

FILED
DEC -7 2005

DEPARTMENT OF REAL ESTATE

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
)
JIM WARD & ASSOCIATES, INC.,) NO. H-8685 SF
AND JAMES STANLEY WARD,) OAH NO. N-2004110570
)
Respondents.)
_____)

DECISION

The Proposed Decision dated November 7, 2005, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon

on DEC 28 2005

IT IS SO ORDERED

DEC - 7 2005

JEFF DAVI
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

JIM WARD & ASSOCIATES, INC.,
and JAMES STANLEY WARD,

Respondents.

No. H-8685 SF

OAH No. N 2004110570

PROPOSED DECISION

On August 2, August 3, August 4 and September 15, 2005, in Oakland, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

James L. Beaver, Counsel, represented Complainant Janice Waddell.

Steven Gourley, Attorney at Law, Law Offices of Steven Gourley, 10757 Stephon Terrace, Culver City, California 90230, represented Respondents Jim Ward & Associates, Inc., and James Stanley Ward. Robert Carey, Attorney at Law, Carey & Carey, Law Corporation, P.O. Box 1040, Palo Alto, California 94302-1040, represented Respondent James Stanley Ward, only. Respondent James Stanley Ward was present during all phases of the hearing.

The record remained open for the purpose of providing the parties the opportunity to file written closing arguments. On October 7, 2005, through Messrs. Gourley and Carey, Respondent Jim Ward & Associates, Inc., Respondent James Stanley Ward, and Jim Ward and Associates, a California corporation, filed, via telefacsimile transmission, with OAH a brief entitled, "Respondents' Post-Hearing Brief." The brief was marked as Exhibit "S," and received as Respondents' closing argument. On October 7, 2005, through the Department's counsel, Complainant filed with OAH a brief captioned, "Complainant's Hearing Brief." Complainant's written closing argument was marked as Exhibit "19."

On October 7, 2005, the parties were deemed to have submitted the matter and the record closed.

FINDINGS OF FACT

1. On February 25, 2004, Complainant Janice Waddell (Complainant), a Deputy Real Estate Commissioner of the State of California, in her official capacity, made the Accusation against Respondent Jim Ward & Associates, Inc. and Respondent James Stanley Ward. The Department filed the Accusation on March 11, 2004.

James Stanley Ward

2. Respondent James Stanley Ward (Respondent J. S. Ward) is presently licensed and has license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code).

On September 16, 1974, the Commissioner issued Respondent J.S. Ward a real estate salesperson license (number 00493126). On July 10, 1975, a real estate broker license was issued to Respondent J. S. Ward.

On May 24, 1995, the Commissioner licensed Respondent J. S. Ward as the designated officer of Jim Ward & Associates, Inc. The designated officer license issued to Respondent J. S. Ward for Jim Ward & Associates, Inc., will expire on May 23, 2007.

On June 21, 1996, the Commissioner licensed Respondent J. S. Ward as the designated officer of Principal Funding Group, Inc. The designated officer license issued to Respondent J. S. Ward for Principal Funding Group, Inc. was canceled as of January 27, 1997.

Jim Ward & Associates, Inc.

3. On May 24, 1995, the Commissioner originally issued real estate corporation license number 1195987 to Jim Ward & Associates, Inc. (Respondent Ward, Inc.) with the designated officer-broker being James Stanley Ward.

The real estate corporation license issued to Respondent Ward, Inc., and the designated officer license issued to Respondent J. S. Ward, will expire on May 23, 2007.

4. Respondent Ward, Inc., was duly organized and existed as a California corporation from about December 20, 1994, until the period of January 31, 1997 through April 22, 1997. The records of the California Secretary of State reflected corporation number 1896037 had been issued for Respondent Ward, Inc.

5. Respondent J. S. Ward was an officer, director and shareholder owning or controlling 10 percent or more of the stock of Respondent Ward, Inc., for all times of its existence as a viable corporation in the State of California.

6. Between January 31, 1997 and April 22, 1997, through a process of liquidation and business closure, Respondent Ward Inc., was merged into another corporation known as Windy Hill Associates. Respondent Ward, Inc., after April 22, 1997, ceased to exist as a viable corporation, and in the context of the 1997 merger, it was deemed the "non-surviving" or "disappearing" corporation. Accordingly, after April 22, 1997, Respondent Ward, Inc., was no longer in good standing with the Office of Secretary of State for the State of California.

Respondent Ward, Inc., has never been reinstated as a California corporation since April 22, 1997.

False, Inaccurate and Misleading Statements in Corporate Officer License Renewal Applications

7. About two years after cessation of Respondent Ward, Inc., as a viable California corporation, Respondent J. S. Ward on April 28, 1999, applied, or caused and permitted his associates, agents or employees to apply on his behalf, to the Department of Real Estate for renewal of both the license of Respondent Ward, Inc., as a corporate real estate broker and the license for Respondent J. S. Ward as the designated officer - corporate broker for Respondent Ward, Inc.

The 1999 application questionnaire included Question 16 that asked, "Is the corporation currently in good legal standing with the Secretary of State?" Respondent J.S. Ward answered, or he caused his agents, employees or associates to answer, Question 16 with a response: "Yes."

The response "yes," concealed and misrepresented that Respondent Ward, Inc., no longer existed as a viable California corporation. And, based upon the material misrepresentation that Respondent Ward, Inc., remained in good legal standing as a California corporation, the Department renewed the corporate license for the defunct Ward, Inc., and the designated officer-broker license for Respondent J. S. Ward.

On May 24, 1999, when the Department renewed the corporate and designated officer-broker licenses associated with Respondent Ward, Inc., Department personnel neither knew nor reasonably could have known that Respondent Ward, Inc. had ceased to be a viable corporation under the laws of the State of California.

8. About six years after cessation of Respondent Ward, Inc., as a viable California corporation, Respondent J. S. Ward on April 10, 2003, applied, or caused or permitted his associates, agents or employees to apply on his behalf, to the Department of Real Estate for renewal of both the license of Respondent Ward, Inc., as a corporate real estate broker and the license as the designated officer or corporate broker. (Respondent J. S. Ward authorized his attorney, Mr. David Lee, to affix onto the application form respondent's facsimile signature by way of a rubber stamp.)

The 2003 designated officer-broker license renewal application form again set out question 16 that asked, "Is the corporation currently in good legal standing with the Office of the Secretary of State?" In response to question 16, Respondent J. S. Ward answered, or he caused his agents, employees or associates to answer Question 16 with a response: "Yes."

The response "yes," concealed and misrepresented that Ward, Inc., no longer existed. And, based upon the material misrepresentation that Ward, Inc., remained in good legal standing as a California corporation, on May 24, 2003 the Department renewed the corporate license for the defunct Ward, Inc., and the designated officer-broker license for Respondent J. S. Ward.

On May 24, 2003, when the Department renewed the corporate and officer-broker licenses associated with Ward, Inc., Department personnel neither knew nor could reasonably have known that Ward, Inc. had ceased to be a viable corporation under the laws of the State of California.

9. When Respondent J. S. Ward, or his agents and employees, failed to reveal correct and truthful information in the applications for renewal of the designated officer-broker for the real estate corporation previously issued to Respondent Ward, Inc., respondents obtained, at least two sets of, real estate corporation and designed officer licenses by fraud, misrepresentation, or deceit. Respondents obtained those licenses by making material misstatements of fact in the renewal applications.

Jim Ward and Associates, a California Corporation

10. Following the merger into non-existence of the corporation hereinabove deemed Respondent Ward, Inc., the California Office of the Secretary of State, on August 23, 2000, recorded the filing of articles of incorporation, bylaws and other documents that pertained to the formation of another corporation called Jim Ward and Associates, a California corporation (Ward Associates). The Secretary of State issued corporation number 2258717 for Ward Associates.

From the date of incorporation of Ward Associates, Respondent J.S. Ward became, and he continued to be an officer, director, and shareholder, who owned or controlled 10 percent or more of the stock, of Ward Associates until mid-2005.

11. Ward Associates, through its officers, directors or shareholders, never became licensed by the Commissioner of the Department of Real Estate as a real estate corporation. The Department of Real Estate has never issued a designated officer-broker license to any Department licensee, such as Respondent J. S. Ward, in order to permit Ward Associates to engage in licensed real estate activities and functions in the State of California.

12. In December 2003, Department Investigator Maxine Risley detected that Respondent Ward, Inc., was no longer in good standing with the Office of the Secretary of State as a viable California Corporation. Ms. Risley gave notice to Respondent J. S. Ward that Department was aware as of December 2003 that Ward Associates was not a licensed real estate corporation.

Other Individuals Associated with Ward Associates

13. Ms. Lee Viola Emerson (Ms. Emerson) appeared at the hearing of this matter. By the manner of her demeanor, her consistent testimony in the face of intense cross-examination, and her attitude towards the proceeding, Ms. Emerson showed that she was a credible¹ and persuasive witness.

Ms. Emerson was first licensed as a real estate salesperson in 1977. Ms. Emerson became a licensed real estate broker in 1981.

In some form or another, Ms. Emerson worked with Respondent J.S. Ward from about 1978 until early 2002. She first associated with Respondent J. S. Ward before he formed Respondent Ward, Inc., when he operated as a sole proprietorship under the name "Jim Ward & Associates." Ms. Emerson's work for Respondent J. S. Ward always revolved around her activity and functions that required her to locate and solicit potential lenders for the construction loan business in which respondents and Ward Associates specialized as mortgage loan brokers of loans that financed construction of buildings in the Palo Alto and western Santa Clara County region. From 1977 until 1994, Ms. Emerson's work was limited to the business of arranging investments as an independent contractor. After the incorporation of Respondent Ward, Inc., Ms. Emerson devoted much time and energy for respondents over the course of mid-1995 until the end of 1997. When the corporate brokerage closed in the late 1990s, Ms. Emerson understood Respondent J. S. Ward to have permanently moved his residence to the State of Ohio. In the summer of 2000, Respondent J. S. Ward solicited Ms. Emerson to join him as he resumed a real estate mortgage loan business presence in the Palo Alto area. Although he expressed enthusiasm to revive the defunct operations, Respondent J. S. Ward expressed that he would not leave his domicile in the State of Ohio, but he would periodically travel to the State of California to oversee the brokerage operations.

When Respondent J. S. Ward invited Ms. Emerson to join him in mortgage-brokerage lending and investor-solicitation operations associated with Ward Associates, she did not know that Respondent Ward, Inc., had been absorbed in 1997 by another corporation called Windy Hills. In the summer of 2000, and for all times that Ms. Emerson was associated with Ward Associates, she did not know that Respondent Ward

¹ Government Code section 11425.50, subdivision (b), third sentence.

did not exist or that Ward Associates had never held a real estate corporation license as issued by the Real Estate Commissioner.

When Respondent J. S. Ward decided to resume business in California in 2000, following his move to the State of Ohio, he asked Ms. Emerson to join him in the business that would be called "Jim Ward & Associates," a corporation. Shareholding, and profit sharing, in the business was split 50% / 50% between Respondent J. S. Ward and Ms. Emerson, but Respondent J. S. Ward was for all times the designated officer-broker for the putative real estate corporation. Initially, Ms. Emerson held the corporate office of Secretary and Treasurer while Respondent J. S. Ward occupied the office of President. Ms. Emerson was an officer for Ward Associates from August 2000 until about January 2001, when she resigned from the corporation and returned her 50% shareholder's stake to Respondent J. S. Ward, who transferred those shares to Mr. David Lee, his attorney.

From about September 2000 until January 2001, Ms. Emerson knew Mr. David Lee, who was a certified public accountant, to be the lawyer, or General Counsel, for Ward Associates. Although Mr. Lee could address accounting questions and problems of a legal nature, Ms. Emerson understood Respondent J. S. Ward to make ultimate decisions that pertained to making and servicing loans and satisfying investors who made funds available for the loan brokerage business.

For about the initial seven months of the brokerage operations of Ward Associates, as an unlicensed real estate corporation, Ms. Emerson negotiated, handled and accounted for loans for the corporation for which Respondent J. S. Ward was the designated officer-broker. The books and records for the real estate brokerage, conducted as Ward Associates, were essentially created and maintained only by Ms. Emerson. Ms. Emerson did not keep the accounting records in a proper manner as required by the Real Estate Law of the Commissioner's regulations.

On behalf of Ward Associates, Ms. Emerson opened and controlled Trust Account #3 and Trust Account #4 by making deposits and signing checks. Bank statements for those accounts were mailed to Ms. Emerson's home address in Los Altos.

Early in the operation of Ward Associates, Ms. Emerson funded loans, which were associated with Ward Associates, with funds from her personal line-of-credit. In some instances, she failed to provide investors with appropriate disclosure forms and she failed to comply with the multi-lender law in the loan-to-value ratio of transactions to which Ward Associates and Respondent J. S. Ward benefited or were associated.

After January 2001, when she resigned as a shareholder and officer in Ward Associates, Ms. Emerson continued to work as an independent contractor for the supposed real estate corporation until about January 2002.

But, at no time regarding the matters alleged in the Accusation, did Ms. Emerson become known by the Department of Real Estate as the licensed designated officer-broker of Ward Associates. Respondent J. S. Ward was always the licensed designated officer-broker for Respondent Ward, Inc., and Ward Associates. Respondent J. S. Ward was the founder, ultimate decision-maker, leader and chief executive for the corporations that bore his name or initials. For all the time that pertained to her association with the enterprises of Respondent J. S. Ward, Ms. Emerson was always the subordinate to Respondent J. S. Ward in matters pertaining to the subject real estate mortgage brokerage company.

14. Mr. David Lee (Mr. Lee) is a California licensed attorney. Also, he holds an inactive certified public accountant license as issued by the California Board of Accountancy. He was an active practicing certified public accountant until 1989.

In 1991 or 1992, Mr. Lee became acquainted with Respondent J. S. Ward, who sought Mr. Lee's legal assistance on a tax matter.

In December 1994, Mr. Lee was the incorporator for Respondent Ward, Inc. He completed the incorporation process around May 1995. On January 14, 1997, the Office of the Secretary of State filed the last Statement by Domestic Stock Corporation for Respondent Ward, Inc., which form was signed by Mr. Lee, as agent for service of process.

As an attorney, in January 1997, Mr. Lee commenced the process with the Secretary of State that caused Respondent Ward, Inc., to be merged into another corporation called Windy Hills Associates, a California corporation. The merger process extinguished the corporate existence of Respondent Ward, Inc. Mr. Lee knew that in 1997 Respondent Ward, Inc., sold all of its assets (including office equipment, investor lists, vendor list, and loan servicing agreements) to Windy Hills. Mr. Lee was the addressee of a letter, dated April 22, 1997, from the California Franchise Tax Board that certified that all taxes imposed on Respondent Ward, Inc., had been paid, and that a final tax return was required to be filed on behalf of the corporation so that dissolution or merger could be lawfully recognized notwithstanding the dispatch to the Office of the Secretary of State of a Tax Clearance Certificate.

Mr. Lee knew that from early 1997 until the summer of 2000, Respondent J. S. Ward was in no manner involved with the mortgage loan business in California. Mr. Lee knew that Respondent J. S. Ward had changed his domicile to the State of Ohio.

In August 2000, Mr. Lee prepared incorporation documents and oversaw the incorporation of Ward Associates. He acted as incorporator of the entity that became known as "Jim Ward & Associates." As an attorney at law and certified public accountant, in August 2000, Mr. Lee knew or reasonably should have known that "Jim Ward & Associates" was a distinct corporation from the defunct entity that had been

known as "Jim Ward & Associates, Inc." (The addresses for the office of Ward Associates on El Camino Real in both Los Altos and Mountain View were also the addresses for David Lee, Attorney at Law.)

In March or April 2001, Mr. Lee became a shareholder and officer in Ward Associates, an unlicensed real estate corporation. In March 2001, Mr. Lee took control of all accounting records and journals for Ward Associates that had been in control and custody of Ms. Emerson.

In August 2003, Mr. Lee filed with the Office of the Secretary of State, the Statement of Domestic Stock Corporation for Ward Associates. The form showed Mr. Lee to be secretary, chief financial officer, director and agent for service of process for Ward Associates.

Mr. Lee acted as General Counsel, or the "in-house" lawyer, for Ward Associates for all times of its existence after it was incorporated in 2000.

Mr. Lee claimed that he never performed activities pertaining to real estate brokerage functions that required a license issued by the Commissioner. Also, Mr. Lee asserted that his duties for Ward Associates were limited to administrative and lawyering functions as requested by Respondent J. S. Ward.

Collective Unlawful Conduct of Respondent J. S. Ward and Ward Associates

15. At all times mentioned below, Respondent J. S. Ward, Respondent Ward, Inc., and Ward Associates, acting as agents or employees of one another, engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers within the State of California within the meaning of Business and Professional Code sections 10131, subdivision (d), and 10131, subdivision (e).

In particular, Respondent J. S. Ward and Ward Associates, an unlicensed corporate entity, operated and conducted the business of a mortgage loan brokerage with the public. In such capacity for each other and on behalf of others, for compensation or in expectation of compensation, Respondent J. S. Ward and Ward Associates solicited lenders and borrowers for loans secured directly or collaterally by liens on real property in the State of California. Ward Associates and Respondent J. S. Ward, through agents or employees, arranged, negotiated, processed and consummated such loans. Ward Associates and Respondent J. S. Ward, through agents or employees, serviced and collected payments on such loans. And, Ward Associates and Respondent J. S. Ward sold or offered to sell, bought or offered to buy, or exchanged or offered to exchange promissory notes secured directly or collaterally by a lien or liens on real property and such persons performed services for the holders of the liens, including servicing and collecting payments on such promissory notes.

Auditor's Findings and Conclusions

16. Over the course of several months beginning on April 2, 2003, and ending on August 20, 2003, Department auditor Michael J. Rivera (Auditor Rivera) performed, on an intermittent basis, an accounting examination of the bank statements, canceled checks, loan files, separate records of each beneficiary, records of trust funds received and disbursed (Control Accounts), bank signature cards, and other accounting records and various invoices maintained by the unlicensed entity- Ward Associates, which was believed by the Department and its auditor to be Respondent Ward, Inc. Also during his inquiry Auditor Rivera viewed Respondent J. S. Ward as the designated corporate officer for the corporation whose records and activities were subject to the audit.

Auditor Rivera conducted the audit examination of records in Mountain View, California, at the principal offices of the entity that was believed to be a licensed corporate broker, and the offices that housed the law office of Mr. Lee.

The audit examination, focused upon the mortgage loan brokerage operated by Respondent J. S. Ward and Mr. Lee, the attorney-at-law, who had represented the interests of Respondent J.S. Ward over the course of preceding years.

Auditor Rivera selected the time span of September 1, 2000, through December 31, 2002, as the period he examined the accounting records and other records of the corporate entity for which Respondent J. S. Ward acted as designated officer-broker. The auditor's examination was to ascertain whether trust funds under the control of the supposed real estate corporation had been handled and accounted for in accordance with the California Real Estate Law and the Commissioner's Regulations.

17. During the audit examination, for the most part, Auditor Rivera met with Mr. Lee to gain explanations to questions that arose during the course of the audit of the records and operations of a supposed licensed real estate corporation. But Auditor Rivera only met personally with Respondent J.S. Ward during the entrance conference on April 2, 2003, because Respondent J.S. Ward has a domicile in the State of Ohio and he resided in the State of California only for certain days during particular months of the year.

18. On October 1, 2003, Auditor Rivera issued an Audit Report, which was reviewed and approved by Supervising Auditor Daniel J. Sandri. The Audit Report, which contained sections titled "audit scope," "background," "findings," which included a "list of trust/ bank accounts," and "discussions of issues," and "conclusions," was reasonable and sound.

Unlawful Acts of Respondents

19. In the course of operating and conducting mortgage loan brokerage business activities and functions, between January 1, 2002, and December 31, 2002,

Respondent J. S. Ward and Ward Associates, an unlicensed real estate corporation, jointly, and through agents or employees, arranged, negotiated, processed, and consummated approximately twenty-five loans, which were secured directly or collaterally by liens on real property in the aggregate amount of about eighteen million (\$18,000,000) dollars. Also, Respondent J. S. Ward and Ward Associates, an unlicensed real estate corporation, jointly, and through agents or employees, serviced and collected payments on approximately thirty-five (35) loans that totaled about twenty-five million (\$25,000,000) dollars.

20. While Respondent Ward, Inc., was not in good legal standing as a California corporation with the Office of the Secretary of State, Ward Associates violated, and Respondent J. S. Ward willfully caused and permitted Ward Associates to violate, California Code of Regulations, title 10, section 2742, subdivision (c), when Ward Associates engaged in the acts described herein.

21. While Respondent Ward, Inc., was not in good legal standing as a California corporation with the California Secretary of State, Ward Associates violated, and Respondent J. S. Ward willfully caused and permitted Ward Associates to violate, Business and Professions Code section 10130, when Ward Associates engaged in the acts described herein.

Trust Funds and Band Accounts

22. When Ward Associates, through its officers, directors, agents and employees, unlawfully acted as a licensed real estate corporation, Respondent J. S. Ward and his business partners, employees and agents accepted or received funds in trust (trust funds) from or on behalf of lenders, investors, borrowers and others in connection with the mortgage loan brokerage activities described above. And also, Respondent J. S. Ward, through agents and employees of Ward Associates, from time to time made disbursement of such trust funds.

23. The trust funds that were accepted or received by Respondent J. S. Ward, his agents or employees, and Ward Associates, were deposited or caused to be deposited by the unlicensed real estate corporation or Respondent J. S. Ward, or his agents or employees, into several bank accounts (trust fund accounts). For the relevant times, the trust fund accounts were under the direction and under the control of Respondent J. S. Ward and his agents or employees. During the period covered by Auditor Rivera's Audit Report, Ward Associates, an unlicensed real estate corporation, maintained the following numbered trust fund accounts:

24. During the period covered by Auditor Rivera's Audit Report, Ward Associates, an unlicensed real estate corporation, maintained the following ten trust fund accounts and bank accounts:

TITLE & ACCOUNT NO.	BANK	Location
Jim Ward & Associates Inc. fbo Military Way LLC Account #533377603 (Bank Account #1)	Greater Bay Bankcorp/ Mid-Peninsula Bank	Fremont
Jim Ward & Associates Inc. fbo Military Way LLC Account #533377604 (Bank Account #2)	Greater Bay Bankcorp/ Mid-Peninsula Bank	Fremont
Jim Ward & Associates Inc. fbo JLJR, LLC 109-01-2 Account #533379203 (Bank Account #3)	Greater Bay Bankcorp/ Mid-Peninsula Bank	Fremont
Jim Ward & Associates Inc. fbo JLJR, LLC 109-01-3 Account #533379204 (Bank Account #4)	Greater Bay Bankcorp/ Mid-Peninsula Bank	Fremont
Jim Ward & Associates Inc. fbo JLL, LLC Account #530036303 (Bank Account #5)	Greater Bay Bankcorp/ Mid-Peninsula Bank	Fremont
Jim Ward & Associates Inc. fbo Military Way LLC Account #533386501 (Bank Account #6)	Greater Bay Bankcorp/ Mid-Peninsula Bank	Fremont
Jim Ward & Associates Inc. Trust Fund Account Account #530027401 (Trust Account #1)	Greater Bay Bankcorp/ Mid-Peninsula Bank	Fremont
Jim Ward & Associates Inc. Loan Servicing Trust Account Account #530026601 (Trust Account #2)	Greater Bay Bankcorp/ Mid-Peninsula Bank	Fremont

Jim Ward & Associates Inc. Bank of Los Altos Los Altos
Trust Fund Account
Account #212105548
(Trust Account #3)

Jim Ward & Associates Inc. Bank of Los Altos Los Altos
Loan Servicing Trust Account
Account #212150431
(Trust Account #4)

25. At the hearing of this matter, Complainant established the nature, purpose and range of various trust accounts and bank accounts used by Ward Associates, with the knowledge and approval of Respondent J. S. Ward, in conducting mortgage brokerage lending operations. Complainant established that those accounts were subject to regulation by the Real Estate Law and the Commissioner's Regulations.

Unlawful Acts and Omissions Regarding Trust Fund Accounts and Bank Accounts

26. For the period of time pertaining to records examined by the Auditor Rivera, Respondent J. S. Ward and Ward Associates, an unlicensed real estate corporation, engaged in certain acts and omissions in the improper or unlawful collection and disbursement of trust funds held in trust fund accounts.

27. Ward Associates and Respondent J. S. Ward, their agents or employees, failed to keep a columnar record in chronological sequence of all trust funds received and disbursed from Trust Account #3 and Trust Account #4 in a manner that contained all information required by law.

This omission violated California Code of Regulations², title 10, section 2831.

28. Ward Associates and Respondent J. S. Ward, their agents or employees, failed to keep a separate record for each beneficiary or transaction for Trust Account #1, Trust Account #3, and Trust Account #4 in a manner that contained all information required by law.

This omission violated Regulations section 2831.1.

29. Ward Associates and Respondent J. S. Ward, their agents or employees, failed to reconcile, at least once a month, the balance of all separate beneficiary or

² Reference herein to "Regulations" shall mean California Code of Regulations, title 10, unless otherwise specified.

transaction records with the record of trust fund received and disbursed from Trust Account #1, Trust Account #3, and Trust Account #4.

This omission violated Regulations section 2831.2.

30. Ward Associates and Respondent J. S. Ward, their agents or employees, failed to place trust funds, which had been entrusted to Respondent J. S. Ward and Ward Associates, into the hands of a principal on whose behalf the funds were received, or into a neutral escrow depository, or into a trust fund account in the name of Respondent J. S. Ward or a licensed real estate corporation under the direction of respondents as trustee at a bank or other financial institution.

The omission violated Regulations section 2832, subdivision (a) as well as the requirements of Business and Professions Code section 10145 in that Respondent J. S. Ward and Ward Associates, through agents or employees, placed such funds in Bank Account #1, Bank Account #2, Bank Account #3, Bank Account #4, Bank Account #5, and Bank Account #6, as each account was not maintained in the name of either respondent as trustee.

31. Respondent J. S. Ward, the unlicensed corporation - Ward Associates, and their agents or employees, caused, allowed, instructed, or permitted the balance of trust funds in Bank Account #1 to be reduced to an amount which, as of May 10, 2002, was approximately \$54,000 less than the liability of respondents, and Ward Associates, to all owners of such funds without first obtaining the written consent of each and every owner of such funds.

32. Respondent J. S. Ward, the unlicensed corporation - Ward Associates, and their agents or employees, caused, allowed, instructed, or permitted the balance of trust funds in Bank Account #4 to be reduced to an amount which, as of May 10, 2002, was approximately \$170,000 less than the liability of respondents and Ward Associates to all owners of such funds without first obtaining the written consent of each and every owner of such funds.

33. Respondent J. S. Ward, the unlicensed corporation - Ward Associates, and their agents or employees, caused, allowed, instructed, or permitted the balance of trust funds in Bank Account #2 to be reduced to an amount which, as of December 31, 2002, was approximately \$111,885.53 less than the liability of respondents, and Ward Associates, to all owners of such funds without first obtaining the written consent of each and every owner of such funds.

34. Respondent J. S. Ward, the unlicensed corporation - Ward Associates, and their agents or employees, caused, allowed, instructed, or permitted the balance of trust funds in Bank Account #2 to be reduced to an amount which, as of January 31, 2003, was approximately \$17,821.78, less than the liability of respondents, and Ward

Associates, to all owners of such funds without first obtaining the written consent of each and every owner of such funds.

35. Because agents and employees of Ward Associates, an unlicensed real estate corporation, failed to maintain records for Trust Account #1, Trust Account #3 and Trust Account #4, those agents and employees were unable to perform required monthly reconciliation that compared the balance of the control record to the total balance of the beneficiary records.

36. Bank Accounts #1 to #6, which held trust funds, were not designated as trust accounts in the name of Respondent J. S. Ward or the unlicensed corporation as a broker deemed "trustee." The accounts were titled in the name of the unlicensed corporation under the acronym "fbo" without any reference in the account name to "trust." (The acronym "fbo," according to Respondent J. S. Ward and his associates or agents was intended to mean: "for the benefit of.")

37. Respondent J. S. Ward failed to exercise reasonable supervision over the acts of agents and employees of Ward Associates in a manner that allowed the acts and omissions on the part of Ward Associates to manifest and occur as described in the above factual findings.

In the matters for which Ward Associates' personnel failed to adhere to the Real Estate Law and the Department's regulations, Respondent J. S. Ward failed in his capacity as the designated officer of Ward Associates, or Respondent Ward, Inc., to exercise reasonable control over the activities of Ward Associates and its employees. Respondent J. S. Ward allowed violations of law to occur and to continue while serving as principal for the subject unlicensed real estate corporation.

Matters in Mitigation and Extenuation

38. Since 1975, Respondent J. S. Ward has held a license to serve as a real estate broker. From 1976 until 1994, Respondent J. S. Ward acted as a sole proprietor of a real estate broker's office. He incorporated the business under the name of Respondent Ward, Inc., in about 1995.

Over the past thirty years, Respondent J. S. Ward has not been the subject of disciplinary action by the Department of Real Estate.

39. Respondent J. S. Ward has had a principal residence and domicile in the Powell, Ohio since about 1996. In January 1997, he retired and sold all assets of Respondent Ward, Inc., which was merged into another California corporation called Windy Hills.

40. Auditor Rivera determined that as of December 31, 2002, Trust Account #2 showed a shortage, in the way of negative balances, in the sum of \$111,885.53. However, Ward Associates' accountant, Robert Bolliard, CPA, followed the policy established under the direction of Respondent J. S. Ward to write checks at the end of the month and then hold the checks until transfers from borrower-impound accounts or deposits were made into Trust Account #2 during the following month. Accountant Bolliard wrote the checks and sent the checks to the offices of Ward Associates for placement of an authorized signature and eventual mailing to investors. Respondent J.S. Ward's associate, Mr. Lee held the checks until the expected transfers or deposits were made and then he, or other employees or agents of Ward Associates, mailed the checks to the investors. In the month of January 2003, the deposit records showed that the shortage or negative balances of \$111,885.53 were partially cured by deposits of \$94,063.76. Hence, the remaining shortage was \$17,821.78.

Even though Trust Account #1 had shortage/negative balances of \$17,821.78 in January 2003, the Trust Account #1 beneficiaries, whose accounts were negative, had sufficient funds as held by Ward Associates in other impound accounts to address the shortages.

41. When Respondent J. S. Ward initiated the incorporation of Ward Associates, he recruited and then associated Ms. Emerson as a 50% shareholder in the business.

At the outset of the operations of Ward Associates, the business functions and principal office for the unlicensed real estate corporation were conducted and operated from Ms. Emerson's personal residence on Manuella Road in Los Altos.

Respondent J. S. Ward vested much responsibility in Ms. Emerson. Ms. Emerson retained her own lawyer named Maxine Monaghan to advise her on matters that pertained to complying with the Commissioner's Regulations. Yet no credible evidence demonstrated that an executed attorney retainer agreement or lawyer's correspondence established that Ms. Monaghan was the attorney for Ward Associates or Respondent J. S. Ward. Moreover, Mr. Lee, who was the attorney for Respondent J. S. Ward, and who also acted as General Counsel for Ward Associates, never sought advice or engaged in consultation with Ms. Monaghan. Neither Ms. Emerson nor Attorney Monaghan assured or guaranteed Respondent J. S. Ward that Ward Associates would attain licensure as a real estate corporation.

The Lender Purchaser Disclosure Statement (RE 851B) forms for loans known as the Moreno loans and the Waverley loans showed that Ms. Emerson negotiated the loans as a Ward Associates representative. But, Ms. Emerson affixed the broker's license number (#00587323) that the Commissioner had issued to her as an individual.

When Ms. Emerson terminated her relationship with Respondent J. S. Ward, internal records for Ward Associates were in disarray and impracticable to reconcile by January 2001. Due to her departure from Ward Associates, beginning in about March 2001, Mr. Lee had to attend to the day-to-day operations of Ward Associates.

42. Complainant offered no competent evidence to show that Respondent J. S. Ward unreasonably or unlawfully used trust fund money as his personal use or as the money of Ward Associates.

43. Complainant did not demonstrate that Respondent J. S. Ward, individually, or by reason of the acts or omissions of agents of respondent corporation or Ward Associates, has been convicted, or charged with, a crime involving moral turpitude.

44. Complainant did not established that Respondent J. S. Ward nor agents or employees of Ward Associates engaged in theft, fraud, embezzlement in conducting operations as an unlicensed real estate corporation.

45. Neither Respondent J. S. Ward nor agents or employees of Ward Associates engaged in commingling of fund in conduction business as an unlicensed real estate corporation. They did not commit acts or participate in omissions that led to loss of money of borrowers or investors. Respondent Ward or Ward Associates did not cause any lien to be attached to trust accounts maintained under the name of the unlicensed real estate corporation.

46. Complainant offered no evidence that agents or employees of Respondent J. S. Ward or Ward Associates made any misrepresentations directly to investors. No investor complained to Department personnel about the operations of Ward Associates or the dealings of Respondent J. S. Ward.

47. Complainant did not establish past consumer complaints against the real estate broker activities conducted by Respondent J. S. Ward as an individual licensee.

48. Complainant provides no evidence that any of Respondent Ward, Inc.'s mortgage loan brokerage clients or trust account beneficiaries suffered any financial harm by respondent's irregular business practices.

Matters in Aggravation

49. After April 22, 1997, Respondent Ward, Inc., ceased to exist as a viable corporation by reason of the record of the Office of the Secretary of State. Yet, two years after the entity became a "disappearing" corporation, on April 28, 1999, Mr. Lee, as an attorney, filed with the Department of Real Estate an Officer Renewal Application (RE 207 form) that set out the name "James Ward & Associates Inc." The renewal

application form showed the corporation identification number for Respondent Ward, Inc., as being 01195987. The form showed that the document was submitted as "license changes" for "change [of] Corporation Main Office address" and "change [of] Corporation mailing address" for the corporation that no longer existed. The application's item number "7" bore the title "corporation name" and it reflected the Department's printed descriptive name of "Jim Ward & Associates Inc," which had been merged out of existence.

The renewal application form, dated in April 1999, asked under item 16: "Is the corporation in good legal standing with the Office of the Secretary of State? If NO, provide explanation." Respondent J. S. Ward checked the "yes" box or caused the box to be checked in the affirmative even though Jim Ward & Associates, Inc., did not exist as a viable corporation.

Respondent J. S. Ward, or his agent or employee, answered "no" to questions 17, 18, 19a, and 20a, that respectively asked, "Did the corporation conduct in-house escrows with respect to its licensed real estate activities?," "Did the corporation, for compensation in the past 12 months, make or arrange loans secured by real property or sell existing notes secured by deeds of trust?," "Did the corporation, for compensation in the past 12 months, collect loan payments from borrowers for lenders/note owners or on behalf of obligators of promissory notes?," and "During the past 12 months did the corporation engage in property management?"

The Officer Renewal Application form sets out distinctly the phrase "OFFICER CERTIFICATION." The certification clearly states, "I certify under penalty of perjury that the answers and statements in this application are true and correct.... I understand that the license issued upon this application *entitles the applicant to act only for this corporation* and not in an individual capacity." (Emphasis added.) The certification also sets out a grant to the Commissioner to exercise "authority to examine the financial records of any trust fund account maintained *by this corporation....*" (Emphasis added.)

The April 1999 officer renewal application form as signed by Respondent J. S. Ward's attorney, was first filed about one year before Mr. Lee, filed with the Office of the Secretary of State, incorporation documents for Ward Associates.

50. On April 10, 2003, the Department received another completed Officer Renewal Application for Respondent Ward, Inc., even though the corporation had ceased to exist according to the Secretary of State in about April 1997. The April 2003 renewal application form was filed after the incorporation of Ward Associates in August 2000, but the name printed on the form contained "Inc.," which Respondent J. S. Ward and his attorney knew was not included in the corporate name for Ward Associates. Moreover the form reflected the corporation identification number that had been assigned to Respondent Ward, Inc., that Mr. Lee, at the direction of Respondent J. S. Ward, had caused to cease to exist when it was taken over by Windy Hills Corporation.

The form showed "license changes" for "change corporation main office address" and "change Corporation mailing address." Item number "7" bore the title corporation name with the Department's printed description of "Jim Ward & Associates INC."

51. Respondent J. S. Ward and Mr. Lee were not persuasive that all non-compliance issues that arose between September 2000 and March 2001 were the responsibility of Ms. Lee Emerson.

During all times that Ms. Emerson was associated with Respondent J. S. Ward (that is from the 1970s until March 2001), she acted under the influence, counsel and in accordance with the directions of Respondent J. S. Ward. Ms. Emerson was always in some fashion "junior," or subordinate to Respondent J. S. Ward, even though for a time she technically held a fifty-percent interest in Ward Associates and was an officer of the unlicensed real estate corporation.

Contrary to arguments of Respondent J. S. Ward, Ms. Emerson was not an "inveterate liar." Ms. Emerson did not commit perjury, as argued by respondents.

The occurrence of errors by Ms. Emerson, in making inaccurate entries on multi-lender disclosure forms for investors in certain loans, does not impugn her integrity insofar as being a credible witness with regard to material matters pertinent to the Accusation against Respondent J. S. Ward and Ward Associates, an unlicensed corporation.

Ms. Emerson's persistence in communicating with personnel of the Department did not adversely impact the Department's personnel's objectivity in enforcing the Real Estate law or the Commissioner's regulations.

Ms. Emerson was never the licensed designated officer-broker for Ward Associates, an unlicensed real estate corporation. For all times the Commissioner's records showed Respondent J. S. Ward to be the licensed designated officer-broker for Respondent Ward, Inc. Respondent J. S. Ward was the only designated officer-broker for the unlicensed real estate corporation -Ward Associates.

52. By his demeanor while testifying, his exaggerated assertions that were inconsistent with more credible evidence, and his attitude towards the proceeding, Respondent J. S. Ward was not a credible³ witness in many aspects of his testimony.

Respondent J. S. Ward was not believable that he had a reasonable understanding and that he could lawfully rely upon Ms. Emerson to handle all regulatory requirements with the Department of Real Estate to secure licensed status for Ward Associates.

³ Government Code section 11425.50, subdivision (b), third sentence.

53. Respondent J. S. Ward engaged in frivolous arguments that personnel within DRE engaged in unethical practices in the prosecution of the Accusation in this matter. Respondents wasted time and energy with a tactic to shift from Respondent J. S. Ward's grave departure from standards expected of real estate corporation's licensed officer-broker rather to blame Department personnel of engaging in a so-called unjustified prosecution of respondents and Ward Associates. Moreover, Respondent J. S. Ward sought to pursue irrelevant assertions, such as a claim that a lawyer named Maxine Monaghan had been a neglectful lawyer of Ward Associates and that the Department's personnel knew that Ms. Monaghan had been the lawyer supposedly appointed by Ms. Emerson to assure the licensure of Ward Associates. Even if Respondents had called Ms. Monaghan as a witness to this proceeding to show she had tremendous responsibilities, in support of Ms. Emerson, at the outset of operations of Ward Associates, that evidence would not have diminished the breach of non-delegable duties that vested in Respondent J. S. Ward, as designated officer-broker, to be ultimately responsible for the acts and omissions of agents and employees of Ward Associates.

54. Respondent J. S. Ward was not believable when he asserted that he was confused by the corporate names involved in this matter and that he misread the Department's Officer Renewal Application forms.

Respondent J. S. Ward is a 1968 graduate of the Stanford University in Palo Alto (as he holds a bachelor's degree with a major in Economics and a minor in History). He has been involved in large-dollar transactions over a span of many years. Respondent J. S. Ward owned a publishing company (Buckeye Education Group) from 1997 until 2000. He now owns a publishing company called Nicholas Ward Publishing Company LLC. Respondent J. S. Ward has personally authored one book and he has published four other books through his currently owned publishing company. He is a world traveler and spends much time in Europe, where he visited about once each month between 1993 and 2002. A reasonable inference may be drawn that with his education, his book publishing businesses and his worldly sophistication, Respondent J. S. Ward in 1999 and 2003 had sufficient ability to read and understand the Department's license renewal application forms, including the certification under penalty, so as to provide accurate responses to questions on the application forms.

Respondent J. S. Ward is totally disingenuous to intimidate or suggest that he is an unsophisticated person who relied upon more trained skills and knowledge of his associates, agents and acquaintances to assure that he met the non-delegable duties of a licensed officer-broker for real estate corporations, which were engaged in transactions valued in the millions of dollars. Respondent J. S. Ward cannot be believed when he claimed he dutifully filled out the corporation's license renewal applications, which he believed were either "renewals of his personal license" or other documentation to keep the Department informed of the address change for Ward Associates, when the

principal place of business moved from the residence of Ms. Emerson to the law office of Mr. Lee.

Respondent J. S. Ward is not believable when he claimed that the form titled "Officer Renewal Application" was viewed by him as his individual real estate broker license renewal application. Even though he read the name "Jim Ward & Associates Inc." printed onto the form, Respondent unpersuasively averred that "it did not register with him" that the form pertained to the non-viable or defunct corporation called "Jim Ward & Associates, Inc.," that is Respondent Ward, Inc.

55. Respondent J. S. Ward is not persuasive when he claimed he misunderstood the language in Department's license renewal application in light of the complicated work in which he was engaged when he operated Respondent Ward, Inc., and Ward Associates. Respondent J. S. Ward described his work as being, in essence, an underwriter. Yet, he made the ultimate decisions on behalf of the putative real estate corporation by way of his methods to characterize loans as being good loans versus bad loans. Respondent J. S. Ward was in full control of the firm, and when Ms. Emerson expressed her dissatisfaction with her share of profits in light of her expenditure of time with the affairs of the business, Respondent J. S. Ward accepted her resignation as a corporate officer and her surrender of shareholding in Ward Associates.

56. Respondent J. S. Ward averred that he never personally visualized the Department's Officer Renewal Application, which bore a date of "4-7-03" and showed a signature of "James S. Ward." Rather his business partner and lawyer, Mr. Lee, supposedly read the contents of the form to him via telephone because when the form arrived at the company's main office, Respondent J. S. Ward was in the Netherlands with his young son. He was not credible when he claimed that in April 2003 "although [he] did not recall his mind set," at the time he thought he was renewing his individual real estate broker license.

57. Respondent J. S. Ward claimed he authorized his business associate and attorney, Mr. Lee, to use a rubber stamp to affix a facsimile of Respondent's signature to the Department's Officer Renewal Application form, without the subject licensed designated officer-broker, at a minimum, first personally having read the entries on the form. Such acts and omissions represented a substantial departure from the oversight responsibility of the individual licensed broker, who was charged with the functions monitoring the material operations of a supposed licensed real estate corporation.

58. Respondent J. S. Ward was frivolous in attempting to subpoena the Commissioner of the Department of Real Estate, General Counsel for the Department and other Department civil servants whose appearance at the hearing on the Accusation in this matter, and in the companion Statement of Issues case, would have been wasteful, needless and not dispositive of any relevant issue for determination of the rights of respondents in the defense of respective licensed status with the Department.

59. Respondent J. S. Ward refuses to acknowledge the potential adverse consequences associated with the negative balances that he permitted Ward Associates to manifest on its books of account. By his omissions in supervising Ms. Emerson and Mr. Lee, Respondent J. S. Ward showed that he does not fully grasp the fiduciary obligation Ward Associates owed to owners of trust accounts, which the unlicensed corporation's personnel managed.

60. Respondent J. S. Ward showed his dire misunderstanding of his responsibilities as a designated officer-broker for a real estate corporation when he asserted "he never really thought about" the obligations imposed on him as a designated officer-broker to personally supervise compliance by agents and employees of the Ward Associates of the Real Estate Law and the Commissioner's Regulations. Respondent J. S. Ward demonstrated his misfeasance that his sole responsibilities arose out of his individual real estate broker license.

Respondent J. S. Ward is misguided to view the allegations in the Accusation as "routine regulatory compliance" matters that should have been settled by the Department on terms dictated by or much to the liking of Respondent J. S. Ward.

61. During much of the time he served as designated officer-broker for Ward Associates, Respondent J. S. Ward did not comprehend the clear meaning, rational construction and definitive dictate of the regulations that implement the State of California's trust fund laws that fall within the Real Estate Law.

62. The wrongful acts and omissions of Respondent J. S. Ward did not constitute "a simple mistake." Rather the unlawful conduct shown by the evidence established Respondent J. S. Ward substantially departed from the standards expected of a licensed real estate broker, who is the designated officer-broker of a real estate corporation.

63. Even though Respondent J. S. Ward and his fellow shareholder in Ward Associates, Mr. Lee, received express notice from Department Investigator Maxine Risley in December 2003 that Ward Associates did not hold a license as a real estate corporation, Respondent J. S. Ward continued to operate a mortgage loan brokerage. For a considerable period of time (December 2003 through late June 2005) Respondent J. S. Ward consciously and deliberately violated the Real Estate Law by transacting business, through an unlicensed real estate corporation, when the Department's investigator explicitly had informed the responsible individuals for the unlicensed corporation about clear violations of law.

After gaining the express notice in December 2003 from Investigator Maxine Risley that the Department viewed Ward Associates as having engaged in unlicensed brokerage activity, until the end of June 2005 Respondent J. S. Ward persisted in

negotiating construction loans, he continued to originate new loans, he passed investor money through trust accounts maintained in the name of the unlicensed corporation, and the standard 851 forms were issued in the name of Ward Associates, an unlicensed corporation, and agents of Ward Associates administered the construction loans.

64. Not until April 2005, did Attorney David Lee and Respondent J. S. Ward devise a "game plan" to address the allegations in the Accusation and related Statement of Issues. At that time, those principals of Ward Associates began the "winding down" of the unlicensed corporation. Respondent J. S. Ward, his agents, employees and business partners, set out to form a new real estate corporation called "JSW Financial Inc.," which showed Richard F. Tipton as the designated officer-broker. (JSW Financial Inc., which secured license number 01511089 on June 27, 2005, has its address at 1975 W. El Camino Real, Suite 202, Mountain View, CA 94040, which is the address of Attorney David Lee and Ward Associates.) Respondent J.S. Ward is a substantial shareholder in the corporation formed in mid-2005 to carry out activities and functions of a real estate broker corporation.

65. To the instant administrative adjudication proceeding, Respondent J. S. Ward called as an expert witness - Mr. Keith Loughran (Mr. Loughran). But the evidence offered by Mr. Loughran was not persuasive.

Mr. Loughran was unbelievable in describing his approach of assessing or treating violations of law by respondents or Ward Associates as de minimis or of little import. Mr. Loughran was not compelling in asserting that the transgressions in this matter involved merely routine, non-compliance regulatory issues.

Mr. Loughran's support of respondent argument that the Department's investigation and prosecution was a "waste" is ill-founded and is not supported by the evidence of serious departure from standards expected of a licensed real estate designated officer-broker for a real estate corporation engaged in large dollar mortgage lending transactions.

In one instance, Auditor Rivera found that as of May 10, 2002, the adjusted bank balance for Bank Account #2 was \$3,538.24, while accountability was \$57,538.24 so as to leave a shortage of \$54,000. The shortage had been caused by an unauthorized transfer of \$54,000 from Bank Account #2 to Trust #1 so as to aid funding of a loan (#119-02). On May 10, 2002, the amount of \$54,000 was part of a disbursement of \$836,000 from Trust Account #1 to Chicago Title. On May 15, 2002, after investors' money was collected for the loan, \$54,000 was transferred from Trust Account #1 to Bank Account #1. Even though beneficiaries were similar between accounts, Ward Associates or Respondent J. S. Ward provided no evidence that the owner of the trust funds had given written consent to allow Ward Associates to reduce the balance of the funds in the trust account to an amount less than the existing aggregate trust fund liabilities. Mr. Loughran unpersuasively insisted that no violation of law occurred. He

contended that the sole beneficiary of Bank Account #2 was Military Way LLC, and that Military Way LLC had authorized the temporary transfer of money to fund another Military Way LLC loan. But Military Way LLC was not the sole beneficiary of Bank Account #2. Bank Account #2 was used to hold construction money related to another loan (#107-01-2). The original deposit into the account was represented by funds from investors in that particular loan (#107-01-2). The funds were trust funds that were subject to Code section 10145, subdivision (a). Under that Code section, Ward Associates or Respondent J. S. Ward only was permitted to disburse such money to: a properly designated trust bank account, an account with an independent escrow, or directly to the principals who were not controlled Ward Associates or Respondent J. S. Ward. The funds remained trust funds even though that money was placed into the vague, unspecific account that was captioned "fbo." Contrary to the view of Mr. Loughran, violation of law did occur when the investors did not authorize the temporary transfer of funds.

Also, Mr. Loughran was neither credible nor persuasive on his view regarding the use of "fbo" by Ward Associates. He claimed that the use of the vague and uncertain acronym met requirements of law that trust funds be designated as trust accounts in the name of the licensed broker, or real estate corporation, as trustee. In this matter, Ward Associates maintained certain account under a title "fbo," without any reference to "trust." Mr. Loughran contended that the initials "fbo" was equivalent of a declaration of trust. But Complainant is more precise when arguing that "fbo" can be inferred to mean that Ward Associates acted merely as the custodian of funds for the sake of the named beneficiary. Such inference is far different than a licensed real estate broker acting as trustee for the benefit of a party or parties to a transaction being arranged by the real estate broker. Contrary to Mr. Loughran's explanation, Respondent J. S. Ward and Ward Associates had no right, title or interests in the funds in the so-called "fbo" accounts, and Respondent and Ward Associates had no right, title or interests in the actual transactions, except the real estate broker who serviced the construction loan investors and borrowers. Inapposite to the position of Mr. Loughran, the "fbo" designations were inconsistent with trust obligations owed the investors. By placing the trust funds into "fbo" accounts, the trust funds were at risk of seizure by creditors of borrowers, creditors of Ward Associates, or state or federal taxing authorities.

66. Mr. S. Guy Puccio (Mr. Puccio) appeared at the hearing of this matter to present credible, persuasive and compelling evidence.

Mr. Puccio offered persuasive and compelling opinions regarding the acts and omissions of Respondent J. S. Ward and Ward Associates that were negligent and a breach of industry standards that are to be expected of a licensed real estate broker in handling trust fund accounts.

67. Respondent J. S. Ward, his agents, associates or employees, presented Auditor Rivera documents that created or perpetuated a false or inaccurate impression

regarding the actual corporation, whose real estate mortgage lending business, was the subject of the audit. Respondent J.S. Ward conducted licensed activities and operations through the defunct Respondent Ward, Inc., in violation of Regulation 2842. Respondents' acts and omission represented a substantial departure from acceptable practices of licensees of the Commissioner.

68. By his demeanor and his attitude towards the proceeding, Mr. David Lee was not credible or truthful. He was unreasonably evasive and uncooperative during cross-examination by Complainant.

Mr. Lee was not truthful when he stated that he did not know that the initials "JSW" in the name of newly formed corporation called JSW Financial Inc. stood for "James Stanley Ward." Also, Mr. Lee was not believable that he relied solely upon Ms. Emerson and her attorney – Ms. Maxine Monaghan to assure that Ward Associates complied with the law for its proper licensure as a real estate corporation. And, Mr. Lee was not credible when he exclaimed that he merely overlooked the "inc." in the name for the corporate licensee on the license renewal applications that he forwarded to Respondent J. S. Ward.

Other Matters

69. It would be against the public interest to permit Respondent Ward, Inc., or its successor Ward Associates, to maintain a license and licensing rights as a real estate corporation.

70. It would be against the public interest to permit Respondent J. S. Ward to maintain a real estate broker; however following a period of actual suspension, the public interest may not be adversely affected were Respondent J. S. Ward hold a restricted real estate salesperson license.

LEGAL CONCLUSIONS

The Standard of Proof

1. The standard of proof in an administrative disciplinary action that seeks the suspension or revocation of a real estate professional's license is "clear and convincing evidence to a reasonable certainty." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 583.)

"Clear and convincing evidence" means evidence of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth of the facts for which it is offered. "Clear and convincing evidence" is a higher standard of

proof than proof by “a preponderance of the evidence.” (*BAJI*⁴ (8TH Ed.), No. 2.62.) “Clear and convincing evidence” requires a finding of high probability for the propositions advanced in an Accusation against a targeted licensee. It must be so clear as to leave no substantial doubt and to command the unhesitating assent of every reasonable mind. (*In re Michael G.* (1998) 63 Cal.App.4th 700.)

Complainant established by clear and convincing evidence the legal conclusions below upon which disciplinary action is imposed upon Respondent J. S. Ward.

Nondelegable Duties

2. Respondent J. S. Ward attempted to deny responsibility for the failures, omissions and neglect of the agents, shareholders, officers and associates of Ward Associates. Respondent J. S. Ward contends that he should not be held culpable for the malfeasance or misconduct of Ms. Emerson, Mr. Lee or accountants and consultants retained to assist the unlicensed real estate corporation. Respondent J. S. Ward asserts that the malfeasance or malfeasance of those actors were independent of his functions as a real estate broker, who was associated with Respondent Ward, Inc., or Ward Associates. But, Respondent J. S. Ward’s arguments are in error in his perceptions that he is not responsible for the acts of agents and employees of Ward Associates or Respondent Ward, Inc.

Respondent J. S. Ward’s defense must be viewed in light of the well-established rule of nondelegable duties of a licensee. The rule, which is similar to the rule of *respondent superior*, advances that “the licensee, if he elects to operate his business through employees, must be responsible to the licensing authority for their conduct in the exercise of his license.” (*California Assn. of Health Facilities v. Department of Health Services* (1997) 16 Cal.4th 284, 295.) “By virtue of the ownership of a ... license such owner has a responsibility to see to it that the license is not used in violation of law.” (*Ford Dealers Assn. v. Dept. of Motor Vehicles* (1982) 32 Cal.3d 347, 360.)

In citing Civil Code section 2330, the court in the Ford Dealers Association case commented that: “The settled rule that licensees can be held liable for the acts of their employees comports with the general rule governing principal-agent liability. ‘An agent represents his principal for all purposes within the scope of his actual or ostensible authority....’ (Civil Code section 2330.)” (*Ford Dealers Assn. v. DMV, supra.*, 32 Cal.3d at p. 360.)

The rule of nondelegable duties of licensees is of common law derivation. (*California Assn. of Health Facilities v. DHS* (1997) *supra.*, 16 Cal.4th at p. 296; *Van Arsdale v. Hollinger* (1968) 68 Cal.2d 245, 251.) The essential justification for the rule

⁴ *Book of Approved Jury Instructions, Standard Jury Instructions, Civil.*

More importantly, if a license, such as Respondent J. S. Ward, were not liable for the acts and omissions of their agents and independent contractors, "effective regulation would be impossible. [The licensee] could contract away the daily operations of his business to independent contractors and become immune to disciplinary action by the licensing authority." (*California Assn. of Health Facilities v. DHS, supra*. 16 Cal.4th at p. 296.) Such result would undermine effective law enforcement and regulatory oversight.

And, the concept that a licensee will be held liable for the acts of agents is one that has been applied to situations where the agent is an independent contractor or is an employee. (See *Banks v. Board of Pharmacy* (1984) 161 Cal.App.3d 708, 713; *Rob-Mac, Inc. v. Dept. of Motor Vehicles* (1983) 148 Cal.App.3d 793, 797-798.)

Respondent J. S. Ward must bear full responsibility for the acts and omissions of agents or employees of Ward Associates, an unlicensed real estate corporation for which Respondent J. S. Ward assumed the role of licensed designated officer-broker. The agents of Ward Associates performed services customarily associated with the functions, duties and obligations of a real estate corporation engaged in mortgage lending brokerage activities. Respondent J. S. Ward was obligated to supervise and control the activities and functions of the individuals associated with the putative real estate corporation- Jim Ward and Associates.

Statutory Authority - Violations of the Real Estate Law and Commissioner's Regulations

3. Business and Professions Code section 10177, subdivision (a), establishes that the Department of Real Estate Commissioner may suspend or revoke the license of a real estate licensee "who has done any of the following, or may suspend or revoke the license of a corporation...if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has ... (a) [p]rocur[ed], or attempted to procure, a real estate license or license renewal, for himself or herself or any salesperson, by fraud, misrepresentation, or deceit, or by making any material misstatement of fact in an application for a real estate license, license renewal, or reinstatement."

Business and Professions Code section 498 provides the Real Estate Commissioner "may revoke, suspend, or otherwise restrict a license on the ground that the licensee secured the license by fraud, deceit, or knowing misrepresentation of a material fact or by knowingly omitting to state a material fact."

Business and Professions Code section 499 prescribes that the Real Estate Commissioner "may revoke, suspend, or otherwise restrict a license on the ground that the licensee, in support of another person's application for license, knowingly made a false statement of a material fact or knowingly omitted to state a material fact to the

the licensee, in support of another person's application for license, knowingly made a false statement of a material fact or knowingly omitted to state a material fact to the [Real Estate Commissioner] regarding the application.”

Cause for disciplinary action exists under Business and Professions Code section 10177, subdivision (a), as that section interacts with Code sections 498 and 499, by reason of the matters set forth in Factual Findings 5 through 11 inclusive.

4. Business and Professions Code section 10177, subdivision (d), establishes that the Department of Real Estate Commissioner may suspend or revoke the license of a real estate licensee “who has done any of the following, or may suspend or revoke the license of a corporation...if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has ...[w]illfully disregarded or violated the Real Estate Law ... or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law....”

The concept of “willful” is given broad meaning in the realm of administrative licensure disciplinary proceedings. “Willful” does not imply a malicious intent to do wrong or a consciousness for malfeasance on the part of a licensee to violate a rule, statute or standard of due care. The term “ ‘willful’... does not necessarily imply anything blamable, or any malice or wrong toward the other party, or perverseness or moral delinquency, but merely that the thing done or omitted to be done was done or omitted intentionally. It amounts to nothing more than this: That the person knows what he is doing, intends to do what he is doing, and is a free agent....” (*Suman v. BMW of North America, Inc.* (1994) 23 Cal.App.4th 1, 12; (See also: *Murrill v. State Board of Accountancy* (1950) 97 Cal.App.2d 709, 713; *Milner v. Fox* (1980) 102 Cal.App.3d 567, 573-575 fn.9; and *Apollo Estates, Inc. v. Department of Real Estate* (1985) 174 Cal.App.3d 625, 639.)

5. California Code of Regulations, title 10, section 2742, subdivision (c), states:

(a) An applicant for an original broker license for a domestic corporation shall submit with the application, a Certificate of Status (Domestic Corporation) executed by the California Secretary of State not earlier than 30 days before the date of mailing or delivering the application to the headquarters office of the Department.

However, if the applicant is a domestic corporation which filed its original Articles of Incorporation not earlier than six (6) months before the date of mailing or delivering the application to the headquarters office of the Department, Articles of

(b) An applicant for an original broker license for a foreign corporation shall submit with the application, a Certificate of Qualification or a Certificate of Good Standing (Foreign Corporation) executed by the California Secretary of State not earlier than 30 days before the date of mailing or delivering the application to the headquarters office of the Department.

(c) A corporation licensed under Section 10211 of the Code shall not engage in the business of a real estate broker while not in good legal standing with the Office of the Secretary of State.

Cause for disciplinary action exists under Business and Professions Code section 10177, subdivision (d), as that section interacts with Regulations section 2742, subdivision (c), by reason of the matters set forth in Legal Conclusion 4 and Factual Findings 7 through 11 inclusive, and 19 through 21 inclusive.

6. Business and Professions Code section 10130 sets forth:

It is unlawful for any person to engage in the business, act in the capacity of, advertise or assume to act as a real estate broker or a real estate salesman within this state without first obtaining a real estate license from the department.

The [Real Estate Commissioner] may prefer a complaint for violation of this section before any court of competent jurisdiction, and the [Real Estate Commissioner] and his counsel, deputies or assistants may assist in presenting the law or facts at the trial....

Cause for disciplinary action exists under Business and Professions Code section 10177, subdivision (d), as that section interacts with Code section 10130, by reason of the matters set forth in Legal Conclusion 4 and Factual Findings 7 through 11 inclusive, and 19 through 21 inclusive.

7. Business and Professions Code section 10145, in part, sets forth:

(a) (1) A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part 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.

(2) Notwithstanding the provisions of paragraph (1), a real estate broker collecting payments or performing services for investors or note owners in connection with loans secured by a first lien on real property may deposit funds received in trust in an out-of-state depository institution insured by the Federal Deposit Insurance Corporation, if the investor or note owner is any one of the following:

(A) The Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or the United States Department of Veterans Affairs.

(B) A bank or subsidiary thereof, bank holding company or subsidiary thereof, trust company, savings bank or savings and loan association or subsidiary thereof, savings bank or savings association holding company or subsidiary thereof, credit union, industrial bank or industrial loan company, or insurance company doing business under the authority of, and in accordance with, the laws of this state, another state, or the United States relating to banks, trust companies, savings banks or savings associations, credit unions, industrial banks or industrial loan companies, or insurance companies, as evidenced by a license, certificate, or charter issued by the United States or a state, district, territory, or commonwealth of the United States.

(C) Trustees of a pension, profit-sharing, or welfare fund, if the pension, profit-sharing, or welfare fund has a net worth of not less than fifteen million dollars (\$15,000,000).

(D) A corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or a wholly owned subsidiary of that corporation.

(E) A syndication or other combination of any of the entities specified in subparagraph (A), (B), (C), or (D) that is organized to purchase the promissory note.

(F) The California Housing Finance Agency or a local housing finance agency organized under the Health and Safety Code.

(G) A licensed residential mortgage lender or servicer acting under the authority of that license.

(H) A licensed real estate broker selling all or part of the loan, note, or contract to a lender or purchaser specified in subparagraphs (A) to (G), inclusive.

(3) A real estate broker who deposits funds held in trust in an out-of-state depository institution in accordance with paragraph (2) shall make available, in this state, the books, records, and files pertaining to the trust accounts to the commissioner or the commissioner's representatives or pay the reasonable expenses for travel and lodging incurred by the commissioner or the commissioner's representatives in order to conduct an examination at an out-of-state location.

(b) A real estate broker acting as a principal pursuant to Section 10131.1 shall place all funds received from others for the purchase of real property sales contracts or promissory notes secured directly or collaterally by liens on real property in a neutral escrow depository unless delivery of the contract or note is made simultaneously with the receipt of the purchase funds.

(c) A real estate sales person who accepts trust funds from others on behalf of the broker under whom he or she is licensed shall immediately deliver the funds to the broker or, if so directed by the broker, shall deliver the funds into the custody of the broker's principal or a neutral escrow depository or shall deposit the funds into the broker's trust fund account.

(d) If not otherwise expressly prohibited by this part, a real estate broker may, at the request of the owner of trust funds or of the principals to a transaction or series of transactions from whom the broker has received trust funds, deposit the funds into an interest-bearing account in a bank, savings and loan association, credit union, or industrial loan company, the accounts of which are insured by the Federal Deposit Insurance Corporation, if all of the following requirements are met:

(1) The account is in the name of the broker as trustee for the designated beneficiary or principal of a transaction or series of transactions.

(2) All of the funds in the account are covered by insurance provided by an agency of the United States.

(3) The funds in the account are kept separate, distinct, and apart from funds belonging to the broker or to any other person for whom the broker holds funds in trust.

(4) The broker discloses to the person from whom the trust funds are received, and to a beneficiary whose identity is known to the broker at the time of establishing the account, the nature of the account, how interest will be calculated and paid under various circumstances, whether service charges will be paid to the depository and by whom, and possible notice requirements or penalties for withdrawal of funds from the account.

(5) Interest earned on funds in the account may not inure directly or indirectly to the benefit of the broker or a person licensed to the broker.

(6) In an executory sale, lease, or loan transaction in which the broker accepts funds in trust to be applied to the purchase, lease, or loan, the parties to the contract shall have specified in the contract or by collateral written agreement the person to whom interest earned on the funds is to be paid or credited.

(e) The broker shall have no obligation to place trust funds into an interest-bearing account unless requested to do so and unless all of the conditions in subdivision (d) are met, nor, in any event, if he or she advises the party making the request that the funds will not be placed in an interest-bearing account.

....

(g) The broker shall maintain a separate record of the receipt and disposition of all funds described in subdivisions (a) and (b), including any interest earned on the funds.

(h) Upon request of the commissioner, a broker shall furnish to the commissioner an authorization for examination of financial records of those trust fund accounts maintained in a financial institution, in accordance with the procedures set forth in Section 7473 of the Government Code.

(i) As used in this section, "neutral escrow" means an escrow business conducted by a person licensed under Division 6 (commencing with Section 17000) of the Financial Code or by a person described in paragraph (1) or (3) of subdivision (a) of Section 17006 of that code.

California Code of Regulations, title 10, section 2831 establishes:

(a) Every broker shall keep a record of all trust funds received, including uncashed checks held pursuant to instructions of his or her principal. This record, including records maintained under an automated data processing system, shall set forth in chronological sequence the following information in columnar form:

- (1) Date trust funds received
- (2) From whom trust funds received.
- (3) Amount received
- (4) With respect to funds deposited in an account, date of said deposit
- (5) With respect to trust funds previously deposited to an account, check number and date of related disbursement.
- (6) With respect to trust funds not deposited in an account, identity of other depository and date funds were forwarded.
- (7) Daily balance of said account

(b) For each bank account which contains trust funds, a record of all trust funds received and disbursed shall be maintained in accordance with subdivision (a) or (c).

(c) Maintenance of journals of account cash receipts and disbursements, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles, shall constitute compliance with subdivision (a) provided that such journals, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2.

(d) Nothing in this section shall be construed to permit a violation of Section 10145 of the Code.

(e) A broker is not required to keep records pursuant to this section of checks which are written by a principal, given to the broker and made payable to third parties for the provision of services, including but not limited to escrow, credit and appraisal services, when the total amount of such checks for any transaction from that principal does not exceed \$1,000. Upon request of the Department or the maker of such checks, a broker shall account for the receipt and distribution of such checks. A broker shall retain for three years copies of receipts issued or obtained in connection with the receipt and distribution of such checks.

Cause for disciplinary action exists under Business and Professions Code section 10177, subdivision (d) as that section interacts with Code section 10145 and Regulations section 2831, by reason of the matters set forth in Legal Conclusion 4 and Factual Findings 22 through 27 inclusive, and 66.

8. California Code of Regulations, title 10, section 2831.1 provides:

(a) A broker shall keep a separate record for each beneficiary or transaction, accounting for all funds which have been deposited to the broker's trust bank account and interest, if any, earned on the funds on deposit. This record shall include information sufficient to identify the transaction and the parties to the transaction. Each record shall set forth in chronological sequence the following information in columnar form:

- (1) Date of deposit
- (2) Amount of deposit
- (3) Date of each related disbursement
- (4) Check number of each related disbursement
- (5) Amount of each related disbursement.
- (6) If applicable, dates and amounts of interest earned and credited to the account
- (7) Balance after posting transactions on any date

(b) Maintenance of trust ledgers of separate beneficiaries or transactions, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles will constitute compliance with subdivision (a), provided that such ledgers, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2.

Cause for disciplinary action exists under Business and Professions Code section 10177, subdivision (d) as that section interacts with Code section 10145 and Regulations section 2831.1, by reason of the matters set forth in Legal Conclusion 4 and Factual Findings 22 through 26 inclusive, 28, 35 through 37 inclusive, and 66.

9. California Code of Regulations, title 10, section 2831.2 sets forth:

The balance of all separate beneficiary or transaction records maintained pursuant to the provisions of Section 2831.1 must be reconciled with the record of all trust funds received and disbursed required by Section 2831, at least once a month, except in those months when the bank account did not have any activities. A record of the reconciliation must be maintained, and it must identify the bank account name and number, the date of the reconciliation, the account number or name of the principals or beneficiaries or transactions, and the trust fund liabilities of the broker to each of the principals, beneficiaries or transactions.

Cause for disciplinary action exists under Business and Professions Code section 10177, subdivision (d) as that section interacts with Code section 10145 and Regulations section 2831.2, by reason of the matters set forth in Legal Conclusion 4 and Factual Findings 22 through 26 inclusive, 29, 35 through 37 inclusive, and 66.

10. California Code of Regulations, title 10, section 2832, subdivision (a) provides:

Compliance with Section 10145 of 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, or in a fictitious name if the broker is the holder of a license bearing

such fictitious name, as trustee at a bank or other financial institution not later than three business days following receipt of the funds by the broker or by the broker's salesperson.

Cause for disciplinary action exists under Business and Professions Code section 10177, subdivision (d), as that section interacts with California Code of Regulations, title 10, section 2832, subdivision (a), by reason of the matters set forth in Legal Conclusion 4 and Factual Findings 22 through 26, 30, 35 through 37 inclusive, and 66.

11. California Code of Regulations, title 10, section 2832.1, states:

The written consent of every principal who is an owner of the funds in the account shall be obtained by a real estate broker prior to each disbursement if such a disbursement will reduce the balance of funds in the account to an amount less than the existing aggregate trust fund liability of the broker to all owners of the funds.

Cause for disciplinary action exists under Business and Professions Code section 10177, subdivision (d), as that section interacts with California Code of Regulations, title 10, section 2832.1, by reason of the matters set forth in Legal Conclusion 4 and Factual Findings 22 through 26, 31, 35 through 37 inclusive, and 66.

12. Business and Professions Code section 10177, subdivision (g), provides the Real Estate Commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has "(g) demonstrated negligence or incompetence in performing any act for which he or she is required to hold a license."

Business and Professions Code section 10177, subdivision (h), declares, in pertinent part, that the Real Estate Commissioner may suspend or revoke the license of a real estate licensee who has "[a]s a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required."

Business and Professions Code section 10159.2, sets out in important part:

(a) The officer designated by a corporate broker licensee pursuant to Section 10211 shall be responsible for the supervision and control of the activities conducted on behalf of

the corporation by its officers and employees as necessary to secure full compliance with the provisions of this division, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required.

(b) A corporate broker licensee that has procured additional licenses in accordance with Section 10158 through officers other than the officer designated pursuant to Section 10211 may, by appropriate resolution of its board of directors, assign supervisory responsibility over salespersons licensed to the corporation to its broker-officers.

(c) A certified copy of any resolution of the board of directors assigning supervisory responsibility over real estate salespersons licensed to the corporation shall be filed with the Real Estate Commissioner within five days after the adoption or modification thereof.

In this matter, Respondent J. S. Ward delegated to other individuals, in particular Ms. Emerson, Mr. Lee and certified public accountant Boulliard, non-delegable duties of a licensed designated officer-broker for a real estate corporation. In particular, Respondent J. S. Ward failed to assure that communications made in his name to the Department of Real Estate were truthful and accurate. Moreover, Respondent J. S. Ward delegated to unqualified agents his non-delegable duty to assure that real estate broker activity that required licensure was conducted by a properly licensed corporate entity.

Cause for disciplinary action exists under Business and Professions Code section 10177, subdivision (d) as that section interacts with Code section 10177, subdivisions (g) and (h) and 10159.2, by reason of the matters set forth in Legal Conclusion 4 and Factual Findings 5 through 15 inclusive, 19 through 37 inclusive, 49 through 64 inclusive, and 66 through 68 inclusive.

13. The matters in mitigation and extenuation as set forth in Factual Findings 35 through 49 were considered in making the following order.

Respondents' Irrelevant Arguments and Offers of Proof

14. Administrative adjudication results in a decision that equates to agency action of specific application that determines a legal right or other legal interest of a particular person.⁵ Contrary to the arguments and presentation by Respondents, administrative adjudication is not identical to nor does it exist for the purpose of civil

⁵ Government Code section 11405.50.

litigation. Administrative adjudication has as its purpose the protection of the health, safety and welfare of the public.

Contrary to arguments of respondents and Ward Associates, it is not relevant to address the question: "Why had the DRE pursued this case with such fervor?" This matter is not unlike other DRE audit examination proceedings for which disciplinary action has been imposed by the Commissioner. Beyond the violations of law as revealed by the audit examination, the matter showed the grave acts of neglect and deception in falsely procuring licensure as a real estate corporation and a designated officer-broker that involved acts and omissions that were not inconsequential. Respondent J. S. Ward's misconduct or negligent supervision "tricked" the Department into believing that the real estate mortgage brokerage of Ward Associates was conducted by a licensed entity from 2000 through 2003. The acts and omissions by Respondent J. S. Ward must be inferred to have been the product of a deliberate and stealth-like scheme to create confusion within the Department of Real Estate and in the mortgage brokerage industry.

Doctrine of Laches

15. The doctrine of laches is alluded to by Respondent J. S. Ward as a means to either gain dismissal of the Accusation, or to mitigate the penalty against his licenses and licensing rights. But, Respondent offers arguments, which have little merit, in his attempt to use the equitable defense of laches.

The doctrine of laches applies in administrative proceedings when the challenged administrative action has been unreasonably delayed. Such unreasonable delay, however, must result in prejudice to the party against whom the action is taken. Because of the relationship between prejudice and delay, circumstances that give rise to laches vary widely depending upon their interplay in the case at issue. (*Hope Rehabilitation Services v. Department of Rehabilitation* (1989) 212 Cal.App.3d 938.) The doctrine is designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witness have disappeared. The policy also guards against other injuries caused by change of position during a delay. Delay alone ordinarily does not constitute laches, as lapse of time is separately embodied in statutes of limitations. What makes the delay unreasonable in the case of laches is that it results in prejudice.⁶ (*Lam v. Bureau of Security & Investigative Services* (1995) 34 Cal.App.4th 29. If no detriment has been

⁶ See also, *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 581 [where two year delay was not within doctrine]; *Dresser v. Board of Medical Quality Assurance* (1982) 130 Cal.App.3d 506, 511-514 [where acts 5 years and 4 years occurred before discipline initiated was not within the doctrine]; *Brown v. State Personnel Board* (1985) 166 Cal.App.3d 1156, 1159-1161 [where 4 years elapsed between the date of a professor's sexual overtures towards female students and the date the university filed charges of misconduct]; *Rudolph v. Athletic Commission* (1960) 177 Cal.App.2d 1, 21-22 [where acts occurred 14 years to 5 years before disciplinary action.]

suffered by the party pleading laches, the plea is in vain. *Wells Fargo v Guerard* (1997) 53 Cal.App.4th 596, 632.)

No merit exists regarding Respondent J. S. Ward's assertion he has an entitlement to application of the equitable doctrine of laches. His motion for dismissal of the Accusation, or to mitigate the penalty under the Order herein, have insubstantial support by the facts.

Measure of Discipline

16. The purpose of an administrative adjudication proceeding that contemplates the revocation or suspension of a professional or occupational license is not to punish the individual. The purpose of the agency action that results from the administrative adjudication proceeding is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 583.)

ORDER

I. All licenses and licensing rights of Respondent Corporation Jim Ward & Associates, Inc., are revoked.

II. All licenses and licensing rights of Respondent James Stanley Ward to act or to serve as a real estate broker under the Real Estate Law are revoked. However, a restricted real estate salesperson license shall be issued to Respondent James Stanley Ward pursuant to Section 10156.5 of the Business and Professions Code if Respondent James Stanley Ward makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted salesperson license within 90 days from the effective date of this Decision. The restricted salesperson license issued to Respondent James Stanley Ward shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

I. The restricted salesperson license and license rights for Respondent James Stanley Ward shall be actually suspended for a period of one hundred eighty (180) days. But, as to the final ninety (90) days of the actual suspension, Respondent James Stanley Ward may, pursuant to section 10175.2, petition the Commissioner to pay a monetary penalty and thereby stay imposition of that part of the term of the latter portion of the actual suspension of the salesperson license. The maximum monetary penalty shall not exceed ten thousand (\$10,000) dollars.

2. The restricted salesperson license issued to Respondent James Stanley Ward may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.
3. The restricted salesperson license issued to Respondent James Stanley Ward may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
4. Respondent James Stanley Ward shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.
5. Respondent James Stanley Ward shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent James Stanley Ward 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 James Stanley Ward the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence
6. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted salesperson license is in effect such information concerning Respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of Respondent and periodic summaries of salient information

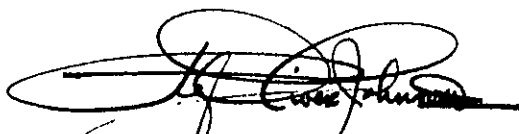
concerning each real estate transaction in which the Respondent engaged during the period covered by the report.

7. At anytime before Respondent James Stanley Ward attains an unrestricted real estate license, pursuant to section 10148 of the Business and Professions Code, Respondent James Stanley Ward shall pay the Commissioner's reasonable cost for an audit to determine if James Stanley Ward, Jim Ward & Associates, or JSW Financial Inc., corrected the trust fund violations set forth in the Legal Conclusions above. 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 James Stanley Ward shall pay such cost within 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 subsequent agreement between the respondent 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 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.
8. Within thirty (30) days of the effective date of the Decision in this matter, Respondent James Stanley Ward shall deliver, by certified mail, a copy of the Decision in this matter to all licensed real estate brokers with whom he has been employed, or transacted business or been associated, or served as a consultant or advisor within twelve months preceding the effective date of this Decision.
9. Respondent James Stanley Ward shall be prohibited from serving as an employee, consultant, associate, officer, director, partner, or qualifying individual for any licensee during the period of actual suspension. And any real estate licensee which employs, retains, consults or associates Respondent James Stanley Ward shall be subject to disciplinary action.
10. Respondent James Stanley Ward shall, within nine months from the effective date of this Decision, present evidence satisfactory to the

Real Estate Commissioner that he 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 James Stanley Ward fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

11. Respondent James Stanley Ward shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent James Stanley Ward fails to satisfy this condition, the Commissioner may order suspension of Respondent's salesperson license until Respondent James Stanley Ward passes the examination.

DATED: November 7, 2005


PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

FILED

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

NOV 23 2004
DEPARTMENT OF REAL ESTATE

By *Laurie G. Z...*

In the Matter of the Accusation of

JIM WARD & ASSOCIATES, INC.,
AND JAMES STANLEY WARD,

}

Case No. H-8685 SF

OAH No.

Respondents

NOTICE OF HEARING ON ACCUSATION

To the above named respondents:

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 THURSDAY, JANUARY 27, 2005, 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.

DEPARTMENT OF REAL ESTATE

Dated: NOVEMBER 23, 2004

By *James L. Beaver*
JAMES L. BEAVER, Counsel

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

FILED
MAR 11 2004

DEPARTMENT OF REAL ESTATE

By Laurie C. Z...

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-8685 SF
12 JIM WARD & ASSOCIATES, INC.,) ACCUSATION
13 and JAMES STANLEY WARD,)
14 Respondents.)

15 The Complainant, Janice Waddell, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against JIM WARD & ASSOCIATES, INC. (herein "WARD INC.") and
18 JAMES STANLEY WARD (herein "WARD"), is informed and alleges as
19 follows:

20 I

21 The Complainant, Janice Waddell, a Deputy Real Estate
22 Commissioner of the State of California, makes this Accusation
23 in her official capacity.

24 II

25 At all times herein mentioned, Respondents WARD INC.
26 and WARD (herein "Respondents") were and now are licensed and/or
27 have license rights under the Real Estate Law (Part 1 of

1 Division 4 of the Business and Professions Code) (herein "the
2 Code").

3 III

4 At all times mentioned herein from on or about
5 December 20, 1994 until on or about January 31, 1997, Respondent
6 WARD INC. was a corporation organized and existing under the
7 laws of the State of California, identified in the records of
8 the California Secretary of State (herein "Secretary of State")
9 as corporation number 1896037, and WARD was an officer,
10 director, and/or person owning or controlling 10 percent or more
11 of the stock of said Respondent corporation.

12 IV

13 On or about May 24, 1995, the Department of Real
14 Estate of the State of California (herein "the Department")
15 issued to Respondent WARD INC. a license, Number 1195987, as a
16 corporate real estate broker by and through WARD as designated
17 officer-broker of WARD INC. to qualify said corporation and to
18 act for said corporation as a real estate broker.

19 V

20 Respondent WARD INC. has not been in good legal
21 standing with the office of the Secretary of State at any time
22 mentioned herein since on or about January 31, 1997, in that, on
23 or about said date, Respondent WARD INC. as "non-surviving" or
24 "disappearing" corporation was merged into Windy Hill Associates
25 (as "surviving" corporation), and the separate corporate
26 existence of Respondent WARD INC. thereupon ceased and was never
27 reinstated.

1 VI

2 On or about April 28, 1999, Respondents applied to the
3 Department for renewal of the license of Respondent WARD INC. as
4 a corporate real estate broker and WARD's officer license. In
5 response to Question 16 in said application (herein "prior
6 renewal application", to wit: "Is the corporation currently in
7 good legal standing with the Office of the Secretary of State?",
8 Respondents answered "Yes", thereby concealing and failing to
9 disclose the facts described in Paragraph V, above. The
10 Department thereupon renewed said corporate and officer licenses
11 in reliance on the statements of Respondents in the prior
12 renewal application.

13 VII

14 At all times mentioned herein from and after August
15 23, 2000, "Jim Ward & Associates" (herein "Ward Associates") was
16 and now is a corporation organized and existing under the laws
17 of the State of California, identified in the records of the
18 Secretary of State as Corporation Number 2258717, and WARD was
19 and now is an officer, director, and/or person owning or
20 controlling 10 percent or more of the stock of said Respondent
21 corporation. At no time mentioned herein has Ward Associates
22 been licensed by the Department in any capacity.

23 VIII

24 On or about April 10, 2003, Respondents applied to the
25 Department for renewal of the license of Respondent WARD INC. as
26 a corporate real estate broker and WARD's officer license. In
27 response to Question 16 in said application (herein "current

1 renewal application"), to wit: "Is the corporation currently in
2 good legal standing with the Office of the Secretary of State?",
3 Respondents answered "Yes", thereby concealing and failing to
4 disclose the facts described in Paragraph V, above. The
5 Department thereupon renewed said corporate and officer licenses
6 in reliance on the statements of Respondents in the current
7 renewal application.

8 IX

9 In failing to reveal the facts described in Paragraph
10 V, above, in the current renewal application, Respondents
11 obtained one or more real estate licenses by fraud,
12 misrepresentation, or deceit, or by making a material
13 misstatement of fact in the current renewal application.

14 X

15 Subject to the limitations on the corporate capacity
16 of WARD INC. described above, at all times herein mentioned
17 herein:

18 (a) WARD INC. was and now is licensed by the
19 Department of Real Estate of the State of California (herein
20 "the Department") as a corporate real estate broker by and
21 through WARD as designated officer-broker of WARD INC. to
22 qualify said corporation and to act for said corporation as a
23 real estate broker.

24 (b) At all times herein mentioned, WARD was and now
25 is licensed by the Department as a real estate broker,
26 individually and as designated officer-broker of WARD INC. As
27 said designated officer-broker, WARD was at all times mentioned

1 herein responsible pursuant to Section 10159.2 of the Code for
2 the supervision of the activities of the officers, agents, real
3 estate licensees and employees of WARD INC. for which a license
4 is required.

5 XI

6 Whenever reference is made in an allegation in this
7 Accusation to an act or omission of WARD INC., such allegation
8 shall be deemed to mean that the officers, directors, employees,
9 agents and/or real estate licensees employed by or associated
10 with WARD INC. committed such act or omission while engaged in
11 the furtherance of the business or operations of such corporate
12 Respondent and while acting within the course and scope of their
13 authority and employment.

14 XII

15 At all times herein mentioned, WARD, WARD INC. and
16 Ward Associates, acting as the agents and or employees of one
17 another, engaged in the business of, acted in the capacity of,
18 advertised, or assumed to act as real estate brokers within the
19 State of California within the meaning of Sections 10131(d) and
20 10131(e) of the Code, including the operation and conduct of a
21 mortgage loan brokerage with the public wherein, on behalf of
22 others, for compensation or in expectation of compensation,
23 Respondents solicited lenders and borrowers for loans secured
24 directly or collaterally by liens on real property, wherein
25 Respondents arranged, negotiated, processed, and consummated
26 such loans, wherein Respondents serviced and collected payments
27 on such loans, and wherein Respondents sold or offered to sell,

1 bought or offered to buy, or exchanged or offered to exchange
2 promissory notes secured directly or collaterally by a lien on
3 real property and performed services for the holders thereof,
4 including servicing and collecting payments on such promissory
5 notes.

6 XIII

7 Between on or about January 1, 2002 and on or about
8 December 31, 2002, in course of the mortgage loan brokerage
9 activities described in Paragraph XII, above, Respondents and
10 Ward Associates jointly arranged, negotiated, processed, and
11 consummated approximately 25 loans secured directly or
12 collaterally by liens on real property in the aggregate sum of
13 approximately \$18,000,000.00, and Respondents and Ward
14 Associates jointly serviced and collected payments on
15 approximately 35 loans totaling approximately \$25,000,000.00.

16 XIV

17 In acting as described in Paragraphs XII and XIII,
18 above, while WARD INC. was not in good legal standing with the
19 office of the Secretary of State, Respondent WARD INC. violated,
20 and Respondent WARD willfully caused, suffered and permitted
21 Respondent WARD INC. to violate, Section 2742(c) of Chapter 6,
22 Title 10, California Code of Regulations (herein "the
23 Regulations").

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XV

In acting as described in Paragraphs XII and XIII, above, Respondents WARD and WARD INC. willfully caused, suffered and permitted Ward Associates to violate Section 10130 of the Code.

XVI

In so acting as real estate brokers, as described in Paragraphs XII and XIII, above, Respondents accepted or received funds in trust (herein "trust funds") from or on behalf of lenders, investors, borrowers and others in connection with the mortgage loan brokerage activities described in above, and thereafter from time to time made disbursements of said trust funds.

XVII

The aforesaid trust funds accepted or received by Respondents were deposited or caused to be deposited by Respondents into one or more bank accounts (herein "trust fund accounts") maintained by Respondents for the handling of trust funds, including but not necessarily limited to the following accounts maintained by Respondents:

- (a) "The Jim Ward & Associates Inc. Trust Fund Account", Account Number 530027401, maintained by Respondents at the Fremont, California, branch of Greater Bay Bankcorp/Mid-Peninsula Bank (herein "Mid-Peninsula Bank") (herein "Trust #1");
- (b) "The Jim Ward & Associates Inc. Loan Servicing Trust Account", Account Number 530026601, maintained by Respondents at the Mid-Peninsula Bank (herein "Trust #2");

1 (c) "The Jim Ward & Associates Inc. fbo Military Way
2 LLC", Account Number 533377603, maintained by Respondents at the
3 Mid-Peninsula Bank (herein "Bank Account #1");

4 (d) "The Jim Ward & Associates Inc. fbo Military Way
5 LLC", Account Number 533377604, maintained by Respondents at the
6 Mid-Peninsula Bank (herein "Bank Account #2");

7 (e) "The Jim Ward & Associates Inc. fbo JLJR, LLC
8 109-01-2", Account Number 533379203, maintained by Respondents
9 at the Mid-Peninsula Bank (herein "Bank Account #3");

10 (f) "The Jim Ward & Associates Inc. fbo JLJR, LLC
11 109-01-3", Account Number 533379204, maintained by Respondents
12 at the Mid-Peninsula Bank (herein "Bank Account #4");

13 (g) "The Jim Ward & Associates Inc. fbo JLL, LLC",
14 Account Number 530036303, maintained by Respondents at the Mid-
15 Peninsula Bank (herein "Bank Account #5");

16 (h) "The Jim Ward & Associates Inc. fbo Military Way,
17 LLC", Account Number 533386501, maintained by Respondents at the
18 Mid-Peninsula Bank (herein "Bank Account #6");

19 (i) "The Jim Ward & Associates Inc. Trust Fund
20 Account", Account Number 212105548, maintained by Respondents at
21 the Los Altos, California, branch of Bank of Los Altos (herein
22 "Trust #3"); and

23 (j) "The Jim Ward & Associates Inc. Loan Servicing
24 Trust Account", Account Number 212150431, maintained by
25 Respondents at the Los Altos, California, branch of Bank of Los
26 Altos (herein "Trust #4").

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XVIII

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2 During the three year period next preceding the filing
3 of this Accusation, in connection with the collection and
4 disbursement of said trust funds, Respondents:

5 (a) Failed to keep a columnar record in chronological
6 sequence of all trust funds received and disbursed from Trust #3
7 and Trust #4 containing all the information required by Section
8 2831 of the Regulations;

9 (b) Failed to keep a separate record for each
10 beneficiary or transaction for Trust #1, Trust #3 and Trust #4
11 containing all the information required by Section 2831.1 of the
12 Regulations;

13 (c) Failed, with respect to Trust #1, Trust #3 and
14 Trust #4, to reconcile, at least once a month, the balance of
15 all separate beneficiary or transaction records with the record
16 of trust funds received and disbursed from such accounts;

17 (d) Failed to place trust funds entrusted to
18 Respondents into the hands of a principal on whose behalf the
19 funds were received, into a neutral escrow depository, or into a
20 trust fund account in the name of a Respondent as trustee at a
21 bank or other financial institution, in conformance with the
22 requirements of Section 10145 of the Code and Section 2832(a) of
23 the Regulations in that Respondents placed such funds in Bank
24 Account #1, Bank Account #2, Bank Account #3, Bank Account #4,
25 Bank Account #5, Bank Account #6, each an account that was not
26 in the name of either of the Respondents as trustee;

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1 (e) Caused, suffered or permitted the balance of
2 funds in Bank Account #2 to be reduced to an amount which, as of
3 May 10, 2002, was approximately \$54,000 less than the liability
4 of Respondents to all owners of such funds without first
5 obtaining the written consent of each and every owner of such
6 funds;

7 (f) Caused, suffered or permitted the balance of
8 funds in Bank Account #4 to be reduced to an amount which, as of
9 May 10, 2002, was approximately \$170,000.00 less than the
10 liability of Respondents to all owners of such funds without
11 first obtaining the written consent of each and every owner of
12 such funds;

13 (g) Caused, suffered or permitted the balance of
14 funds in Trust #2 to be reduced to an amount which, as of
15 December 31, 2002, was approximately \$111,885.53 less than the
16 liability of Respondents to all owners of such funds without
17 first obtaining the written consent of each and every owner of
18 such funds; and

19 (h) Caused, suffered or permitted the balance of
20 funds in Trust #2 to be reduced to an amount which, as of
21 January 31, 2003, was approximately \$17,821.78 less than the
22 liability of Respondents to all owners of such funds without
23 first obtaining the written consent of each and every owner of
24 such funds.

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XIX

Respondent WARD failed to exercise reasonable supervision over the acts of WARD INC. in such a manner as to allow the acts and omissions on the part of WARD INC. described above, to occur.

XX

The facts alleged above are grounds for the suspension or revocation of the licenses and license rights of Respondents WARD and WARD INC. under the following provisions of the Code and/or the Regulations:

(a) As to Paragraph IX, under Sections 498, 499 and 10177 of the Code;

(b) As to Paragraph XIV, under Section 2742(c) of the Regulations in conjunction with Section 10177(d) of the Code;

(c) As to Paragraph XV, under Section 10130 of the Code in conjunction with Section 10177(d) of the Code;

(d) As to subparagraph (a) of Paragraph XVIII, under Section 10145 of the Code and Section 2831 of the Regulations in conjunction with Section 10177(d) of the Code;

(e) As to subparagraph (b) of Paragraph XVIII, under Section 10145 of the Code and Section 2831.1 of the Regulations in conjunction with Section 10177(d) of the Code;

(f) As to subparagraph (c) of Paragraph XVIII, under Section 10145 of the Code and Section 2831.2 of the Regulations in conjunction with Section 10177(d) of the Code;

///

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

4 (h) As to subparagraphs (e), (f), (g), and (h) of
5 Paragraph XVIII, under Section 10145 of the Code and Section
6 2832.1 of the Regulations in conjunction with Section 10177(d)
7 of the Code.

8 XXI

9 The facts alleged above in Paragraph XIX of the
10 Accusation are grounds for the suspension or revocation of the
11 licenses and license rights of Respondent WARD under Section
12 10177(g) and/or Section 10177(h) of the Code and Section 10159.2
13 of the Code in conjunction with Section 10177(d) of the Code.

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

21
22 
23 JANICE WADDELL
Deputy Real Estate Commissioner

24 Dated at Los Angeles, California,
25 this 25th day of February, 2004.