

ORIGINAL

FILED

MAY 19 2003

DEPARTMENT OF REAL ESTATE

Shelly Ely

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-7969 SF
)	
KEVIN CRAIG MOORE,)	OAH No. N-2002100251
)	
Respondent.)	

STIPULATION AND AGREEMENT

AND

DECISION AFTER REJECTION

The California Department of Real Estate ("Department") filed an Accusation against KEVIN CRAIG MOORE ("Respondent") on June 21, 2001. On December 23, 2002, a hearing was held and evidence was received, the record was closed, and the matter was submitted.

On January 23, 2003, the Proposed Decision of the Administrative Law Judge was issued, and determined, among other things, that Respondent's real estate broker license should be

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1 suspended for two years stayed upon various terms and
2 conditions.

3 On February 5, 2003, the Commissioner rejected the
4 Proposed Decision of January 23, 2003.

5 The parties wish to settle this matter without further
6 proceedings.

7 IT IS HEREBY STIPULATED by and between Respondent and
8 his attorney of record, Steven E. Elias, and the Department,
9 acting by and through David B. Seals, Counsel for the Department
10 of Real Estate, as follows for the purpose of settling and
11 disposing of the Accusation filed by the Department.

12 1. It is understood by the parties that the Real Estate
13 Commissioner may adopt the Stipulation and Agreement as her
14 decision in this matter, thereby imposing the penalty and
15 sanctions on Respondent's real estate license as set forth in
16 the below "Decision and Order". In the event the Commissioner
17 in her discretion does not adopt the Stipulation and Settlement,
18 the Stipulation shall be void and of no effect; the Commissioner
19 will review the transcript and the evidence in the case, and
20 will issue her Decision after Rejection as her Decision in this
21 matter.

22 2. By reason of the foregoing and solely for the purpose of
23 settlement of the Accusation without further administrative
24 proceedings, it is stipulated and agreed that the following
25 shall be adopted as the Commissioner's Decision:

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1 FACTUAL FINDINGS

2 1. Complainant Les R. Bettencourt ("Complainant"), in his
3 official capacity as a Deputy Real Estate Commissioner of the
4 State of California, made the Accusation against respondent Kevin
5 Craig Moore ("respondent").

6 2. At all times herein mentioned, Respondent is presently
7 licensed and/or has license rights under the Real Estate Law
8 (Part 1 of Division 4 of the Business and Professions Code)
9 (hereinafter "Code") as a real estate broker with license
10 identification number 006864185. Respondent's license will expire
11 on December 26, 2005, unless renewed.

12 Respondent currently maintains a business mailing
13 address of P.O. Box 745, San Leandro, California 94577.
14 Respondent maintains a business office at 860 East Llewellyn
15 Boulevard in Hayward, California.

16 3. At the hearing of this matter, the parties stipulated
17 and agreed to the following facts and to the legal effect
18 therefrom:

19 a. At all times mentioned in the Accusation, filed on
20 June 21, 2001, respondent was a licensed real estate broker
21 doing business as Independent Real Estate Brokers - Moore &
22 Associates and Moore Property Management pursuant to the
23 Real Estate Law (Part 1 of Division 4 of the California
24 Business and Professions Code) ("Code").

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1 b. At all times mentioned in the Accusation,
2 respondent maintained a trust account and accepted or
3 received funds in trust ("trust funds") from and on behalf
4 of his principals and placed the funds in accounts and at
5 times respondent made disbursements of such trust funds.

6 c. At all times mentioned in the Accusation,
7 respondent maintained the trust funds at Bank of America,
8 1400 E. 14TH Street, San Leandro, CA 94577, Account Number
9 01490-30388 ("account").

10 d. At all times mentioned in the Accusation,
11 respondent did not designate the account as a trust account
12 in violation of section 10145 of the Code and section 2832
13 of the California Code of Regulations, title 10
14 ("Regulations").

15 e. As of May 31, 2000, respondent had a trust
16 fund overage of three thousand three hundred seventy
17 nine and 38/100 Dollars (\$3,379.38).

18 f. The aforementioned overage was caused by
19 respondent's fees (\$778.97) not being disbursed.

20 g. Respondent collected from January 2000 to April
21 2000 undisbursed fees in a total amount of \$564.90.

22 h. The undisbursed fees of \$564.90 as collected from
23 January to April 2000 were held by respondent for more than
24 25 days and were commingled with trust funds in violation of
25 section 10176, subdivision (e) of the Code and section 2835,
26 subdivision (c) (3) of the Regulations.

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1 i. At all times mentioned in the Accusation,
2 respondent failed to maintain adequate beneficiary records
3 in the account in violation of section 2331.1 of the
4 Regulations.

5 j. At all times mentioned in the Accusation, in
6 violation of section 2831.2 of the Regulation, respondent
7 failed to reconcile, on a monthly basis, the control record
8 to the total balance of the beneficiary records.

9 k. At all times mentioned in the Accusation,
10 respondent failed to maintain an adequate control record in
11 violation of section 2831 of the Regulations.

12 l. On January 9, 2002, pursuant to respondent's
13 alleged failure to respond to the Accusation the California
14 Department of Real Estate ("the Department") revoked
15 respondent's real estate broker's license.

16 m. On February 25, 2002, the Honorable Judith Ford,
17 Judge of the California Superior Court in and for the County
18 of Alameda, signed an Order that stayed the Department's
19 administrative order that revoked respondent's real estate
20 license.

21 n. On March 7, 2002, the Department reinstated
22 respondent's real estate license.

23 Matters in Extenuation

24 4. In the past, the wife of respondent performed bookkeeping
25 functions for respondent's property management business. After a
26 separation and subsequent divorce, respondent neglected to
27 properly maintain accurate records for the money on deposit in

1 properly maintain accurate records for the money on deposit in
2 the account that was intended for trust funds. Moreover, after
3 his divorce from his former wife, respondent suffered through a
4 period of emotional depression that contributed to the neglect of
5 his business affairs.

6 Matters in Mitigation

7 5. Respondent has held a real estate broker license since
8 December 27, 1985. He was first licensed as a real estate
9 salesperson in 1978.

10 6. Other than a complaint from an individual named Stephen
11 Choy as recorded in the Department's audit report, dated October
12 31, 2000, respondent knows of no other consumer complaint against
13 his real estate licenses since he was first licensed in 1978.

14 7. For a two month period ending on or about March 7, 2002,
15 respondent's real estate license and licensing rights were
16 suspended. He was out of business for that period of time.

17 Matters in Rehabilitation

18 8. On or about March 1, 2002, respondent
19 discontinued doing business as Moore Property Management.
20 He only maintains at the current time a business as a
21 real estate broker doing business as Independent Real
22 Estate Brokers - Moore & Associates.

23 9. Respondent compellingly represents that after January
24 2001 he has collected no rents as a property manager.

25 10. After March 24, 2001, respondent has conducted no
26 transactions through any trust fund account.

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1 11. On or about November 9, 2001, respondent closed trust
2 account number 01490-30388 that he had maintained at Bank of
3 America. Since that time he has not maintained a trust account of
4 any kind.

5 LEGAL CONCLUSIONS

6 1. Business and Professions Code section 10176,
7 subdivision (e) sets forth the Commission of the Department of
8 Real Estate ("the Commissioner") temporarily suspend or
9 permanently revoke a real estate license when a licensee has
10 engaged in "commingling with his own money or property in a
11 transaction without the knowledge or consent of all parties
12 thereto."

13 California Code of Regulations, title 10, section 2835,
14 subdivision (c)(3) establishes that "commingling" is not
15 constituted when "the deposit into a trust account of broker
16 owned funds ... provided ... all broker owned funds deposited
17 into the account are disbursed from the account not later than 25
18 days after their deposit."

19 Cause for discipline exists pursuant to Business and
20 Professions Code section 10176, subdivision (e) and California
21 Code of Regulations, title 10, section 2835, subdivision (c)
22 (3), by reason of the matter set out in Factual Finding 3.

23 2. California Code of Regulations, title 10, section
24 2831.1 prescribes, among other things, that "a broker shall
25 keep a separate record of each beneficiary or transaction,
26 accounting for all funds [that] have been deposited to the
27 broker's trust bank account and interest, if any, earned on the

1 funds on deposit. The record shall include information
2 sufficient to identify the transaction and the parties to the
3 transaction...."

4 Cause for discipline exists pursuant to California
5 Code of Regulations, title 10, section 2831.1, by reason of the
6 matter set out in Factual Finding 3.

7 3. California Code of Regulations, title 10, section
8 2831.2 prescribes that "the balance of all separate beneficiary
9 or transaction records maintained ... must be reconciled with
10 the record of all trust funds received and disbursed ... at
11 least once a month, except in those months when the bank
12 account did not have any activities...."

13 Cause for discipline exists pursuant to California
14 Code of Regulations, title 10, section 2831.2, by reason of the
15 matter set out in Factual Finding 3.

16 4. California Code of Regulations, title 10, section
17 2831 prescribes, among other things, that "[e]very broker
18 shall keep a record of all trust funds received, including
19 uncashed checks held pursuant to instructions of his ...
20 principal...."

21 Cause for discipline exists pursuant to California
22 Code of Regulations, title 10, section 2831, by reason of the
23 matter set out in Factual Finding 3.

24 5. Business and Professions Code section 10145
25 declares, among other things, that "a real estate broker
26 who accepts funds belonging to others in connection with a
27 transaction ... shall deposit all those funds that are not

1 immediately placed into a neutral escrow depository or into
2 the hands of the broker's principal, into a trust fund
3 account maintained by the broker in a bank or recognized
4 depository in this state. All funds deposited by the broker
5 in a trust fund account shall be maintained there until
6 disbursed by the broker in accordance with instructions
7 from the person entitled to the funds...."

8 Business and Professions Code section 10177,
9 subdivision (d) sets out the Commissioner may suspend or
10 revoke the licensee of a real estate licensee who has
11 "violated the Real Estate Law ... or the rules or
12 regulations of the commissioner"

13 California Code of Regulations, title 10, section 2832
14 prescribes rules pertaining to trust fund handling Among
15 other things the regulatory section sets out that
16 "[c]ompliance with ... the Code requires that the broker
17 place funds accepted on behalf of another into the hands of
18 the owner of the funds, into a neutral escrow depository or
19 into a trust fund account in the name of the broker ... not
20 later than three business days following receipt of the
21 funds by the broker"

22 Cause for discipline exists pursuant to Business and
23 Professions Code section 10145 and California Code of
24 Regulations, title 10, sections 2831, 2831.1, 2831.2, 2831
25 and 2835, subdivision (c) (3), in conjunction with Code
26 section 10177, subdivision (d) by reason of the matter set
27 out in Factual Finding 3.

1 4. Pursuant to Section 10148 of the Business and
2 Professions Code, Respondent shall pay the
3 Commissioner's reasonable cost for: a) the audit which
4 led to this disciplinary action, which is \$3,813.54,
5 and, b) a subsequent audit to determine if Respondent
6 has corrected the trust fund violation(s) found in
7 Legal Conclusions, which shall not exceed \$4,197.85.
8 In calculating the amount of the Commissioner's
9 reasonable cost, the Commissioner may use and/or has
10 used the estimated average hourly salary for all
11 persons performing audits of real estate brokers, and
12 shall include and/or has included an allocation for
13 travel time to and from the auditor's place of work.
14 Respondent shall pay such cost within 60 days of
15 receiving an invoice from the Commissioner detailing
16 the activities performed during the audit and the
17 amount of time spent performing those activities. The
18 Commissioner may suspend respondent's license pending
19 a hearing held in accordance with Section 11500, et
20 seq., of the Government Code, if payment is not timely
21 made as provided for herein, or as provided for in a
22 subsequent agreement between the Respondent and the
23 Commissioner. The suspension shall remain in effect
24 until payment is made in full or until Respondent
25 enters into an agreement satisfactory to the
26 Commissioner to provide for payment, or until a
27

1 decision providing otherwise is adopted following a
2 hearing held pursuant to this condition, irrespective
3 of any other suspension herein provided for.

4
5 3/28/2003

6 DATED

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8 DAVID B. SEALS, Counsel
9 DEPARTMENT OF REAL ESTATE

10 * * *

11 I have read the Stipulation and Agreement, and its
12 terms are understood by me and are agreeable and acceptable to
13 me. I willingly and voluntarily agree to enter into this
14 Stipulation.

15 3/26/03

16 DATED

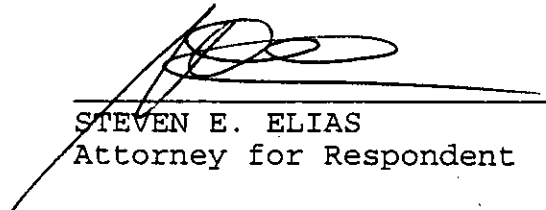
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18 KEVIN CRAIG MOORE
19 Respondent

20 I have reviewed the Stipulation and Agreement as to
21 form and content and have advised my client accordingly.

22
23 03-26-03

24 DATED

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26 STEVEN E. ELIAS
27 Attorney for Respondent

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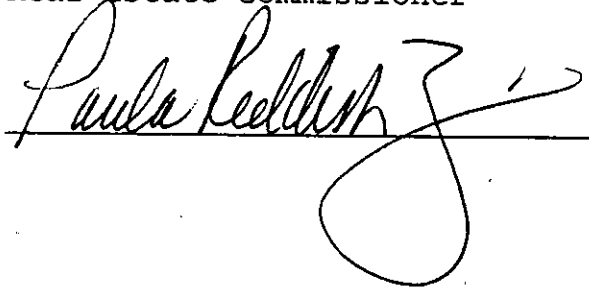
DECISION AND ORDER

The foregoing Stipulation and Agreement is hereby adopted by the Real Estate Commissioner as her Decision and Order.

This Decision shall become effective at 12 o'clock noon on JUNE 9, 2003.

IT IS SO ORDERED April 22, 2003.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



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DEPARTMENT OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	
KEVIN CRAIG MOORE,)	No. H-7969 SF
)	
)	N-2002100251
Respondent.)	
)	

NOTICE

TO: KEVIN CRAIG MOORE, Respondent, and STEVEN E. ELIAS, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated January 23, 2003, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated January 23, 2003, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on December 23,

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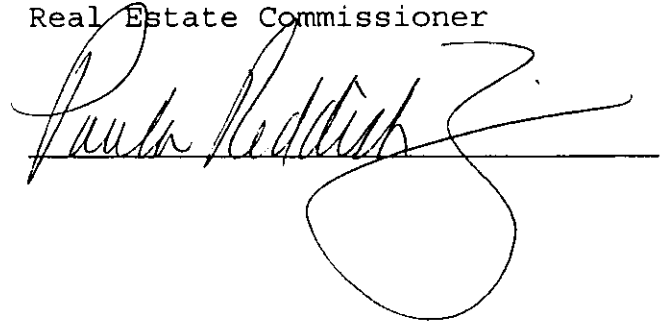
1 2002, and any written argument hereafter submitted on behalf of
2 Respondent and Complainant.

3 Written argument of Respondent to be considered by me
4 must be submitted within 15 days after receipt of the transcript
5 of the proceedings of December 23, 2002, at the Sacramento office
6 of the Department of Real Estate unless an extension of the time
7 is granted for good cause shown.

8 Written argument of Complainant to be considered by me
9 must be submitted within 15 days after receipt of the argument of
10 Respondent at the Sacramento office of the Department of Real
11 Estate unless an extension of the time is granted for good cause
12 shown.

13 DATED: February 5, 2003

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15 PAULA REDDISH ZINNEMANN
16 Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

KEVIN CRAIG MOORE,

Respondent.

File No. H-7969 SF

OAH No. N2002100251

PROPOSED DECISION

On December 23, 2002, in Oakland, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

David B. Seals, Counsel, represented complainant Les R. Bettencourt.

Steven E. Elias, Attorney at Law, the North Valley Office, 2470 Berryessa Road, Suite A, San Jose, California 95133, represented respondent Kevin Craig Moore who appeared for all phases of the hearing.

On December 23, 2002, the parties submitted the matter and the record closed.

FACTUAL FINDINGS

1. Complainant Les R. Bettencourt ("Complainant"), in his official capacity as a Deputy Real Estate Commissioner of the State of California, made the Accusation against respondent Kevin Craig Moore ("respondent").

2. At all times herein mentioned, Respondent is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (hereinafter "Code") as a real estate broker with license identification number 006864185. Respondent's license will expire on December 26, 2005, unless renewed.

Respondent currently maintains a business mailing address of P.O. Box 745, San Leandro, California 94577. Respondent maintains a business office at 860 East Llewellyn Boulevard in Hayward, California.

3. At the hearing of this matter, the parties stipulated and agreed to the following facts and to the legal effect therefrom:

a. At all times mentioned in the Accusation, filed on June 21, 2001, respondent was a licensed real estate broker doing business as Independent Real Estate Brokers -Moore & Associates and Moore Property Management pursuant to the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code) ("Code").

b. At all times mentioned in the Accusation, respondent maintained a trust account and accepted or received funds in trust ("trust funds") from and on behalf of his principals and placed the funds in accounts and at times respondent made disbursements of such trust funds.

c. At all times mentioned in the Accusation, respondent maintained the trust funds at Bank of America, 1400 E. 14th Street, San Leandro, CA 94577, Account Number 01490-30388 ("account").

d. At all times mentioned in the Accusation, respondent did not designate the account as a trust account in violation of section 10145 of the Code and section 2832 of the California Code of Regulations, title 10 ("Regulations").

e. As of May 31, 2000, respondent had a trust fund overage of three thousand three hundred seventy nine and 38/100 Dollars (\$3,379.38).

f. The aforementioned overage was caused by respondent's fees (\$778.97) not being disbursed.

g. Respondent collected from January 2000 to April 2000 undisbursed fees in a total amount of \$564.90.

h. The undisbursed fees of \$564.90 as collected from January to April 2000 were held by respondent for more than 25 days and were commingled with trust funds in violation of section 10176, subdivision (e) of the Code and section 2835, subdivision (c) (3) of the Regulations.

i. At all times mentioned in the Accusation, respondent failed to maintain adequate beneficiary records in the account in violation of section 2331.1 of the Regulations.

j. At all times mentioned in the Accusation, in violation of section 2831.2 of the Regulation, respondent failed to reconcile, on a monthly basis, the control record to the total balance of the beneficiary records.

k. At all times mentioned in the Accusation, respondent failed to maintain an adequate control record in violation of section 2831 of the Regulations.

l. On January 9, 2002, pursuant to respondent's alleged failure to respond to the Accusation the California Department of Real Estate ("the Department") revoked respondent's real estate broker's license.

m. On February 25, 2002, the Honorable Judith Ford, Judge of the California Superior Court in and for the County of Alameda, signed an Order that stayed the Department's administrative order that revoked respondent's real estate license.

n. On March 7, 2002, the Department reinstated respondent's real estate license.

Matters in Extenuation

4. In the past, the wife of respondent performed bookkeeping functions for respondent's property management business. After a separation and subsequent divorce, respondent neglected to properly maintain accurate records for the money on deposit in the account that was intended for trust funds. Moreover, after his divorce from his former wife, respondent suffered through a period of emotional depression that contributed to the neglect of his business affairs.

Matters in Mitigation

5. Respondent has held a real estate broker license since December 27, 1985. He was first licensed as a real estate salesperson in 1978.

6. Other than a complaint from an individual named Stephen Choy as recorded in the Department's audit report, dated October 31, 2000, respondent knows of no other consumer complaint against his real estate licenses since he was first licensed in 1978.

7. For a two month period ending on or about March 7, 2002, respondent's real estate license and licensing rights were suspended. He was out of business for that period of time.

Matters in Rehabilitation

8. On or about March 1, 2002, respondent discontinued doing business as Moore Property Management. He only maintains at the current time a business as a real estate broker doing business as Independent Real Estate Brokers – Moore & Associates.

9. Respondent compellingly represents that after January 2001 he has collected no rents as a property manager.

10. After March 24, 2001, respondent has conducted no transactions through any trust fund account.

11. On or about November 9, 2001, respondent closed trust account number 01490-30388 that he had maintained at Bank of America. Since that time he has not maintained a trust account of any kind.

LEGAL CONCLUSIONS

1. Business and Professions Code section 10176, subdivision (e) sets forth the Commission of the Department of Real Estate ("the Commissioner") temporarily suspend or permanently revoke a real estate license when a licensee has engaged in "commingling with his own money or property in a transaction without the knowledge or consent of all parties thereto."

California Code of Regulations, title 10, section 2835, subdivision (c)(3) establishes that "commingling" is not constituted when "the deposit into a trust account of broker owned funds ... provided ... all broker owned funds deposited into the account are disbursed from the account not later than 25 days after their deposit."

Cause for discipline exists pursuant to Business and Professions Code section 10176, subdivision (e) and California Code of Regulations, title 10, section 2835, subdivision (c) (3), by reason of the matter set out in Factual Finding 3.

2. California Code of Regulations, title 10, section 2831.1 prescribes, among other things, that "a broker shall keep a separate record of each beneficiary or transaction, accounting for all funds [that] have been deposited to the broker's trust bank account and interest, if any, earned on the funds on deposit. The record shall include information sufficient to identify the transaction and the parties to the transaction...."

Cause for discipline exists pursuant to California Code of Regulations, title 10, section 2831.1, by reason of the matter set out in Factual Finding 3.

3. California Code of Regulations, title 10, section 2831.2 prescribes that "the balance of all separate beneficiary or transaction records maintained ... must be reconciled with the record of all trust funds received and disbursed ... at least once a month, except in those months when the bank account did not have any activities...."

Cause for discipline exists pursuant to California Code of Regulations, title 10, section 2831.2, by reason of the matter set out in Factual Finding 3.

4. California Code of Regulations, title 10, section 2831 prescribes, among other things, that “[e]very broker shall keep a record of all trust funds received, including uncashed checks held pursuant to instructions of his ... principal....”

Cause for discipline exists pursuant to California Code of Regulations, title 10, section 2831, by reason of the matter set out in Factual Finding 3.

5. Business and Professions Code section 10145 declares, among other things, that “a real estate broker who accepts funds belonging to others in connection with a transaction ... shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker’s principal, into a trust fund account maintained by the broker in a bank or recognized depository in this state. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the person entitled to the funds....”

Business and Professions Code section 10177, subdivision (d) sets out the Commissioner may suspend or revoke the license of a real estate licensee who has “violated the Real Estate Law ... or the rules or regulations of the commissioner”

California Code of Regulations, title 10, section 2832 prescribes rules pertaining to trust fund handling. Among other things the regulatory section sets out that “[c]ompliance with ... the Code requires that the broker place funds accepted on behalf of another into the hands of the owner of the funds, into a neutral escrow depository or into a trust fund account in the name of the broker ... not later than three business days following receipt of the funds by the broker”

Cause for discipline exists pursuant to Business and Professions Code section 10145 and California Code of Regulations, title 10, sections 2831, 2831.1, 2831.2, 2831 and 2835, subdivision (c) (3), in conjunction with Code section 10177, subdivision (d) by reason of the matter set out in Factual Finding 3.

ORDER

All licenses and licensing rights of Respondent are suspended for two years from the effective date of this Decision; provided, however, that the suspension shall be stayed upon the following terms and conditions:

1. Respondent’s license and license rights shall be actually suspended for a period of an additional 31 days, excluding the past suspension period of about 60 days that ended on or about March 7, 2002. Respondent may, pursuant to Section 10175.2, petition the Commissioner to pay a monetary penalty and thereby further stay imposition of the term of the actual suspension.
2. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California.

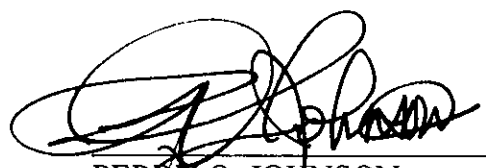
Not adopted

*not
adopted*

3. The Commissioner may, if a final subsequent determination is made, after hearing or upon stipulation, that cause for disciplinary action occurred during the term of 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 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 of the Business and Professions Code, Respondent shall pay the Commissioner's reasonable cost for: a) the audit which led to this disciplinary action and, b) a subsequent audit to determine if Respondent has corrected the trust fund violation(s) found in Legal Conclusions. 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 time to and from the auditor's place of work. Respondent shall pay such cost within 60 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 suspend the restricted license issued to respondent pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the Respondent and the Commissioner. 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 payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

Dated: January 23, 2003


PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
OCT 24 2002

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

KEVIN CRAIG MOORE

By Shelly [Signature]

Case No. H-7969 SF

OAH No. N2002100251

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 MONDAY--DECEMBER 23, 2002, at the hour of 9:00 A.M., 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 24, 2002

DEPARTMENT OF REAL ESTATE
By David B. Seals [Signature]
DAVID B. SEALS, Counsel

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FILED
AUG 15 2002

DEPARTMENT OF REAL ESTATE

By Shelly Ely

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-7969 SF
)	
KEVIN CRAIG MOORE,)	
)	
)	
)	
Respondent.)	

ORDER AFTER REMAND

On December 3, 2001, the Real Estate Commissioner signed and on December 7, 2001, filed a Default Order and on December 12, 2001, the Commissioner signed and on December 20, 2001, filed a Decision revoking KEVIN CRAIG MOORE's real estate broker license effective January 9, 2002. Respondent filed his petition for writ of mandate in Alameda County Superior Court, action number 2002-040249, on February 7, 2002. By order of remand from the Alameda County Superior Court, pursuant to the agreement of respondent and the Commissioner, this Order After Remand is made as set forth herein.

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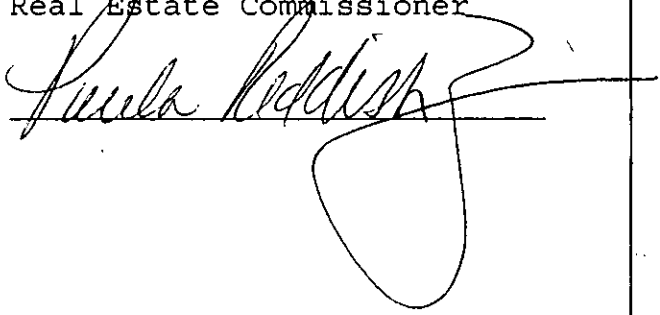
1. The Decision of the Real Estate Commissioner signed
December 12, 2001 and effective January 9, 2002, In the Matter of
the Accusation of KEVIN CRAIG MOORE, No. H-7969 SF is set aside.

2. A new hearing will be scheduled in In the Matter of
the Accusation of KEVIN CRAIG MOORE, No. H-7969 SF, and Mr. Moore
will be given timely notice of the time and place for said
hearing.

This Order shall be effective immediately.

DATED: August 13, 2002.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



sale, purchase or exchanges of leases on real property, or a business opportunity, or collecting rents from real property, or improvements thereon, or from business opportunities, for or in expectation of compensation.

IV

At all times mentioned herein, Respondent accepted or received funds in trust (hereafter trust funds) from and on behalf of his principals placing them in accounts and at times thereafter made disbursements of such funds.

V

From July 25, 2000 to October 4, 2000 an investigative audit was conducted by the Department of the records and bank records of Respondent for the period from January 1, 1999 to May 31, 2000, as said records related to his activities as a real estate broker described above.

VI

Respondent maintained an account, into which trust funds were placed at Bank of America, 1400 E. 14th Street, San Leandro, CA 94577, Acct. #01490-30388. The account was not designated as a trust account.

VII

The account as of May 31, 2000 had a trust fund overage of Three Thousand Three Hundred Seventy-Nine and 38/100 Dollars (\$3,379.38). The overage was caused by Respondent's fees not being disbursed (\$778.97) and (\$2600.41) was unidentified.

VIII

A total of \$564.90 of the undisbursed fees were collected from January to April of 2000. Therefore such funds were held for more than 25 days and commingled with trust funds in violation of Section 10176(e) of the Code and Section 2835(c)(3), Title 10, California Code of Regulations (hereinafter the "Regulations").

IX

Respondent failed to maintain adequate beneficiary records in the account in violation of Section 2831.1 of the Regulations.

X

Respondent failed to reconcile on a monthly basis the control record to the total balance of the beneficiary records in the account in violation of Section 2831.2 of the Regulations.

XI

Respondent failed to maintain an adequate control record in violation of Section 2831 of the Regulations.

DETERMINATION OF ISSUES

I

Cause for disciplinary action against Respondent exists pursuant to Business and Professions Code (hereinafter the "Code") Section 10145 and Sections 2831, 2831.1, 2831.2, 2832 and 2835(c)(3) of the Regulations in conjunction with Section 10177(d) of the Code.

II

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

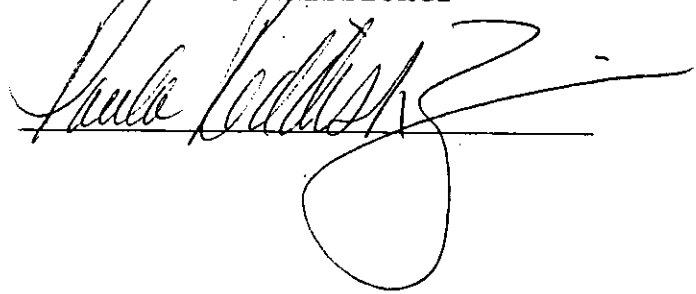
ORDER

All licenses and licensing rights of Respondent KEVIN CRAIG MOORE, under the provisions of Part I of Division 4 of the Business and Professions Code are revoked.

This Decision shall become effective at 12 o'clock noon on January 9, 2002.

DATED: December 12, 2001

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



1 Department of Real Estate
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
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5 Telephone: (916) 227-0789
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7

FILED
DEC 07 2001

DEPARTMENT OF REAL ESTATE

By Shelly Elzy

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 KEVIN CRAIG MOORE,) NO. H-7969 SF
13 Respondent.) DEFAULT ORDER
14)

15 Respondent, KEVIN CRAIG MOORE, having failed to file a
16 Notice of Defense within the time required by Section 11506 of
17 the Government Code, is now in default. It is, therefore,
18 ordered that a default be entered on the record in this matter.

19 IT IS SO ORDERED December 3, 2001.

20 PAULA REDDISH ZINNEMANN
21 Real Estate Commissioner

22
23 By: Steven J. Ellis
24 STEVEN J. ELLIS
25 Regional Manager
26
27

1 DAVID B. SEALS, Counsel (SBN 69378)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000
5 Telephone: (916) 227-0789
6 -or- (916) 227-0792 (Direct)
7

FILED
JUN 21 2001

DEPARTMENT OF REAL ESTATE

By Shelly Ely

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-7969 SF
12)
13 KEVIN CRAIG MOORE,) ACCUSATION
14 Respondent.)

15 The Complainant, Les R. Bettencourt, a Deputy Real
16 Estate Commissioner of the State of California for cause of
17 Accusation against KEVIN CRAIG MOORE (hereinafter "Respondent"),
18 is informed and alleges as follows:

19 I

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

23 II

24 Respondent is presently licensed and/or has license
25 rights under the Real Estate Law (Part 1 of Division 4 of the
26 California Business and Professions Code) (hereinafter "Code") as
27

1 a real estate broker dba Independent Real Estate Brokers - Moore
2 & Associates and Moore Property Management.

3 III

4 At various times mentioned herein, Respondent engaged
5 in the business of, acted in the capacity of, advertised, or
6 assumed to act as a real estate broker within the State of
7 California, within the meaning of Section 10131(b) of the Code by
8 leasing or renting or offering to lease or rent, or placing for
9 rent, or soliciting listings of places for rent, or soliciting
10 for prospective tenants, or negotiating the sale, purchase or
11 exchanges of leases on real property, or a business opportunity,
12 or collecting rents from real property, or improvements thereon,
13 or from business opportunities, for or in expectation of
14 compensation.

15 IV

16 That at all times mentioned herein, Respondent accepted
17 or received funds in trust (hereafter trust funds) from and on
18 behalf of his principals placing them in accounts and at times
19 thereafter made disbursements of such funds.

20 V

21 From on or about July 25, 2000 to October 4, 2000 an
22 investigative audit was conducted by the Department of the
23 records and bank records of Respondent for the period from
24 January 1, 1999 to May 31, 2000, as said records related to his
25 activities as a real estate broker described above.

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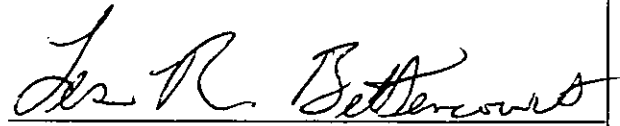
XII

Respondent failed to maintain an adequate control record in violation of Section 2831 of the Regulations.

XIII

The acts and/or omissions of Respondent described above are grounds for the suspension or revocation of Respondent's licenses and license rights under Section 10145 of the Code and Sections 2831, 2831.1, 2831.2, 2832 and 2835(c)(3) of the Regulations in conjunction with Section 10177(d) of the Code.

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 other provisions of law.


LES R. BETTENCOURT
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 5th day of June, 2001.