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FILED
FEB - 8 1995

DEPARTMENT OF REAL ESTATE

By *Laurie A. Zyan*

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of)	
NEW MARKET HOLDINGS, INC.,)	NO. H-1240 FRESNO
Respondent.)	<u>STIPULATION AND WAIVER</u>

NEW MARKET HOLDINGS, INC., Respondent herein, does hereby affirm that it has applied to the Department of Real Estate for a real estate broker license and that to the best of its knowledge it has satisfied all of the statutory requirements for the issuance of the license, including the payment of the fee therefor.

Respondent acknowledges that it has received and read the Statement of Issues and the Statement to Respondent filed by the Department of Real Estate on September 14, 1994, in connection with its application for a real estate broker license. Respondent understands that the Real Estate Commissioner may hold a hearing on this Statement of Issues for the purpose of requiring further

1 proof of its honesty and truthfulness and to prove other
2 allegations therein, or that he may in his discretion waive the
3 hearing and grant Respondent a restricted real estate broker
4 license based upon this Stipulation and Waiver. Respondent also
5 understands that by filing the Statement of Issues in this matter
6 the Real Estate Commissioner is shifting the burden to Respondent
7 to make a satisfactory showing that it meets all the requirements
8 for the issuance of a real estate broker license. Respondent
9 further understands that by entering into this Stipulation and
10 Waiver, Respondent will be stipulating that the Real Estate
11 Commissioner has found that it has failed to make such a showing,
12 thereby justifying the denial of the issuance to Respondent of an
13 unrestricted real estate broker license.

14 Respondent hereby admits that the allegations of the
15 Statement of Issues filed against it are true and correct and
16 request that the Real Estate Commissioner in his discretion issue
17 a restricted real estate broker license to Respondent under the
18 authority of Section 10156.5 of the Business and Professions Code.

19 Respondent is aware that by signing this Stipulation
20 and Waiver, Respondent is waiving its right to a hearing and the
21 opportunity to present evidence at the hearing to establish its
22 rehabilitation in order to obtain an unrestricted real estate
23 broker license. Respondent is not waiving its right to a hearing
24 and to further proceedings to obtain a restricted or unrestricted
25 license if this Stipulation and Waiver is not accepted by the
26 Commissioner.

27

1 Respondent further understands that the following
2 conditions, limitations and restrictions will attach to a
3 restricted real estate license issued by the Department of Real
4 Estate pursuant hereto:

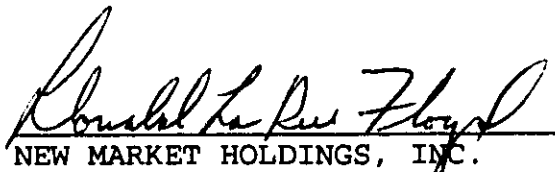
5 1. The license shall not confer any property right in
6 the privileges to be exercised, and the Real Estate Commissioner
7 may by appropriate order suspend the right to exercise any
8 privileges granted under this restricted license in the event of:

9 (a) The conviction of Respondent (including a plea of
10 nolo contendere) to a crime which bears a
11 substantial relationship to Respondent's fitness or
12 capacity as a real estate licensee; or

13 (b) The receipt of evidence that Respondent has
14 violated provisions of the California Real Estate
15 Law, the Subdivided Lands Law, Regulations of the
16 Real Estate Commissioner or conditions attaching to
17 this restricted license.

18 2. Respondent shall not be eligible to apply for the
19 issuance of an unrestricted real estate license nor the removal of
20 any of the conditions, limitations or restrictions attaching to
21 the restricted license until one (1) year has elapsed from the
22 date of issuance of the restricted license to Respondent.

23 DATED: 12/16/94

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25 
26 NEW MARKET HOLDINGS, INC.
27 Respondent
 By: Donald LaRue Floyd

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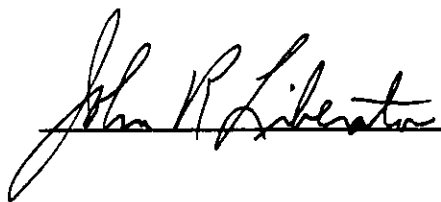
I have read the Statement of Issues filed herein and the foregoing Stipulation and Waiver signed by Respondent. I am satisfied that the hearing for the purpose of requiring further proof as to the honesty and truthfulness of Respondent need not be called and that it will not be inimical to the public interest to issue a restricted real estate broker license to Respondent.

Therefore, IT IS HEREBY ORDERED that a restricted real estate broker license be issued to respondent NEW MARKET HOLDINGS, INC. if Respondent has otherwise fulfilled all of the statutory requirements for licensure. The restricted license shall be limited, conditioned and restricted as specified in the foregoing Stipulation and Waiver.

This Order is effective immediately.

DATED: Feb. 2, 1995

JOHN R. LIBERATOR
Interim Commissioner



FILED
OCT 21 1994
DEPARTMENT OF REAL ESTATE

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

By Kathleen Contreras

In the Matter of the Application of

NEW MARKET HOLDINGS, INC.,

Case No. H-1240 FRESNO
OAH No. N-9410049

Respondent

NOTICE OF HEARING ON APPLICATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at _____
The State Building, 2550 Mariposa Mall, Room 1027,
Fresno, California 93721

on Thursday -- December 29, 1994, at the hour of 9:00 AM,
or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you.

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.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you are not present nor represented at the hearing, the Department may act upon your application without taking evidence.

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 Administrative Law Judge 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 Administrative Law Judge directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: October 20, 1994

By David A. Peters
DAVID A. PETERS Counsel

1 DAVID A. PETERS, Counsel
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

FILED
SEP 14 1994
DEPARTMENT OF REAL ESTATE

5 Telephone: (916) 227-0789

6 By Laurie A. Zyan

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 NEW MARKET HOLDINGS, INC.,)
13 Respondent.)

No. H-1240 FRESNO
STATEMENT OF ISSUES

14
15 The Complainant, Jerry E. Fiscus, a Deputy Real Estate
16 Commissioner of the State of California, for Statement of Issues
17 against NEW MARKET HOLDINGS, INC. (hereinafter "Respondent")
18 alleges as follows:

19 I

20 Respondent made application to the Department of Real
21 Estate of the State of California for a real estate broker
22 corporation license on or about November 30, 1993.

23 II

24 The Complainant, Jerry E. Fiscus, a Deputy Real Estate
25 Commissioner of the State of California, makes this Statement of
26 Issues in his official capacity.

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III

Beginning on or before October 29, 1993 and continuing thereafter, DONALD LARUE FLOYD (hereinafter "FLOYD") was an officer, director, or person owning or controlling ten percent (10%) or more of Respondent's corporate stock.

IV

From time to time during 1983, 1984 and 1985, FLOYD operated a real estate brokerage including a property management business at 224 North Gateway, Madera, California. In connection with this business, FLOYD received from time to time, on behalf of the owners of the properties he managed, rental payments, security deposits, and other trust funds.

V

FLOYD kept a bank trust account for depositing property management trust funds. FLOYD failed to deposit and to maintain some of these trust funds as required by Section 10145 of the Business and Professions Code (hereinafter "the Code") resulting in shortages of trust funds as of the following dates:

(1) On December 31, 1984, FLOYD's trust obligations were \$5,837.66 and the adjusted bank balance of FLOYD's trust account on this date was negative by \$10,377.99, resulting in a total trust fund shortage of \$16,215.65.

(2) On February 19, 1985, FLOYD's trust obligations were \$2,828.16 and the adjusted bank balance of FLOYD's trust account on this date was \$2.22, resulting in a total trust fund shortage of \$2,825.94.

///

VI

1
2 From time to time during 1983 and 1984, FLOYD took trust
3 funds in the form of cash out of the Property Management Trust
4 Account and transferred trust funds from this account to an
5 account FLOYD used in conducting an insurance agency under the
6 name Don Floyd & Associates Insurance Agency. The total of these
7 amounts was \$16,534.65. Respondent used these trust funds for his
8 personal use and benefit and in any event for purposes not
9 authorized by the owners of these trust funds. FLOYD did not have
10 authorization from any of his principals to withdraw and use these
11 funds as described above.

VII

12
13 During 1983, 1984 and 1985, FLOYD did not keep the trust
14 fund records required by the Title 10, California Code of
15 Regulations (hereinafter "the Regulations") as follows:

16 (1) FLOYD did not keep the required records of the
17 dates on which trust funds were deposited in the bank trust
18 account (Regulation 2831).

19 (2) FLOYD did not keep the required records of the
20 daily balance of the bank trust account (Regulation 2831).

21 (3) FLOYD did not keep the required records for all
22 trust funds received and not deposited in the bank trust account
23 (Regulation 2831).

24 ///

25 ///

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VIII

During 1983, 1984 and 1985, FLOYD did not review and initial all contracts and documents for the property management business as required by Regulation 2725, including, but not limited to, listings for leasing or renting as follows:

<u>DATE</u>	<u>OWNER</u>	<u>PROPERTY</u>
June 20, 1984	Armando Enriquez	700 James Way Madera, California
June 29, 1984	Debbie Garfield	17450 Crescent Madera, California
June 4, 1984	(Not legible)	17823 Wabash Madera, California
November 9, 1984	Jeaneane Stagle	1104 Philip Street Madera, California

IX

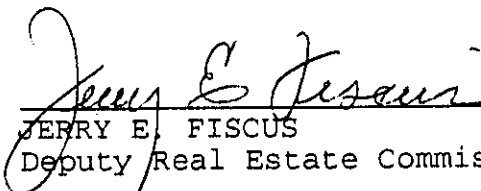
On or about February 19, 1987, in Case No. H-755 FRESNO, the Real Estate Commissioner of the State of California issued his Decision revoking DONALD LARUE FLOYD's real estate broker license with the right to apply for and obtain a restricted real estate broker license on terms and conditions, effective March 16, 1987, for violation of Section 10176(i) of the Code and Section 10177(d) of the Code in conjunction with Sections 2725 and 2831 of the Regulations.

X

The acts described above constitute cause for denial of Respondent's application for a real estate license under Section 10177(f) of the Code, and Section 10177(d) of the Code in conjunction with Sections 10176(i) and 10145 of the Code and Sections 2725 and 2831 of the Regulations.

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WHEREFORE, the Complainant prays that the above-entitled matter be set for hearing and, upon proof of the charges contained herein, that the Commissioner refuse to authorize the issuance of, and deny the issuance of, a real estate broker corporation license to Respondent, and for such other and further relief as may be proper in the premises.



JERRY E. FISCUS
Deputy Real Estate Commissioner

Dated at Fresno, California,
this 8th day of ^{Sept.}~~May~~, 1994.