shows that respondent TVR did not place trust funds entrusted to it into a neutral escrow depository or into a trust fund account in the name of TVR as trustee at a bank or other financial institution.³ Respondent TVR violated Section 10145 and Title 10, California Code of Regulations (CCR) section 2832(a). Cause for disciplinary action exists under Section 10177(d).

2. The evidence shows that respondent TRV did not reconcile, at least once monthly, the balance of all separate beneficiary or transaction records with the record of all trust funds received into and disbursed from Bank Account #1 and Trust Account #1. Respondent TVR violated Title 10, CCR, section 2831.2. Cause for disciplinary action exists under Section 10177(d).

3. The evidence shows that respondent TVR caused, suffered and permitted the balance of funds in Bank Account #1 and Trust Account #1 to be reduced to an amount which, as of February 27, 1998, was \$30,599.88 less than the aggregate liability of respondent TVR to all owners of such funds and without the prior written consent of the owners of such funds. Respondent TVR violated Section 10145 and Title 10, CCR, section 2832.1. Cause for disciplinary action exists under Section 10177(d).

4. The evidence shows that respondent TVR caused, suffered and permitted the balance of funds in Bank Account #1 and Trust Account #1 to be reduced to an amount which, as of February 18, 1999, was \$35,169.60 less than the aggregate liability of respondent TVR to all owners of such funds and without the prior written consent of the owners of such funds. Respondent TVR violated Section 10145 and Title 10, CCR, section 2832.1. Cause for disciplinary action exists under Section 10177(d).

5. The evidence shows that respondent Franzella did not exercise reasonable supervision over the acts of TVR in such manner as to allow the acts and events described in Conclusions 1-4 to occur. Respondent Franzella violated Section 10159.2(a). Cause for disciplinary action exists under Sections 10177(h) and 10177(d).

³ While the evidence shows that Franzella considered the Union Bank account a trust account, competent evidence does not show that it, in fact, was a trust account.

ORDER

RESPONDENT TVR

All licenses and licensing rights of respondent TVR are suspended for two (2) years from the effective date of this decision under Conclusions 1-4, separately and jointly; provided, however that the suspension shall be stayed upon the following conditions:

1. Respondent TVR's license and license rights shall be suspended for forty (40) days. Respondent TVR may, pursuant to Section 10175.2, petition the Commissioner to pay a monetary penalty and thereby further stay imposition of the actual suspension.
2. Respondent TRV shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California.
3. The Commissioner may, if a final subsequent determination is made after hearing or upon stipulation and waiver that cause for disciplinary action occurred during the suspension provided for in condition "1," vacate and set aside the stay order including any further stay imposed pursuant to Section 10175.2. Should no such order vacating the stay be made pursuant to this condition or condition "4" below, the stay imposed herein shall become permanent.
4. Pursuant to Section 10148, respondent TVR shall pay the Commissioner's reasonable cost for an audit to determine if respondent TVR has corrected the trust fund violations found in paragraphs 1-4 of the Legal Conclusions.⁴

In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers and shall include an allocation for travel costs, including mileage, time to and from the auditor's place of work and per diem.

Respondent TVR shall pay such cost within forty-five (45) days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities.

The Commissioner may, in his discretion, vacate and set aside the stay order if payment is not timely made as provided for herein or as provided for in a

⁴ According to the Department, the cost will be \$6,455.35. (See Exhibit No. 7.)

*Not
Adopted -
See
Decision*

subsequent agreement between respondent TVR and the Commissioner. The vacation and the set aside of the stay shall remain in effect until payment is made in full or until respondent TVR enters into an agreement satisfactory to the Commissioner to provide for payment.

Should no order vacating the stay be issued either in accordance with this condition or condition "3," the stay imposed herein shall become permanent.

RESPONDENT FRANZELLA

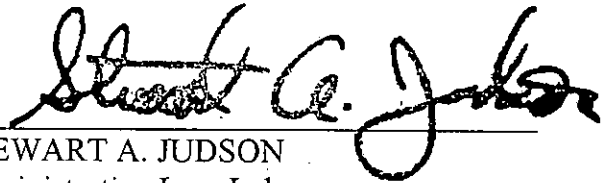
All licenses and licensing rights of respondent Lawrence Louis Franzella under the Real Estate Law are revoked under Conclusion No. 5; provided, however, a restricted real estate broker license shall be issued to respondent Franzella pursuant to Section 10156.5 if respondent Franzella makes application therefor and pays to the Department the appropriate fee for the restricted license within ninety (90) days from the effective date of this decision. The restricted license issued to respondent Franzella shall be subject to all the provisions of Section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6:

1. The restricted license issued to respondent Franzella may be suspended prior to hearing by Order of the Commissioner in the event of respondent Franzella's conviction or plea of nolo contendere to a crime that is related substantially to his fitness or capacity as a real estate licensee.
2. The restricted license issued to respondent Franzella may be suspended prior to hearing by Order of the Commissioner on evidence satisfactory to the Commissioner that respondent Franzella has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Commissioner or conditions attaching to the restricted license.
3. Respondent Franzella 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 real estate license until two (2) years have elapsed from the effective date of this decision.
4. Respondent Franzella shall, within nine (9) months from the effective date of this decision, present evidence satisfactory to the Commissioner that respondent Franzella 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 Franzella fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until respondent presents such evidence. The Commissioner shall

afford respondent the opportunity for a hearing under the Administrative Procedure Act to present such evidence.

5. Respondent Franzella shall be held liable for respondent TVR's payment of the reasonable cost for an audit to determine if respondent TVR has corrected the trust fund violations found in Conclusions 1-4. If respondent TVR does not timely make said payment, the Commissioner may seek payment from respondent Franzella. Should respondent Franzella not make timely payment within ten (10) days of notification from the Commissioner, the Commissioner may consider such act as a violation of the conditions of respondent Franzella's restricted license.

DATED: February 9, 2000



STEWART A. JUDSON
Administrative Law Judge
Office of Administrative Hearings

FILED
OCT 14 1999

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

Laurie G. Zin

In the Matter of the Accusation of

TROTTER - VOGEL REALTY, INC. and
LAWRENCE LOUIS FRANZELLA,

}

Case No. H-7738 SF

OAH No. N-1999090147

Respondent

FIRST AMENDED
NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at the
Office of Administrative Hearings, 1515 Clay Street, Suite 206,
Oakland, CA 94612

on January 12th & 13th, 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.

Dated: October 14, 1999

DEPARTMENT OF REAL ESTATE
By *JL Beaver*
JAMES L. BEAVER Counsel

FILED
SEP 30 1999

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

Laurie A. Zain

In the Matter of the Accusation of

TROTTER - VOGEL REALTY, INC. and
LAWRENCE LOUIS FRANZELLA,

}

Case No. H-7738 SF

OAH No. N-1999090147

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, 1515 Clay Street, Suite 206,
Oakland, CA 94612

on November 15 & 16, 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: September 30, 1999

By James L. Beaver
JAMES L. BEAVER Counsel (12)

1 JAMES L. BEAVER, Counsel (SBN 60543)
Department of Real Estate
2 P. O. Box 187000
Sacramento, CA 95818-7000
3
4 Telephone: (916) 227-0789
-or- (916) 227-0788 (Direct)
5
6
7

FILED
AUG 17 1999

DEPARTMENT OF REAL ESTATE

By *Lucie A. Zain*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 TROTTER - VOGEL REALTY, INC. and) No. H-7738 SF
13 LAWRENCE LOUIS FRANZELLA,) ACCUSATION
14 Respondents.)

15 The Complainant, Les R. Bettencourt, a Deputy Real
16 Estate Commissioner of the State of California for cause of
17 Accusation against TROTTER - VOGEL REALTY, INC. (hereinafter
18 "TVR") and LAWRENCE LOUIS FRANZELLA (hereinafter "Respondent
19 FRANZELLA"), is informed and alleges as follows:

20 I

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

24 ///
25 ///
26 ///
27 ///

1 II

2 At all times herein mentioned, Respondents TVR and
3 FRANZELLA were and now are licensed and/or have license rights
4 under the Real Estate Law (Part 1 of Division 4 of the Business
5 and Professions Code) (hereinafter "the Code").

6 III

7 At all times herein mentioned, Respondent TVR was and
8 now is licensed by the Department of Real Estate of the State of
9 California (hereinafter "the Department") as a corporate real
10 estate broker by and through Respondent FRANZELLA as designated
11 officer-broker of Respondent TVR to qualify said corporation and
12 to act for said corporation as a real estate broker.

13 IV

14 At all times herein mentioned; Respondent FRANZELLA was
15 and now is licensed by the Department as a real estate broker,
16 individually and as designated officer-broker of Respondent TVR.
17 As said designated officer-broker, Respondent FRANZELLA was at
18 all times mentioned herein responsible pursuant to Section
19 10159.2 of the Code for the supervision of the activities of the
20 officers, agents, real estate licensees and employees of
21 Respondent TVR for which a license is required.

22 V

23 Whenever reference is made in an allegation in this
24 Accusation to an act or omission of Respondent TVR, such
25 allegation shall be deemed to mean that the officers, directors,
26 employees, agents and real estate licensees employed by or
27 associated with Respondent TVR committed such act or omission

1 while engaged in the furtherance of the business or operations of
2 Respondent TVR and while acting within the course and scope of
3 their corporate authority and employment.

4 VI

5 At all times herein mentioned, Respondents engaged in
6 the business of, acted in the capacity of, advertised, or assumed
7 to act as real estate brokers within the State of California
8 within the meaning of Section 10131(b) of the Code, including the
9 operation and conduct of a property management business with the
10 public wherein, on behalf of others, for compensation or in
11 expectation of compensation, Respondents leased or rented and
12 offered to lease or rent, and placed for rent, and solicited
13 listings of places for rent, and solicited for prospective
14 tenants of real property or improvements thereon, and collected
15 rents from real property or improvements thereon.

16 VII

17 In so acting as real estate brokers, as described in
18 Paragraph VI above, Respondents accepted or received funds in
19 trust (hereinafter "trust funds") from or on behalf of owners and
20 tenants in connection with the leasing, renting, and collection
21 of rents on real property or improvements thereon, as alleged
22 herein, and thereafter from time to time made disbursements of
23 said funds.

24 VIII

25 The aforesaid trust funds accepted or received by
26 Respondents were deposited or caused to be deposited by
27 Respondents into one or more bank accounts (hereinafter "trust

1 fund accounts") maintained by Respondents for the handling of
2 trust funds, including but not necessarily limited to:

3 (a) The "Trotter - Vogel Realty, Inc. dba Prudential
4 California Realty" account, Account Number 145009705, maintained
5 by Respondents at the San Mateo, California branch of Union Bank
6 of California (hereinafter "Bank Account #1"); and

7 (b) The "ERA Trotter - Vogel Realty Trust Account",
8 Account Number 01233-06010, maintained by Respondents at the San
9 Bruno, California, branch of Bank of America (hereinafter "Trust
10 Account #1").

11 IX

12 Within the three-year period immediately preceding the
13 filing of this Accusation, in connection with the collection and
14 disbursement of said trust funds, Respondent TVR:

15 (a) Failed to place trust funds entrusted to
16 Respondent TVR into the hands of a principal on whose behalf the
17 funds were received, into a neutral escrow depository, or into a
18 trust fund account in the name of Respondent TVR as trustee at a
19 bank or other financial institution, in conformance with the
20 requirements of Section 10145 of the Code and Section 2832(a) of
21 Chapter 6, Title 10, California Code of Regulations (hereinafter
22 "the Regulations"), in that Respondent TVR placed such funds in
23 Bank Account #1, an account that was not in the name of
24 Respondent TVR as trustee;

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1 (b) Failed to reconcile, at least once a month, the
2 balance of all separate beneficiary or transaction records with
3 the record of all trust funds received into and disbursed from
4 Bank Account #1 and Trust Account #1;

5 (c) Caused, suffered or permitted the balance of funds
6 in Bank Account #1 and Trust Account #1 to be reduced to an
7 amount which, as of February 27, 1998, was approximately
8 \$30,599.88 less than the aggregate liability of Respondent TVR to
9 all owners of such funds, without the prior written consent of
10 the owners of such funds; and

11 (d) Caused, suffered or permitted the balance of funds
12 in Bank Account #1 and Trust Account #1 to be reduced to an
13 amount which, as of February 28, 1999, was approximately
14 \$35,169.60 less than the aggregate liability of Respondent TVR to
15 all owners of such funds, without the prior written consent of
16 the owners of such funds.

17 X

18 Respondent FRANZELLA failed to exercise reasonable
19 supervision over the acts of Respondent TVR in such a manner as
20 to allow the acts and events described in Paragraph IX to occur.

21 XI.

22 The facts alleged above are grounds for the suspension
23 or revocation of the licenses and license rights of Respondent
24 TVR under the following provisions of the Code and/or the
25 Regulations:

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1 (a) As to Paragraph IX(a), under Section 10145 of the
2 Code and Section 2832 of the Regulations in conjunction with
3 Section 10177(d) of the Code;

4 (b) As to Paragraph IX(b), under Section 2831.2 of the
5 Regulations in conjunction with Section 10177(d) of the Code;

6 (c) As to Paragraph IX(c), under Section 10145 of the
7 Code and 2832.1 of the Regulations in conjunction with Section
8 10177(d) of the Code; and

9 (d) As to Paragraph IX(d), under Section 10145 of the
10 Code and 2832.1 of the Regulations in conjunction with Section
11 10177(d) of the Code.

12 XII

13 The facts alleged in Paragraph X above, are grounds for
14 the suspension or revocation of the licenses and license rights
15 of Respondent FRANZELLA under Section 10177(g) and/or Section
16 10177(h) of the Code and Section 10159.2 of the Code in
17 conjunction with Section 10177(d) of the Code.

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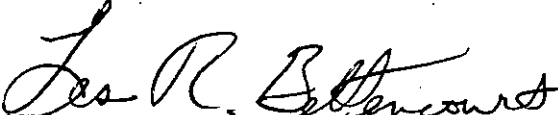
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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof a decision be rendered imposing disciplinary action against all licenses and license rights of Respondents under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other provisions of law.


LES R. BETTENCOURT
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 28th day of July, 1999.