

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
JAN 22 2002

DEPARTMENT OF REAL ESTATE

By Shelly Ely

* * *

In the Matter of the Accusation of)
METRO PROPERTY MANAGEMENT, INC.)
And)
LAWTON DARREN POWERS,)
Respondents.)

NO. H-1495 FRESNO
OAH NO. N-2001090269

DECISION

The Proposed Decision dated December 28, 2001, 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 February 11, 2002.

DATED: January 15, 2002.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish Zinnemann

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

METRO PROPERTY
MANAGEMENT, INC.

And

LAWTON DARREN POWERS,

Respondents.

Case No. H-1495 FRESNO

OAH No. N2001090269

PROPOSED DECISION

Administrative Law Judge Catherine B. Frink, State of California, Office of Administrative Hearings, heard this matter in Fresno, California on December 12, 2001.

David B. Seals, Counsel, represented the complainant.

Respondent Lawton Darren Powers was present and was represented by Fawn Kennedy Dessy, Attorney at Law, 1301 "L" Street, Bakersfield, California 93301.

Evidence was received, the hearing was closed, and the matter was submitted on December 12, 2001.

FACTUAL FINDINGS

1. The Complainant, John Sweeney, a Deputy Real Estate Commissioner, Department of Real Estate ("Department"), State of California, filed the Accusation and the First Amended Accusation in his official capacity.

2. Metro Property Management, Inc. ("respondent Metro") is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and

Professions Code as a corporate real estate broker dba ATCO Property Management ("ATCO").

3. Lawton Darren Powers ("respondent Powers") is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code as a real estate broker, and as the designated officer of respondent Metro.

4. Respondents stipulated to the truth of the following facts:

A. At all times mentioned herein, respondents Metro and Powers engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker in the State of California within the meaning of Business and Professions Code section 10131(b) for or in expectation of compensation.

B. At all times mentioned herein, respondent Metro accepted or received funds in trust ("trust funds") from and on behalf of its principals placing them in accounts and at times thereafter made disbursements of such funds.

C. An investigative audit of the records and back records of respondent Metro, audit No. FR000004 with included exhibits and a report dated February 20, 2001, was conducted by the Department from December 13, 2000 to January 12, 2001, covering the period of December 1, 1999 to November 30, 2000, as said records related to its activities as a real estate broker ("Department audit").

D. The audit referred to in Finding 4.C. set forth that respondent Metro maintained five accounts, into which other persons' trust funds were placed at Westamerica Bank, 1810 Chester Avenue, Bakersfield, California 93301. The accounts were designated as follows:

METRO PROPERTY MANAGEMENT, INC.
DBA ATCO PROPERTY MANAGEMENT
L. DARREN POWERS, TRUSTEE – TRUST I
ACCOUNT NO. 277-45674-5

METRO PROPERTY MANAGEMENT, INC.
DBA ATCO PROPERTY MANAGEMENT
L. DARREN POWERS, TRUSTEE – TRUST II
ACCOUNT NO. 277-45595-2

METRO PROPERTY MANAGEMENT, INC.
DBA ATCO PROPERTY MANAGEMENT
L. DARREN POWERS, TRUSTEE – TRUST III
ACCOUNT NO. 277-67450-5

METRO PROPERTY MANAGEMENT, INC.
DBA ATCO PROPERTY MANAGEMENT
L. DARREN POWERS, TRUSTEE – TRUST IV
ACCOUNT NO. 277-95056-4

METRO PROPERTY MANAGEMENT, INC.
DBA ATCO PROPERTY MANAGEMENT
L. DARREN POWERS, TRUSTEE – TRUST VI
ACCOUNT NO. 277-95437-6

E. The audit referred to in Finding 4.C. set forth that the adjusted balance of Trust I as of November 30, 2000, was sixty-four thousand nine hundred eighty-seven and 68/100 dollars (\$64,987.68) and the trust fund accountability in the account as of November 30, 2000, was sixty-eight thousand three hundred eighty and 95/100 dollars (\$68,380.95). Therefore, respondent Metro, as of November 30, 2000, had a trust fund shortage of three thousand three hundred ninety-three and 27/100 dollars (\$3,393.27).

F. The audit referred to in Finding 4.C. set forth that the adjusted balance of Trust II as of November 30, 2000, was fifteen thousand two hundred eighty-six and 59/100 dollars (\$15,286.59) and the trust fund accountability in the account as of November 30, 2000, was twenty-two thousand two hundred thirty-one and 90/100 dollars (\$22,231.90). Therefore, respondent Metro, as of November 30, 2000, had a trust fund shortage of six thousand nine hundred forty-five and 31/100 dollars (\$6,945.31).

G. The audit referred to in Finding 4.C. set forth that the adjusted balance of Trust III as of November 30, 2000, was twenty-one thousand three hundred eighty-three and 66/100 dollars (\$21,383.66) and the trust fund accountability in the account as of November 30, 2000, was thirty-nine thousand three hundred eighty-two and 52/100 dollars (\$39,382.52). Therefore, respondent Metro, as of November 30, 2000, had a trust fund shortage of seventeen thousand nine hundred ninety-eight and 86/100 dollars (\$17,998.86).

H. The audit referred to in Finding 4.C. set forth that the adjusted balance of Trust IV as of November 30, 2000, was forty-four thousand nine hundred fifty-seven and 79/100 (\$44,957.79) and the trust fund accountability in the account as of November 30, 2000, was forty-five thousand eighty-one and 20/100 dollars (\$45,081.20). Therefore, respondent Metro, as of November 30, 2000, had a trust fund shortage of one hundred twenty-three and 41/100 dollars (\$123.41).

I. The audit referred to in Finding 4.C. set forth that in November of 2000 respondent Metro failed to make timely deposits of rents on, at least, the following properties in violation of Title 10, California Code of Regulations ("10 CCR") section 2832:

2300 Eric Way
713 Deseret
7334 Stockdale
204 Gabriel
1301 McDonald Way
226 Stine Road, #2

J. The audit referred to in Finding 4.C. set forth that Debra Powers was a signatory on the trust accounts. However, Debra Powers was not licensed by the Department nor was there fidelity bond coverage at least equal to the minimum amount of trust funds to which she had access at the time, in violation of 10 CCR section 2834.

5. Respondent Powers is the president and owner of respondent Metro. At the time of the Department audit, respondent Metro was responsible for managing more than 600 rental units, and approximately \$400,000 in collected rents were handled through respondent Metro's bank accounts.

6. Prior to December 1998, monthly reconciliations were not prepared on respondent Metro's trust accounts. December 1998/January 1999 was selected as the date to begin reconciliations because respondent Metro was in the process of converting its bookkeeping system to a Windows-based program. As a result, respondent Metro's controller, Jeff Wheeler, discovered that there were trust imbalances. At the time Wheeler brought the discrepancies to the attention of respondent Powers, the amount of the discrepancies was about \$17,000. Wheeler and respondent Powers attempted to determine the source of the discrepancies but were unable to do so. Respondent Powers decided to cure the trust fund imbalances by putting a piece of real estate on the market; however, respondent Powers was unable to sell the real estate. By the fall of 2000, the trust fund imbalances had grown to approximately \$28,000. Respondent Powers cured the trust fund deficiencies with his personal funds by liquidating part of a profit-sharing/pension plan. He deposited \$25,000 from the pension plan into a personal bank account and wrote checks to the trust fund accounts, as follows:

Trust I—Check No. 3946, in the amount of \$3,393.27, dated December 12, 2000.

Trust II—Check No. 3948, in the amount of \$3,692.39, dated December 11, 2000; Check No. 007411, in the amount of \$1,252.92, dated December 11, 2000, from the ATCO Operating Account; and Check No. 007437, in the amount of \$2,000, dated December 26, 2000, from the ATCO Operating Account—for a total of \$6,945.31.

Trust III—Check No. 3947, in the amount of \$17,914.39, dated December 11, 2000.

The balance of the shortage in Trust III, in the amount of \$84.47, was caused by one property that had a negative balance at the end of November which was corrected when the December rents were paid. The shortage in Trust IV was corrected by a journal entry transferring funds from the ATCO Fee Account to offset the property no longer being managed by respondent Metro.

7. Ken Breeding, General Auditor III, conducted the Department audit. During the course of the Department audit, Wheeler told Breeding that \$5,000 of the shortage in Trust I, \$5,000 of the shortage in Trust II, and \$17,289.48 of the shortage in Trust III were the result of over-disbursement of management fees to respondent Metro. Wheeler did not testify at hearing. Respondent Powers does not believe that respondent Metro withdrew money from the trust accounts to which it was not entitled. He further contended that no client was harmed or suffered loss as a result of the trust fund shortages, all of which were cured prior to the Department audit.

8. Respondent Metro had written policies and procedures concerning the preparation of reports related to bank statements and trust accounts, as well as collection and deposit of rent checks, which were to be deposited within 24 hours of receipt. Respondent Powers did not monitor the deposits, so he was unaware prior to the time of the Department audit whether the written policies were being carried out. Respondent Powers has made changes in his office policies and procedures in the aftermath of the Department audit, incorporating suggestions made by Breeding. Each employee of respondent Metro is required to read the Department of Real Estate handbook and sign a document verifying this requirement. Respondent Powers is overseeing the timely deposit of checks and has made the consequences for non-compliance by his staff more severe. He no longer takes bank statements at face value, but rather goes over each statement line by line, as does Wheeler. Both Wheeler and respondent Powers sign all monthly bank statements to verify that each has reviewed the bank statements.

9. At the time of the Department audit, the bank signature cards for the trust accounts were ambiguous. In two different places on the signature cards, they indicated that two signatures were required for the trust accounts, but in a third place on the signature cards it indicated that only one signature was required. Respondent Powers and Debra Powers were the only individuals authorized to sign trust fund checks. As an unlicensed person, Debra Powers was not authorized to be the sole signatory on trust fund checks. In fact, Debra Powers never signed any trust fund checks by herself.

At the conclusion of the Department audit, respondent Powers told Breeding that he would obtain a fidelity bond sufficient to cover the average balance in the total of the trust accounts. In addition, respondent Powers has changed banks, and the new trust account signature cards make it clear that Debra Powers is not authorized to sign trust fund checks by herself.

10. Respondent Powers was originally licensed as a real estate salesperson by the Department in 1985 and has been licensed as a broker since 1990, with no prior history of disciplinary action.

11. Respondent Powers is currently the president of the Bakersfield Association of Realtors and has served on the board of directors of the California Association of Realtors for five years. He is a Certified Property Manager, and he is involved with various charitable and community service activities, including Golden Empire Gleaners, the St. Francis Foundation (church school) and CASA (Court-Appointed Special Advocates), an organization that assists abused children.

12. Respondent Powers has taken full responsibility for the trust fund discrepancies and other audit deficiencies. He has expressed sincere remorse for any shortcomings in his supervision of respondent Metro, and he has instituted changes in office procedures to minimize the likelihood of future problems. He has fully cooperated with the Department audit and expressed his willingness to have continued Department oversight of respondent Metro's trust fund finances.

LEGAL CONCLUSIONS

1. The following statutes and regulations are pertinent to the proceedings herein:

Business and Professions Code section 10131(b) states as follows:

“A real estate broker within the meaning of this part is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others:

“(a) ...

“(b) Leases or rents or offers to lease or rent, or places for rent, or solicits listings of places for rent, or solicits for prospective tenants, or negotiates the sale, purchase or exchanges of leases on real property, or on a business opportunity, or collects rents from real property, or improvements thereon, or from business opportunities.”

Business and Professions Code section 10145 states in pertinent part as follows:

“(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.

“ ...

“(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) ...”

Business and Professions Code section 10177 states in pertinent part as follows:

“The 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 done any of the following:

“(a) ...

“(d) Willfully disregarded or violated the Real Estate Law (Part 1 commencing with Section 10000) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.

“(e) ...

“(g) Demonstrated negligence or incompetence in performing any act for which he or she is required to hold a license.

“(h) As 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.

“(i) ...”

10 CCR section 2725 states as follows:

“A broker shall exercise reasonable supervision over the activities of his or her salespersons. Reasonable supervision includes, as appropriate, the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage:

“(a) Transactions requiring a real estate license.

“(b) Documents which may have a material effect upon the rights or obligations of a party to the transaction.

“(c) Filing, storage and maintenance of such documents.

“(d) The handling of trust funds.

“(e) Advertising of any service for which a license is required.

“(f) Familiarizing salespersons with the requirements of federal and state laws relating to the prohibition of discrimination.

“(g) Regular and consistent reports of licensed activities of salespersons.

“The form and extent of such policies, rules, procedures and systems shall take into consideration the number of salespersons employed and the number and location of branch offices.

“A broker shall establish a system for monitoring compliance with such policies, rules, procedures, and systems. A broker may use the services of brokers and salespersons to assist in administering the provisions of this section so long as the broker does not relinquish overall responsibility for supervision of the acts of salespersons licensed to the broker.”

10 CCR section 2832(a) states as follows:

“(a) 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.”

10 CCR section 2834 states as follows:

“(a) Withdrawals may be made from a trust fund account of an individual broker only upon the signature of the broker or one or more of the following persons if specifically authorized in writing by the broker:

“(1) a salesperson licensed to the broker.

“(2) a person licensed as a broker who has entered into a written agreement pursuant to section 2726 with the broker.

“(3) an unlicensed employee of the broker with fidelity bond coverage at least equal to the maximum amount of the trust funds to which the employee has access at any time.

“(b) Withdrawals may be made from the trust fund account of a corporate broker only upon the signature of:

“(1) an officer through whom the corporation is licensed pursuant to section 10158 or 10211 of the Code; or

“(2) one of the persons enumerated in paragraph (1), (2) or (3) of subdivision (a) above, provided that specific authorization in writing is given by the officer through whom the corporation is licensed and that the officer is an authorized signatory of the trust fund account..

“(c) An arrangement under which a person enumerated in paragraph (1), (2) or (3) of subdivision (a) above is authorized to make withdrawals from a trust fund account of a broker shall not relieve an individual broker, or the broker-officer of a corporate broker licensee, from responsibility or liability as provided by law in handling trust funds in the broker's custody.”

2. Clear and convincing evidence to a reasonable certainty established cause for discipline of the licenses and/or licensing rights of respondent Metro and respondent Powers, and each of them, pursuant to Business and Professions Code sections 10145 in conjunction with Business and Professions Code section 10177(d) by reason of Findings 4A through 4H, 6 and 7, in that respondent Metro had an aggregate trust fund shortage in its trust accounts totaling \$28,460.85 as of November 30, 2000.

3. Clear and convincing evidence to a reasonable certainty established cause for discipline of the licenses and/or licensing rights of respondent Metro and respondent Powers, and each of them, pursuant to 10 CCR sections 2832 and 2834 in conjunction with Business and Professions Code section 10177(d) by reason of Findings 4A through 4C, 4I, 4J and 9, in that respondent Metro failed to make timely deposits of rents and permitted an unlicensed person to appear as a signatory to trust fund bank accounts when she was not bonded.

4. Clear and convincing evidence to a reasonable certainty established cause for discipline of the license and/or licensing rights of respondent Powers, pursuant to Business and Professions Code sections 10177(g) and (h) and CCR section 2725 in conjunction with Business and Professions Code section 10177(d) by reason of Findings 4, 6, 7, 8, and 9, in that respondent Powers, as the designated officer of respondent Metro, was negligent in his supervision of the activities of respondent Metro and failed to adequately review, oversee, inspect and manage the personnel and activities of respondent Metro, thereby resulting in the violations set forth in Legal Conclusions 2 and 3 above.

5. As set forth in Findings 6, 7, 8, 9, 10, 11 and 12, there was substantial evidence of mitigation and rehabilitation submitted by respondents in this matter. Respondent Powers identified the trust fund shortages and cured them prior to the Department audit. Respondent Powers has corrected all other violations and instituted changes in policies and procedures to insure that Department's laws and regulations will be fully complied with in the future. There was no evidence that any client suffered financial loss as a result of the violations herein. It is unlikely that the misconduct found herein will recur. Under all of the facts and circumstances herein, it would not be contrary to the public interest to permit respondents to remain licensed by the Department, with restricted licenses.

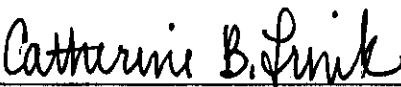
ORDER

All licenses and licensing rights of respondents Metro Property Management, Inc. and Lawton Darren Powers under the Real Estate Law are revoked; provided, however, that a restricted real estate broker license shall be issued to respondents pursuant to Business and Professions Code section 10156.5 if respondents make applications therefor and pay to the Department of Real Estate the appropriate fee for the restricted licenses within 90 days from the effective date of this Decision. The restricted licenses issued to respondents shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of Business and Professions Code section 10156.6:

- A. The restricted licenses issued to respondents may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondents' conviction or plea of nolo contendere to a crime which is substantially related to respondents' fitness or capacity as a real estate licensee.
- B. The restricted licenses issued to respondents may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondents have violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner, or conditions attaching to the restricted licenses.

- C. Respondents 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 (2) years have elapsed from the effective date of this Decision.
- D. Respondent Powers shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent Powers 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 Powers fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until respondent Powers presents such evidence. The Commissioner shall afford respondent Powers the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
- E. Pursuant to Business and Professions Code section 10148, respondents shall pay the Commissioner's reasonable cost for an audit to determine if respondents have corrected the trust fund violations found in Legal Conclusion 2. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Respondents 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 suspend the restricted licenses issued to respondents pending a hearing held in accordance with Government Code section 11500 et seq., if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the respondents and the Commissioner. The suspension shall remain in effect until payment is made in full or until respondents enter into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

Dated: 12-28-01



CATHERINE B. FRINK
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
NOV 28 2001

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

By Shelly Kelly

METRO PROPERTY MANAGEMENT, INC.
and LAWTON DARREN POWERS,

}

Case No. H-1495 FR

OAH No.

Respondent

SECOND CONTINUED
NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at THE STATE BUILDING, 2550 MARIPOSA MALL, ROOM 1027, FRESNO, CALIFORNIA 93721 on DECEMBER 12TH, 2001, at the hour of 10:30 AM, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: NOVEMBER 28, 2001

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

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

FILED
OCT 05 2001

DEPARTMENT OF REAL ESTATE

By Shelly Ely

In the Matter of the Accusation of

METRO PROPERTY MANAGEMENT, INC.
and LAWTON DARREN POWERS,

} Case No. H-1495 FR

} OAH No.

Respondent

**FIRST CONTINUED
NOTICE OF HEARING ON ACCUSATION**

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at THE STATE BUILDING, 2550 MARIPOSA MALL, ROOM 1007, FRESNO, CALIFORNIA 93721 on NOVEMBER 28TH, 2001, at the hour of 10:30 AM, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

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DEPARTMENT OF REAL ESTATE

Dated: OCTOBER 5, 2001

By David B. Seals
for DAVID B. SEALS, Counsel

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
SEP 14 2001

DEPARTMENT OF REAL ESTATE

By Shelley Edye

In the Matter of the Accusation of

METRO PROPERTY MANAGEMENT, INC.
and LAWTON DARREN POWERS,

}
}

Case No. H-1495 FR

OAH No.

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at THE STATE BUILDING, 2550 MARIPOSA MALL, ROOM 1038, FRESNO, CALIFORNIA 93721 on NOVEMBER 5TH, 2001, at the hour of 10:00 AM, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

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Dated: SEPTEMBER 14, 2001

DEPARTMENT OF REAL ESTATE
By David B. Seals

DAVID B. SEALS,

Counsel

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

FILED
SEP 13 2001
DEPARTMENT OF REAL ESTATE
By Shelly Ay

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12) No. H-1495 FRESNO
13 METRO PROPERTY MANAGEMENT, INC.) FIRST AMENDED
14 and LAWTON DARREN POWERS,) ACCUSATION
15 Respondents.)

16 The Complainant, John Sweeney, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against METRO PROPERTY MANAGEMENT, INC. (hereinafter "Respondent
19 METRO") and LAWTON DARREN POWERS (hereinafter "Respondent
20 POWERS"), is informed and alleges as follows:

21 I

22 Respondents are licensed and/or have license rights
23 under the Real Estate Law, Part 1 of Division 4 of the California
24 Business and Professions Code (hereinafter "Code") as follows:

- 25 (a) Respondent METRO as a corporate real estate
- 26 broker dba ATCO Property Management (hereinafter
- 27 "ATCO").

1 (b) Respondent POWERS as a real estate broker at all
2 times herein mentioned and as the designated officer of
3 Respondent METRO.

4 II

5 The Complainant, John Sweeney, a Deputy Real Estate
6 Commissioner of the State of California, makes this Accusation
7 against Respondents in his official capacity.

8 III

9 At all times herein mentioned, Respondents METRO and
10 POWERS engaged in the business of, acted in the capacity of,
11 advertised, or assumed to act as a real estate broker in the
12 State of California within the meaning of Section 10131(b) of the
13 Code for or in expectation of compensation.

14 IV

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

19 V

20 An investigative audit of the records and bank records
21 of Respondent METRO, Audit No. FR000004 with included exhibits
22 and a report dated February 20, 2001, was conducted by the
23 Department from December 13, 2000 to January 12, 2001 covering
24 the period December 1, 1999 to November 30, 2000 as said records
25 related to its activities as a real estate broker.

26 ///

27 ///

VI

The audit referred to in Paragraph V set forth that Respondent maintained five accounts, into which other persons trust funds were placed at Westamerica Bank, 1810 Chester Avenue, Bakersfield, CA 93301. The accounts were designated as follows:

METRO PROPERTY MANAGEMENT, INC.
DBA ATCO PROPERTY MANAGEMENT
L. DARREN POWERS, TRUSTEE - TRUST I
ACCOUNT NO. 277-45674-5

METRO PROPERTY MANAGEMENT, INC.
DBA ATCO PROPERTY MANAGEMENT
L. DARREN POWERS, TRUSTEE - TRUST II
ACCOUNT NO. 277-45595-2

METRO PROPERTY MANAGEMENT, INC.
DBA ATCO PROPERTY MANAGEMENT
L. DARREN POWERS, TRUSTEE - TRUST III
ACCOUNT NO. 277-67350-5

METRO PROPERTY MANAGEMENT, INC.
DBA ATCO PROPERTY MANAGEMENT
L. DARREN POWERS, TRUSTEE - TRUST IV
ACCOUNT NO. 277-95056-4

METRO PROPERTY MANAGEMENT, INC.
DBA ATCO PROPERTY MANAGEMENT
L. DARREN POWERS, TRUSTEE - TRUST VI
ACCOUNT NO. 277-95437-6

VII

The audit referred to in Paragraph V set forth that the adjusted balance of Trust I as of November 30, 2000 was Sixty-Four Thousand Nine Hundred Eighty-Seven and 68/100 Dollars (\$64,987.68) and the trust fund accountability in the account as of November 30, 2000 was Sixty-Eight Thousand Three Hundred Eighty and 95/100 Dollars (\$68,380.95). Therefore, Respondent METRO, as of November 30, 2000, had a trust fund shortage of Three Thousand Three Hundred Ninety-Three and 27/100 Dollars (\$3,393.27).

1 VIII

2 The audit referred to in Paragraph V set forth that the
3 adjusted balance of Trust II as of November 30, 2000 was Fifteen
4 Thousand Two Hundred Eighty-Six and 59/100 Dollars (\$15,286.59)
5 and the trust fund accountability in the account as of November
6 30, 2000 was Twenty-Two Thousand Two Hundred Thirty-One and
7 90/100 Dollars (\$22,231.90). Therefore, Respondent METRO, as of
8 November 30, 2000, had a trust fund shortage of Six Thousand Nine
9 Hundred Forty-Five and 31/100 Dollars (\$6,945.31).

10 IX

11 The audit referred to in Paragraph V set forth that the
12 adjusted balance of Trust III as of November 30, 2000 was Twenty-
13 One Thousand Three Hundred Eighty-Three and 66/100 Dollars
14 (\$21,383.66) and the trust fund accountability in the account as
15 of November 30, 2000 was Thirty-Nine Thousand Three Hundred
16 Eighty-Two and 52/100 Dollars (\$39,382.52). Therefore,
17 Respondent METRO, as of November 30, 2000, had a trust fund
18 shortage of Seventeen Thousand Nine Hundred Ninety-Eight and
19 86/100 Dollars (\$17,998.86).

20 X

21 The audit referred to in Paragraph V set forth that the
22 adjusted balance of Trust IV as of November 30, 2000 was Forty-
23 Four Thousand Nine Hundred Fifty-Seven and 79/100 Dollars
24 (\$44,957.79) and the trust fund accountability in the account as
25 of November 30, 2000 was Forty-Five Thousand Eighty-One and
26 20/100 Dollars (\$45,081.20). Therefore, Respondent METRO, as of

27 ///

1 November 30, 2000, had a trust fund shortage of One Hundred
2 Twenty-Three and 41/100 Dollars (\$123.41).

3 XI

4 The audit referred to in Paragraph V set forth that in
5 November of 2000 Respondent METRO failed to make timely deposits
6 of rents on, at least, the following properties in violation of
7 Section 2832, Title 10, California Code of Regulations
8 (hereinafter the "Regulations"):

9 2300 Eric Way
10 713 Deseret
11 7334 Stockdale
12 204 Gabriel
13 1301 McDonald Way
14 226 Stine Road, #2

15 XII

16 The audit referred to in Paragraph V set forth that
17 Debra Powers was a signatory on the trust accounts. However,
18 Debra Powers was not licensed by the Department nor was there
19 fidelity bond coverage at least equal to the minimum amount of
20 trust funds to which she had access at the time, in violation of
21 Section 2834 of the Regulations.

22 XIII

23 At all times mentioned herein, Respondent POWERS failed
24 to exercise reasonable supervision over the activities of
25 Respondent METRO, and permitted, ratified and/or caused the
26 conduct described above. Respondent POWERS failed to reasonably
27 or adequately review, oversee, inspect and manage the personnel
and activities of Respondent METRO, and/or to establish

///

1 reasonable policies, rules, procedures and systems for such
2 review, oversight, inspection and management.

3 XIV

4 The acts and/or omissions of Respondents METRO and
5 POWERS described above are grounds for the revocation or
6 suspension of Respondents' licenses under the following sections
7 of the Business and Professions Code and the Regulations:

8 (a) As to Respondents METRO and POWERS, and each of them under
9 Section 10145 of the Code and Sections 2832 and 2834 of the
10 Regulations in conjunction with Section 10177(d) of the
11 Code; and

12 (b) As to Respondent POWERS only, under Section 10177(g) and/or
13 (h) of the Code and Section 2725 of the Regulations in
14 conjunction with Section 10177(d) of the Code.

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

21 
22 JOHN SWEENEY
Deputy Real Estate Commissioner

23 Dated at Fresno, California,
24 this 6th day of September, 2001.

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

FILED
AUG 29 2001

DEPARTMENT OF REAL ESTATE

By Shelly Ely

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-1495 FRESNO
12)
13 METRO PROPERTY MANAGEMENT, INC.) ACCUSATION
14 and DARREN LAWTON POWERS,)
15 Respondents.)

16 The Complainant, John Sweeney, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against METRO PROPERTY MANAGEMENT, INC. (hereinafter "Respondent
19 METRO") and DARREN LAWTON POWERS (hereinafter "Respondent
20 POWERS"), is informed and alleges as follows:

21 I

22 Respondents are licensed and/or have license rights
23 under the Real Estate Law, Part 1 of Division 4 of the California
24 Business and Professions Code (hereinafter "Code") as follows:

25 (a) Respondent METRO as a corporate real estate
26 broker dba ATCO Property Management (hereinafter
27 "ATCO").

1 (b) Respondent POWERS as a real estate broker at all
2 times herein mentioned and as the designated officer of
3 Respondent METRO.

4 II

5 The Complainant, John Sweeney, a Deputy Real Estate
6 Commissioner of the State of California, makes this Accusation
7 against Respondents in his official capacity.

8 III

9 At all times herein mentioned, Respondents METRO and
10 POWERS engaged in the business of, acted in the capacity of,
11 advertised, or assumed to act as a real estate broker in the
12 State of California within the meaning of Section 10131(b) of the
13 Code for or in expectation of compensation.

14 IV

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

19 V

20 An investigative audit of the records and bank records
21 of Respondent METRO, Audit No. FR000004 with included exhibits
22 and a report dated February 20, 2001, was conducted by the
23 Department from December 13, 2000 to January 12, 2001 covering
24 the period December 1, 1999 to November 30, 2000 as said records
25 related to its activities as a real estate broker.

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1 VI

2 The audit referred to in Paragraph V set forth that
3 Respondent maintained five accounts, into which other persons
4 trust funds were placed at Westamerica Bank, 1810 Chester Avenue,
5 Bakersfield, CA 93301. The accounts were designated as follows:

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18 against all licenses and license rights of Respondents, under the
19 Real Estate Law and for such other and further relief as may be
20 proper under other provisions of law.

21 
22 JOHN SWEENEY
Deputy Real Estate Commissioner

23 Dated at Fresno, California,
24 this 23rd day of August, 2001.