

NOV -2 1990

DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE  
*Laura B. Chao*

\* \* \* \*

In the Matter of the Accusation of  
  
DIVERSIFIED REAL ESTATE &  
PROPERTY MANAGEMENT, INC.,  
dba Hallmark Realty, a corporation;  
and NORMAN F. EVANS, individually and  
as designated officer of Diversified  
Real Estate & Property Management,  
Inc.,

No. H- 915 SA

L- 49816

Respondent(s).

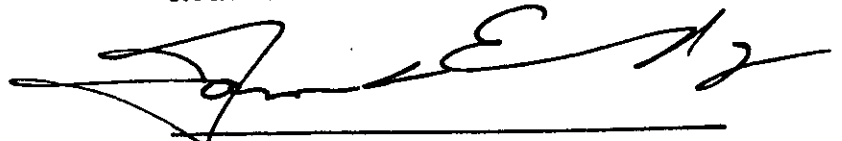
DECISION

The Proposed Decision dated October 9, 1990  
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 November 27, 1990.

IT IS SO ORDERED 10-23-90.

JAMES A. EDMONDS, JR.  
Real Estate Commissioner



BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

|                                   |              |
|-----------------------------------|--------------|
| In the Matter of the Accusation ) |              |
| of: )                             |              |
| )                                 |              |
| DIVERSIFIED REAL ESTATE & )       | NO. H-915 SA |
| PROPERTY MANAGEMENT, INC., )      |              |
| dba Hallmark Realty, a )          | L-49816      |
| corporation; and NORMAN F. )      |              |
| EVANS, individually and as )      |              |
| designated officer of )           |              |
| Diversified Real Estate & )       |              |
| Property Management, Inc., )      |              |
| )                                 |              |
| Respondents. )                    |              |

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PROPOSED DECISION

This matter came on regularly for hearing before Ralph B. Dash, Administrative Law Judge with the Office of Administrative Hearings, on August 23, 1990, at Los Angeles, California. Complainant was represented by Timothy Newlove, Staff Counsel. Respondent was present and was represented himself. Oral and documentary evidence was received and the record was left open for the submission of additional information from the Department concerning evidentiary matters brought forth at the hearing. On September 10, 1990, the Department corresponded with the Administrative Law Judge and Respondent, and the record was thereafter closed.

The Administrative Law Judge finds as follows:

I

Thomas McCrady made the Accusation in his official capacity as Deputy Real Estate Commissioner of the State of California.

II

At all times pertinent hereto, Respondent Diversified Real Estate and Property Management, Inc., dba Hallmark Realty (hereinafter "Diversified") was licensed by the Department as a corporate real estate broker. At all times pertinent hereto, Respondent Norman F. Evans (hereinafter "Evans") was a real estate broker and was the designated officer of Diversified.

### III

On July 11, 1989, the Department completed an examination of Respondents' books and records covering a one year period ending May 31, 1989 (the "audit period").

### IV

The audit revealed that during the audit period, Respondents maintained one bank account at the Riverside National Bank under Diversified's name for the deposit of monthly rent receipts and security deposits used in connection with the property management portion of Respondents' business.

### V

The audit also revealed that Respondents' failed to maintain adequate columnar records of all trust funds received by them and deposited into the trust account and of trust funds received and not placed therein, including the date the funds were received and a daily balance of trust funds in chronological order.

### VI

Respondents failed to maintain a reconciliation of their control record for all trust funds received with a separate record for each beneficiary or transaction.

### VII

The audit further revealed that Respondents disbursed or allowed the disbursement of funds from the trust account without the prior consent of every principal who was the owner of funds in the account where the disbursement of said funds reduced the balance of funds in the account to an amount which was, at the end of the audit period, \$17,325.10 less than Respondents' existing aggregate trust fund liability to all owners of said funds.

### VIII

Respondents permitted Theodora Sheldon to perform the acts of a real estate licensee when she was not licensed by the Department. These acts included permitting Ms. Sheldon to perform property management duties including showing properties, collecting rent and the like.

## IX

Respondent has been licensed by the Department since 1971 when he first obtained his salesperson's license. He became a broker in 1977 and at one time operated the largest real estate office in Riverside, handling as much as ten million dollars per month in business. In 1986, Respondent had a heart attack and open heart surgery which forced him to close his company. Upon recovering, Respondent reopened his office but on a much smaller scale, employing four agents and handling only a very modest amount (approximately \$25,000 per month) of property management business. It was this portion of Respondents' business which the audit proved deficient.

Respondent hired Ms. Sheldon as a receptionist because of her computer background. She was not hired to perform property management work; however, Ms. Sheldon was aggressive and took matters into her own hands on a number of occasions in dealing with prospective clients.

Shortly after the audit was concluded, Respondent terminated Ms. Sheldon's employment and gave up all of his property management business. Respondent had no explanation for the shortfall in his trust records (which only dealt with the property management business) but made good the deficit within twenty days of the conclusion of the audit by depositing sufficient funds to cover the entire shortfall from his personal resources. Respondent is 59 years old and has been married since 1951. He has now undertaken the clerical book work himself and all his account are current.

\* \* \* \* \*

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

## I

Respondents violated the provisions of Sections 2831, 2831.2 and 2832.1 of Title 10 of the California Code of Regulations by reason of Findings V, VI, and VII thereby subjecting Respondents' licenses to discipline under the provisions of Business and Professions Code Section 10177(d).

## II

Respondents' conduct as set forth in Finding VII constitutes grounds for discipline against Respondents' licenses under the provisions of Business and Professions Code Sections 10176(e) and 10176(i).

### III

Respondents' conduct as set forth in Finding VIII is cause for discipline under the provisions of Business and Professions Code Section 10137.

### IV

Respondent Evans' lack of supervision over the activities of Diversified and its employees as set forth in Finding VIII and IX, is grounds for discipline under the provisions of Business and Professions Code Section 10177(h).

### V

In light of Respondents' long unblemished record and his immediate correction of the problems detailed by the audit, as set forth in Finding IX, the public interest can be adequately protected by the issuance to Respondents of restricted licenses conditioned as set forth below.

\* \* \* \* \*

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The real estate broker's license and license rights of Respondent Norman F. Evans is hereby revoked; however a restricted real estate broker's license shall be issued to said Respondent pursuant to Section 10156.5 of the Business and Professions Code if said Respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for said license with six (6) months from the effective date of the Decision herein. The restricted license issued shall be subject to all 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 said Code:

(a) Said restricted license may be suspended prior to hearing by order of the Real Estate Commissioner in the event of Respondent's conviction, including conviction by plea of nolo contendere, to a crime which bears a significant relation to Respondent's fitness or capacity as a real estate licensee.

(b) Said restricted license 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 this restricted license.

(c) 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 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.

(d) Respondent shall, within 6 months from the effective date of the 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 fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

(e) Respondent shall, within six months from the effective date of the restricted license, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of the restricted license until Respondent passes the examination.

(f) Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the date of issuance of the restricted license.

(g) Respondent shall submit to the Department a Trust Funds Position Statement as of the last day of each March, June, September and December for so long as said restricted license shall remain in effect. The Position Statement shall consist of the following:

(1) A schedule of trust fund accountability with the following information concerning funds held by respondent as agent or trustee to the owner(s) of said funds:

- (a) Trust account numbers and depositories
- (b) Names of principals or beneficiaries.
- (c) Trust fund liability to principals or beneficiaries.

(2) A report of trust funds in the custody and control of respondent as of the accounting date consisting of:

(a) A copy of bank statement from the trust account(s) maintained by respondent showing the balance of funds in said account(s) as of the accounting date.

(b) A schedule of uncleared checks drawn on the trust account(s) adjusting the accounts(s) to their true balance as of the accounting date.

(3) A copy of the records maintained by Respondent pursuant to the following sections of Chapter 6, Title 10 of the California Code of Regulations (hereinafter "Regulations"):

(a) Regulation 2831  
(general columnar records of trust funds received and disbursed)

(b) Regulation 2831.1  
(Separate record for each beneficiary or transaction).

(c) Regulation 2831.2  
(trust account reconciliation).

(4) A written statement explaining any discrepancy between the total trust fund liability shown under subsection (1) hereinabove and the adjusted balance shown in subsection (2) hereinabove.

The Trust Fund Position Statement shall be submitted by Respondent to the Los Angeles Office of the Department of Real Estate not later than 60 days after each accounting date. If Respondent has no trust fund liability as of the accounting date, the report to the Department shall so state.

Respondent shall certify under penalty of perjury the completeness and accuracy of each Position Statement.

II

The corporate real estate broker's license of Respondent Diversified Real Estate & Property Management is revoked provided that a restricted license shall be issued if applied for as set forth above and provided further that said Respondent complies with subparagraphs (b), (c), (f) and (g) above.

Dated: 10-9-90

A handwritten signature in black ink, appearing to read 'R. B. Dash', written over a horizontal line.

RALPH B. DASH  
Administrative Law Judge  
Office of Administrative Hearings

RBD:mh



Sacto  
Jag

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED

JUL -9 1990

DEPARTMENT OF REAL ESTATE

BY James P. OAH

In the Matter of the Accusation of

DIVERSIFIED REAL ESTATE &  
PROPERTY MANAGEMENT, INC., et al.

Case No. H-915 SA

OAH No. \_\_\_\_\_

Respondent(s)

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

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

OFFICE OF ADMINISTRATIVE HEARINGS, 314 W. FIRST ST., LOS ANGELES, CA 90012

23rd

on the & 24th day of AUGUST, 19 90, at the hour of 9:00 a.m., or as soon thereafter  
as the matter can be heard, upon the charges made in the Accusation served upon you.

You may be present at the hearing, and you may be represented by counsel, but you are neither required to be present at the hearing nor to be represented by counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you upon any express admissions, 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. The interpreter must be approved by the hearing officer conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the hearing officer directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: July 9, 1990

By Therese

Counsel

cc: Diversified Real Estate &  
Property Management, Inc.  
Norman F. Evans  
Sacto.  
OAH  
RE 501 (Rev. 7/87)  
TBG

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ROBERT E. BAKER, Counsel  
Department of Real Estate  
107 South Broadway, Room 8107  
Los Angeles, California 90012  
  
(213) 620-4790

NOV -9 1989  
DEPARTMENT OF REAL ESTATE  
BY *Carma Jones*

DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \* \*

|                                    |   |                            |
|------------------------------------|---|----------------------------|
| In the Matter of the Accusation of | ) | No. H-915 SA               |
|                                    | ) |                            |
| DIVERSIFIED REAL ESTATE &          | ) | <u>A C C U S A T I O N</u> |
| PROPERTY MANAGEMENT, INC.,         | ) |                            |
| dba Hallmark Realty, a             | ) |                            |
| corporation; and NORMAN F.         | ) |                            |
| EVANS, individually and as         | ) |                            |
| designated officer of              | ) |                            |
| Diversified Real Estate &          | ) |                            |
| Property Management, Inc.,         | ) |                            |
|                                    | ) |                            |
| Respondents.                       | ) |                            |

The complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against DIVERSIFIED REAL ESTATE & PROPERTY MANAGEMENT, INC., dba Hallmark Realty, a corporation; and NORMAN F. EVANS, individually and as designated officer of Diversified Real Estate & Property Management, Inc., alleges as follows:

1.

The complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in his official capacity.

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2.

All sections of Title 10, Chapter 6, California Code of Regulations, are hereinafter referred to as "Regulations".

3.

DIVERSIFIED REAL ESTATE & PROPERTY MANAGEMENT, INC., dba Hallmark Realty (hereinafter DIVERSIFIED), and NORMAN F. EVANS (hereinafter EVANS), hereinafter sometimes collectively referred to as Respondents, are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code, hereinafter the Code).

4.

At all times herein mentioned, DIVERSIFIED was licensed by the Department of Real Estate of the State of California (hereinafter Department) as a corporate real estate broker by and through EVANS as designated officer.

5.

At all times herein mentioned, EVANS was licensed by the Department as a real estate broker, both individually and as the designated officer of DIVERSIFIED, to qualify said corporation and to act for said corporation as a real estate broker and, under Section 10159.2 of the Code, was responsible for the supervision and control of the activities conducted on behalf of DIVERSIFIED by its officers and employees as necessary to secure full compliance with the provisions of the Code and of the Regulations.

6.

Whenever reference is made in an allegation in this Accusation to an act or omission of DIVERSIFIED and/or

1 Respondents, such allegation shall be deemed to mean that the  
2 officers, directors, employees, agents and real estate licensees  
3 employed by or associated with Respondents, including but not  
4 limited to EVANS, committed such act or omission while engaged in  
5 the furtherance of the business or operation of Respondents and  
6 while acting within the course and scope of their corporate  
7 authority and employment.

8 7.

9 At all times herein mentioned, DIVERSIFIED and EVANS  
10 were acting as the agent or employee of the other and within the  
11 course and scope of such agency or employment.

12 8.

13 At all times herein mentioned, Respondents engaged in  
14 the business of, acted in the capacity of, and assumed to act as  
15 real estate brokers and/or property managers as defined by  
16 Section 10131(b) of the Code, wherein Respondents solicited for  
17 and negotiated the lease or rental of real property on behalf of  
18 others for or in expectation of compensation.

19 9.

20 During 1988 and 1989, in connection with the aforesaid  
21 real property management activities, Respondents accepted or  
22 received funds in trust (hereinafter trust funds) from or on  
23 behalf of owners and their tenants and thereafter made  
24 disbursements of such funds.

25 10.

26 On or about July 11, 1989, the Department completed an  
27 examination of Respondents' books and records covering a one-year

1 period ending May 31, 1989, which revealed the facts set forth in  
2 Paragraphs 11 through 15.

3 11.

4 From June 1, 1988, to May 31, 1989, Respondents  
5 maintained the following account used by them as the depository of  
6 trust funds received and held in connection with their activities  
7 requiring a real estate license:

| 8 <u>BANK AND NAME ON ACCOUNT</u>                                                                                                                              | <u>NATURE OF FUNDS HELD</u>                     |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------|
| 9 Riverside National Bank<br>10 Riverside<br>11 Diversified Real Estate<br>12 and Property Management Inc.<br>13 dba Hallmark Realty<br>14 (hereinafter TA #1) | Monthly rent receipts and<br>security deposits. |

15 12.

16 Respondents failed to maintain adequate columnar records  
17 of all trust funds received by them and deposited in TA #1 and of  
18 trust funds received and not placed in TA #1, including the date  
19 said funds were received and a daily balance of trust funds in TA  
20 #1 in chronological order.

21 13.

22 Respondents failed to maintain a reconciliation of their  
23 control record for all trust funds received with their separate  
24 records for each beneficiary or transaction.

25 14.

26 With reference to TA #1, Respondents disbursed or  
27 allowed the disbursement of funds from this account without the  
prior written consent of every principal who then was an owner of  
funds in said account where the disbursements of said funds

1 reduced the balance of funds in the account to an amount which  
2 was, on May 31, 1989, \$17,325.10 less than Respondents' existing  
3 aggregate trust fund liability to all owners of said funds. In  
4 addition, Respondents used funds in TA #1 to pay their own  
5 business and personal expenses during a period from January 1,  
6 1989, through May 31, 1989.

7 15.

8 Respondents employed and compensated Theodora Sheldon to  
9 perform the acts of a real estate broker as described in Section  
10 10131(b) of the Code when she was not licensed by the Department  
11 as a real estate broker or a real estate salesperson.

12 16.

13 The acts and omissions of Respondents, as described in  
14 Paragraphs 11 through 14, are in violation of Sections 2831,  
15 2831.2 and 2832.1 of the Regulations and are bases for the  
16 suspension or revocation of the licenses and license rights of  
17 Respondents pursuant to Section 10177(d) of the Code.

18 17.

19 The acts and omissions of Respondents, as described in  
20 Paragraph 14, constitute commingling and/or conversion and are  
21 bases for the suspension or revocation of the licenses and license  
22 rights of Respondents pursuant to Sections 10176(e) and 10176(i)  
23 of the Code.

24 18.

25 The conduct of Respondents, as described in Paragraph  
26 15, in employing and compensating an unlicensed person to conduct  
27 activities requiring a real estate license, constitutes a basis

1 for the suspension or revocation of the licenses and license  
2 rights of Respondents pursuant to Section 10137 of the Code.

3 19.

4 The acts and omissions of EVANS, as described in  
5 Paragraphs 11 through 15, constitute a lack of adequate  
6 supervision over the activities of DIVERSIFIED and its employees  
7 requiring a real estate license and are further bases for the  
8 suspension or revocation of the licenses and license rights of  
9 EVANS pursuant to Section 10177(h) of the Code.

10 WHEREFORE, complainant prays that a hearing be conducted  
11 on the allegations of this Accusation and, that upon proof  
12 thereof, a decision be rendered imposing disciplinary action  
13 against the licenses and license rights of Respondents DIVERSIFIED  
14 REAL ESTATE & PROPERTY MANAGEMENT, INC., dba Hallmark Realty, a  
15 corporation; and NORMAN F. EVANS, individually and as designated  
16 officer of Diversified Real Estate & Property Management, Inc.,  
17 under the Real Estate Law (Part 1 of Division 4 of the Business  
18 and Professions Code) and for such other and further relief as may  
19 be proper under other applicable provisions of law.

20 Dated at Santa Ana, California  
21 this 9th day of November, 1989.

22 THOMAS McCRADY  
23 Deputy Real Estate Commissioner

24 cc: Diversified Real Estate &  
25 Property Management, Inc.  
26 Norman F. Evans  
27 Sacto.  
TBG