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FILED

AUG 06 2009

DEPARTMENT OF REAL ESTATE

By Jean Brenon

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)	
)	
DANA JEAN BUTCHER,)	No. H-1641 FR
)	
Respondent.)	
)	

ORDER GRANTING REINSTATEMENT OF LICENSE

On October 6, 2004, in Case No. H-1641 FR, a Decision was rendered revoking the real estate broker license of Respondent effective November 17, 2004, but granting Respondent the right to the issuance of a restricted real estate broker license. A restricted real estate broker license was issued to Respondent on December 29, 2004, and Respondent has operated as a restricted licensee since that time.

On June 5, 2009, Respondent petitioned for reinstatement of said real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered the petition of Respondent and the evidence and arguments in support thereof. Respondent has demonstrated to my satisfaction that Respondent meets the

1 requirements of law for the issuance to Respondent of an unrestricted real estate broker license
2 and that it would not be against the public interest to issue said license to Respondent.

3 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for
4 reinstatement is granted and that a real estate broker license be issued to Respondent if
5 Respondent satisfies the following conditions within twelve (12) months from the date of this
6 Order:

- 7 1. Submittal of a completed application and payment of the fee for a real estate
8 broker license.
- 9 2. Submittal of evidence of having, since the most recent issuance of an original
10 or renewal real estate license, taken and successfully completed the continuing education
11 requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate
12 license.

13 This Order shall be effective immediately.

14 DATED: 7/28/09

15 JEFF DAVI
16 Real Estate Commissioner

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FILED

AUG 06 2009

DEPARTMENT OF REAL ESTATE

By Jean Dumort

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
DANA BUTCHER ASSOCIATES,) No. H-1641 FR
)
Respondent.)
_____)

ORDER GRANTING REINSTATEMENT OF LICENSE

On October 6, 2004, in Case No. H-1641 FR, a Decision was rendered revoking the corporate real estate broker license of Respondent effective November 17, 2004, but granting Respondent the right to the issuance of a restricted corporate real estate broker license. A restricted corporate real estate broker license was issued to Respondent on December 29, 2004, and Respondent has operated as a restricted licensee since that time.

On June 5, 2009, Respondent petitioned for reinstatement of said corporate real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered the petition of Respondent and the evidence and arguments in support thereof. Respondent has demonstrated to my satisfaction that Respondent meets the

///

1 requirements of law for the issuance to Respondent of an unrestricted corporate real estate broker
2 license and that it would not be against the public interest to issue said license to Respondent.

3 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for
4 reinstatement is granted and that a corporate real estate broker license be issued to Respondent if
5 Respondent satisfies the following conditions within twelve (12) months from the date of this

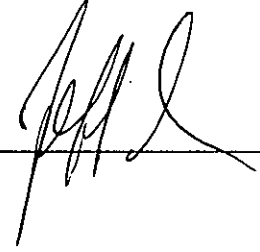
6 Order:

- 7 1. Submittal of a completed application and payment of the fee for a corporate real
8 estate broker license.

9 This Order shall be effective immediately.

10 DATED: 7/28/09

11 JEFF DAVI
12 Real Estate Commissioner

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14 _____
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1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187007
3 Sacramento, CA 95818-7007
4 Telephone: (916) 227-0789

FILED
OCT 28 2004

DEPARTMENT OF REAL ESTATE

By Katherine Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12) NO. H-1641 FR
13 DANA BUTCHER ASSOCIATES, and)
14 DANA JEAN BUTCHER,) STIPULATION AND AGREEMENT
15)
16 Respondents.)

16 It is hereby stipulated by and between DANA BUTCHER
17 ASSOCIATES and DANA JEAN BUTCHER (hereafter Respondents),
18 represented by Warren R. Paboojian, Attorney at Law, Oren &
19 Paboojian, and the Complainant, acting by and through Deidre L.
20 Johnson, Counsel for the Department of Real Estate, as follows
21 for the purpose of settling and disposing the Accusation filed
22 on November 18, 2003 in this matter:

23 1. All issues which were to be contested and all
24 evidence which was to be presented by Complainant and Respondents
25 at a formal hearing on the Accusation, which hearing was to be
26 held in accordance with the provisions of the Administrative
27 Procedure Act (APA), shall instead and in place thereof be

1 submitted solely on the basis of the provisions of this
2 Stipulation and Agreement.

3 2. Respondents have received, read and understand the
4 Statement to Respondent, and the Discovery Provisions of the APA
5 filed by the Department of Real Estate in this proceeding.

6 3. On December 12, 2003, Respondents filed their
7 Notice of Defense pursuant to Section 11505 of the Government
8 Code for the purpose of requesting a hearing on the allegations
9 in the Accusation. Respondents hereby freely and voluntarily
10 withdraw said Notice of Defense. Respondents acknowledge that
11 they understand that by withdrawing said Notice of Defense they
12 will thereby waive their rights to require the Commissioner to
13 prove the allegations in the Accusation at a contested hearing
14 held in accordance with the provisions of the APA, and that they
15 will waive other rights afforded to them in connection with the
16 hearing such as the right to present evidence in defense of the
17 allegations in the Accusation and the right to cross-examine
18 witnesses.

19 4. Respondents, pursuant to the limitations set forth
20 below, hereby admit that the factual allegations in Paragraphs I
21 through VI of the Accusation filed in this proceeding are true
22 and correct and the Real Estate Commissioner shall not be
23 required to provide further evidence of such allegations.

24 5. Without admitting the truth of the allegations
25 contained in the rest of the Accusation, Respondents stipulate
26 that they will not interpose a defense thereto. This Stipulation
27 is based on the factual allegations contained in the Accusation

1 as found below. In the interests of expedience and economy,
2 Respondents choose not to contest the remaining allegations, but
3 to remain silent, and understand that, as a result thereof, these
4 factual allegations, without being admitted or denied, will serve
5 as a basis for the disciplinary action stipulated to herein. The
6 Real Estate Commissioner shall not be required to provide further
7 evidence to prove said factual allegations.

8 6. Respondents have received, read and understands
9 the "Notice Concerning Costs of Audits." Respondents understand,
10 by agreeing to this Stipulation and Agreement, and after the
11 findings set forth below in the "Determination of Issues"
12 become final, that the Commissioner may charge Respondents DANA
13 BUTCHER ASSOCIATES and DANA JEAN BUTCHER, jointly and severally,
14 for the costs of the following audits that have been and may be
15 conducted pursuant to Section 10148 of the Business and
16 Professions Code:

17 (a) Audit #FR-02-0014 dated February 24, 2003:
18 Not more than \$27,030.00;

19 *WPP* (b) Future follow-up audit: Not more than *DSJ*
20 ~~\$27,000.00.~~ \$15,000.00

21 7. It is understood by the parties that the Real
22 Estate Commissioner may adopt the Stipulation and Agreement as
23 his decision in this matter thereby imposing the penalty and
24 sanctions on the real estate licenses and license rights of
25 Respondents as set forth in the below "Order". In the event that
26 the Commissioner in his discretion does not adopt the Stipulation
27 and Agreement, it shall be void and of no effect, and Respondents
shall retain the rights to a hearing and proceeding on the

1 Accusation under all the provisions of the APA and shall not be
2 bound by any admission or waiver made herein.

3 8. The Order or any subsequent Order of the Real
4 Estate Commissioner made pursuant to this Stipulation and
5 Agreement shall not constitute an estoppel, merger or bar to any
6 further administrative or civil proceedings by the Department of
7 Real Estate with respect to any matters which were not
8 specifically alleged to be causes for accusation in this
9 proceeding.

10 * * *

11 DETERMINATION OF ISSUES

12 By reason of the foregoing stipulations and waivers and
13 solely for the purpose of settlement of the pending Accusation
14 without a hearing, it is stipulated and agreed that the following
15 determination of issues shall be made:

16 I

17 The acts and/or omissions of Respondent DANA BUTCHER
18 ASSOCIATES, as stipulated above violate Sections 10145 of the
19 Code, and Sections 2831, 2831.1, 2831.2, 2832.1, and 2824 of
20 Title 10, California Code of Regulations, and constitute grounds
21 for disciplinary action against the real estate broker license(s)
22 and license rights of Respondent under the provisions of Section
23 10177(d) of the California Business and Professions Code.

24 II

25 The acts and/or omissions of Respondent DANA JEAN
26 BUTCHER, as stipulated above, constitute grounds for disciplinary
27 action under the provisions of Section 10177(h) of the Code.

1 * * *

2 ORDER

3 I

- 4 A. All real estate licenses and license rights of Respondents
5 DANA BUTCHER ASSOCIATES and DANA JEAN BUTCHER are revoked.
- 6 B. A restricted real estate broker license shall be issued to
7 each Respondent pursuant to Section 10156.6 of the Code if
8 Respondents make application therefor and pay to the
9 Department the appropriate fees for each license within
10 ninety (90) days of the effective date of the Order.
- 11 C. The restricted licenses issued to Respondents shall each be
12 subject to all of the provisions of Section 10156.7 of the
13 Business and Professions Code and to the following conditions
14 and limitations imposed under authority of Section 10156.6 of
15 said Code:
- 16 1) Respondent DANA JEAN BUTCHER shall, prior to and as a
17 condition of the issuance of said restricted license,
18 submit proof satisfactory to the Commissioner of having
19 taken and completed the continuing education course on
20 trust fund accounting and handling specified in
21 paragraph (3) of subdivision (a) of Section 10170.5 of
22 the Business and Professions Code from an approved
23 continuing education course provider. Said course may
24 have been completed within one hundred and twenty (120)
25 days prior to the effective date of the order herein.
- 26 2) The restricted licenses issued to Respondents may each be
27 suspended prior to hearing by order of the Real Estate

1 Commissioner in the event of a Respondent's conviction or
2 plea of nolo contendere to a crime which bears a
3 substantial relationship to such Respondent's fitness or
4 capacity as a real estate licensee.

5 3) The restricted licenses may each be suspended prior to
6 hearing by Order of the Real estate Commissioner on
7 evidence satisfactory to the Commissioner that the
8 Respondent has violated provisions of the California Real
9 Estate Law, the Subdivided Lands Law, Regulations of the
10 Real Estate Commissioner or conditions attaching to the
11 respective restricted license.

12 4) Respondents shall each not be eligible to apply for the
13 issuance of an unrestricted real estate license, nor the
14 removal of any of the conditions of the restricted
15 license, until ^{two 2} ~~three 3~~ years have elapsed from the (DAG)
16 effective date of this Order. J

17 5) Pursuant to Section 10148 of the Business and Professions
18 Code, Respondents DANA BUTCHER ASSOCIATES and DANA JEAN
19 BUTCHER, jointly and severally, shall pay the
20 Commissioner's reasonable cost for the following audits
21 as a result of the above found violations:

22 (a) Audit #FR-02-0014 dated February 24, 2003:
23 Not more than \$27,030.00;

24 (b) Future follow-up audit: Not more than
~~\$27,000.00.~~ \$18,000.00 (DAG)

25 In calculating the amount of the Commissioner's
26 reasonable costs for each audit, the Commissioner may use
27 the estimated average hourly salary for all Department

1 Audit Section personnel performing audits of real estate
2 brokers, and shall include an allocation for travel time
3 to and from the auditor's place of work. Respondents
4 shall pay such costs within sixty (60) days of receiving
5 an invoice from the Commissioner detailing the activities
6 performed during each audit and the amount of time spent
7 performing those activities. The Commissioner may
8 suspend the restricted licenses issued to Respondents
9 pending a hearing held in accordance with Section 11500,
10 et seq., of the Government Code, if payment is not timely
11 made as provided for herein, or as provided for in a
12 subsequent agreement between Respondents and the
13 Commissioner. The suspension shall remain in effect
14 until payment is made in full for each audit or until
15 Respondents enter into an agreement satisfactory to the
16 Commissioner to provide for payment, or until a decision
17 providing otherwise is adopted following a hearing held
18 pursuant to this condition.

- 19 6) Respondent DANA JEAN BUTCHER shall, within nine (9)
20 months from the effective date of this Order, present
21 evidence satisfactory to the Real Estate Commissioner
22 that Respondent has, since the most recent issuance of an
23 original or renewal real estate license, taken and
24 successfully completed the continuing education
25 requirements of Article 2.5 of Chapter 3 of the Real
26 Estate Law for renewal of a real estate license. If
27 Respondent DANA JEAN BUTCHER fails to satisfy this

1 condition, the Commissioner may order the suspension of
2 the restricted license until the Respondent presents such
3 evidence. The Commissioner shall afford Respondent the
4 opportunity for hearing pursuant to the Administrative
5 Procedure Act to present such evidence.

6 7) Respondent DANA JEAN BUTCHER shall, within six (6) months
7 from the effective date of this Decision, take and pass
8 the Professional Responsibility Examination administered
9 by the Department including the payment of the
10 appropriate examination fee. If Respondent DANA JEAN
11 BUTCHER fails to satisfy this condition, the Commissioner
12 may order suspension of the restricted license until
13 Respondent DANA JEAN BUTCHER passes the examination.
14

15
16 September 24, 2004
DATED

16 Deidre L. Johnson
DEIDRE L. JOHNSON
17 Counsel for Complainant

18
19 * * *

20
21 I have read the Stipulation and Agreement, have
22 discussed it with my counsel, and its terms are understood by me
23 and are agreeable and acceptable to me. I understand that I am
24 waiving rights given to me by the California Administrative
25 Procedure Act, and I willingly, intelligently and voluntarily
26 waive those rights, including the right of requiring the
27 Commissioner to prove the allegations in the Accusation at a

1 hearing at which I would have the right to cross-examine
2 witnesses against me and to present evidence in defense and
3 mitigation of the charges.

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9/24/04

DATED



DANA BUTCHER ASSOCIATES
Respondent

By: DANA JEAN BUTCHER

9/24/04

DATED



DANA JEAN BUTCHER
Respondent

APPROVED AS TO FORM:

9/24/04

DATED



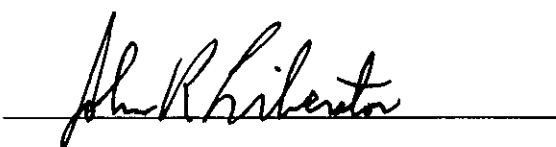
WARREN R. PABOOJIAN
Attorney for Respondents

* * *

The foregoing Stipulation and Agreement is hereby
adopted as my Decision and shall become effective at 12 o'clock
noon on November 17, 2004.

IT IS SO ORDERED Oct. 6, 2004.

JOHN R. LIBERATOR
Acting Real Estate Commissioner



FILED
AUG 19 2004

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

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

In the Matter of the Accusation of

DANA BUTCHER, and
DANA BUTCHER ASSOCIATES,

} Case No. H-1641 FR

} OAH No. N-2004040689

Respondents

**FIRST CONTINUED
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 STATE BUILDING
2550 MARIPOSA MALL, ROOM 1038
FRESNO, CALIFORNIA 93721**

on **NOVEMBER 1, 2004, at the hour of 1:00 PM, and on NOVEMBER 2, 2004, NOVEMBER 3, 2004, NOVEMBER 4, 2004, and NOVEMBER 5, 2004, at the hour of 9:00 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.

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: AUGUST 18, 2004

By Deidre L. Johnson
DEIDRE L. JOHNSON, Counsel

RE 501 (Rev. 8/97)

FILED
JUN 10 2004

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

In the Matter of the Accusation of

DANA BUTCHER, and
DANA BUTCHER ASSOCIATES,

}

Case No. H-1641 FR

OAH No. N-2004040689

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 STATE BUILDING

2550 MARIPOSA MALL, ROOM 1027

FRESNO, CALIFORNIA 93721

on **SEPTEMBER 28, 2004, and SEPTEMBER 29, 2004**, at the hour of **9:00 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.

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: JUNE 9, 2004

By Deidre L. Johnson
DEIDRE L. JOHNSON, Counsel

1 DEIDRE L. JOHNSON, Counsel
2 SBN 66322
3 Department of Real Estate
4 P. O. Box 187000
5 Sacramento, CA 95818-7000
6 Telephone: (916) 227-0789

FILED
NOV 18 2003

DEPARTMENT OF REAL ESTATE

By *Kathleen Contreras*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 DANA BUTCHER ASSOCIATES, and) NO. H-1641 FR
13 DANA JEAN BUTCHER,) ACCUSATION
14 Respondents.)
15)

16 The Complainant, JOHN SWEENEY, a Deputy Real Estate
17 Commissioner of the State of California, for causes of Accusation
18 against DANA BUTCHER ASSOCIATES and DANA JEAN BUTCHER is informed
19 and alleges as follows:

20 PRELIMINARY ALLEGATIONS

21 I

22 The Complainant, JOHN SWEENEY, a Deputy Real Estate
23 Commissioner of the State of California, makes this Accusation
24 against Respondents in his official capacity and not otherwise.

25 II

26 Respondents DANA BUTCHER ASSOCIATES and DANA JEAN
27 BUTCHER are presently licensed and/or have license rights under

1 the Real Estate Law, Part 1 of Division 4 of the California
2 Business and Professions Code (hereafter the Code).

3 III

4 At all times herein mentioned, Respondent DANA BUTCHER
5 ASSOCIATES (hereafter DBA) was and is licensed by the Department
6 of Real Estate (hereafter the Department) as a real estate broker
7 corporation, with Respondent DANA JEAN BUTCHER as its designated
8 broker officer.

9 IV

10 At all times herein mentioned, Respondent DANA JEAN
11 BUTCHER (hereafter BUTCHER) was and is licensed by the Department
12 as an individual real estate broker, and as the designated broker
13 officer of DBA. BUTCHER was and is the president of DBA and
14 directed and controlled its activities.

15 V

16 At least within the last three years, DBA and BUTCHER
17 engaged in activities on behalf of others for which a real estate
18 license is required, including but not limited to activities
19 under Section 10131(b) of the Code, for or in expectation of
20 compensation, and leased or rented, offered to lease or rent,
21 solicited prospective tenants, collected rents on, and/or managed
22 certain real properties in California.

23 VI

24 At all times herein mentioned, DBA and BUTCHER also
25 engaged in activities on behalf of others for which no real
26 estate license was required, for or in expectation of
27 compensation, including but not limited to the management of

1 homeowners associations (HOAs), and the management of common area
2 maintenance (CAM) for principal owners of commercial properties.

3 FIRST CAUSE OF ACCUSATION

4 VII

5 Beginning in about August of 2002, the Department
6 conducted an audit of the business activities of Respondents for
7 a period of time from about October 31, 1999, to October 31, 2002
8 (hereafter "the audit period"), as more particularly set forth
9 in Audit Report FR-02-0014, dated February 24, 2003, and all
10 accompanying working papers and exhibits. During the course of
11 the activities described in Paragraph V above, DBA received and
12 disbursed funds in trust on behalf of others, and deposited the
13 trust funds into about twenty trust bank accounts, including but
14 not limited to the following:

15 (a) Trust Account #1: Comerica Bank Account

16 No. 1891521807, in Fresno, California, entitled
17 "Dana Butcher Associates Trustee Account," used
18 primarily as the main trust account to handle trust
19 funds related to property management clients;

20 (b) Trust Account #2: Imperial Bank Account

21 No. 0015006234, in Fresno, California, entitled
22 "Dana Butcher Associates Bullard West Shopping
23 Center," used primarily to handle trust funds related
24 to the management of commercial rentals in that
25 shopping center; and

26 (c) Trust Account #3: Imperial Bank Account

27 No. 0015006331, in Fresno, California, entitled

1 "Dana Butcher Associates Shaw Commerce Center," used
2 primarily to handle trust funds related to the
3 management of commercial rentals of that commerce
4 center.

5 VIII

6 In connection with the receipt and disbursement of the
7 above trust funds, DBA failed to deposit and maintain the trust
8 funds allocated to Trust Account #1 in said account, or in a
9 neutral escrow depository, or to deliver them into the hands of
10 the owners of the funds as required by Section 10145 of the Code,
11 in such a manner that as of October 31, 2002, there was a trust
12 fund shortage as to Trust Account #1 in the approximate sum of
13 \$316,706.36.

14 IX

15 Some or all of the trust shortage as to Trust Account
16 No. #1 as of October 31, 2002, as alleged in Paragraph VIII
17 above, was caused by the following:

- 18 (a) Negative account balances as to multiple owners in
19 the sum of about \$42,269;
- 20 (b) Disbursements in the net sum of about \$9,178.57 on
21 behalf of the owners of Bullard West Shopping Center
22 including but not limited to the unauthorized
23 transfer of about \$10,550.17 from Trust Account #1 to
24 Trust Account #2 on or about August 7, 2001;
- 25 (c) Disbursements in the net sum of about \$109,492.75 on
26 behalf of the owners of Shaw Commerce Center
27 including but not limited to unauthorized transfers

1 of about \$402,911.17 from Trust Account #1 to Trust
2 Account #3 as follows:

3

CHECK DATE	TRUST #1 CHECK NO.	AMOUNT
4/28/00	39643	\$ 46,304.53
5/30/00	39951	109,958.76
9/20/00	41111	65,530.35
12/29/00	41984	36,714.04
4/21/01	43087	101,508.49
6/26/01	43548	42,895.00
	TOTAL	\$402,911.17

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13 (d) Disbursements in the net sum of about \$382.00 on
14 behalf of the Woodside Park Townhouses HOA including
15 but not limited to the unauthorized transfer of about
16 \$167,760.13 from Trust Account #1 to Imperial Bank
17 Account No. 0015006072, Respondent DBA's trust
18 account for the Woodside HOA, on or about January 26,
19 2001; and

20 (e) Unidentified causes for the trust shortage in the net
21 amount of about \$155,384.04 as of October 31, 2002.

22 X

23 Within the last three years, in connection with the
24 receipt and disbursement of trust funds, DBA failed to deposit
25 and maintain the trust funds allocated to Trust Account #1 in
26 said account, or in a neutral escrow depository, or to deliver
27 them into the hands of the owners of the funds as required by

1 Section 10145 of the Code, in a manner exemplified by, but not
2 limited to the following:

- 3 (a) A deposit into Trust Account #1 on or about
4 February 28, 2001 of about \$1,371.60 of trust
5 funds for Bullard West Shopping Center that
6 should have gone into Trust Account #2;
- 7 (b) A consistent trust shortage in Trust Account #1
8 in varying amounts of not less than \$1,000,000
9 (One Million Dollars) from approximately June of
10 2001 to January of 2002;
- 11 (c) Under-collection of rents and CAM charges from
12 Shaw Commerce Center tenants for deposit to
13 Trust Account #3, and/or overstatement of
14 receipts for Trust Account #3 on the property
15 owner's accountings;
- 16 (d) An unauthorized disbursement from Trust Account #1
17 on June 6, 2001, in the sum of about \$83,580.34
18 payable to a roofing company on behalf of
19 Birchwood HOA, instead of from the Birchwood HOA
20 bank account maintained by Respondents; and
- 21 (e) Unauthorized disbursements from Trust Account #1
22 into a bank account maintained by Respondents for
23 Manor House HOA, including the following:
- 24 (i) \$14,500 on or about May 16, 2001; and
25 (ii) \$11,000 on or about May 25, 2001.

26 ///

27 ///

XI

In connection with the receipt and disbursement of trust funds as to Trust Account #1, Respondent DBA:

- (a) Failed to maintain a written control record of all trust funds received and disbursed containing all information required by Section 2831 of the Regulations, including but not limited to unauthorized disbursements, failure to record all checks issued on the account, failure to record double usage of the same check numbers; and inconsistent entries;
- (b) Failed to maintain separate beneficiary or transaction records containing all information required by Section 2831.1, including but not limited to unauthorized disbursements, failure to record all checks issued drawing on each separate beneficiary's funds, failure to record double usage of the same check numbers; inconsistent entries; and overstatement of receipts;
- (c) Failed to reconcile the balance of separate beneficiary or transaction records with the control record of trust funds received and disbursed at least once a month, and/or failed to maintain a record of such reconciliations as required by Section 2831.2 of the Regulations; and
- (d) Failed to obtain the prior written consents of the principal owners of the funds for the reduction of

1 the aggregate balance of trust funds in Trust
2 Account #1 to an amount less than the existing
3 aggregate trust fund liability to the owners of
4 said funds, in conformance with Section 2832.1 of
5 the Regulations.

6 XII

7 Within the last three years, Respondent DBA authorized
8 withdrawals to be made from Trust Account #1 above on the
9 signature of KEVIN F. CLARKE, an unlicensed employee, when he
10 was not duly bonded with the requisite fidelity bond insurance
11 coverage to conduct such trust account activities on behalf
12 of Respondent DBA, as required by Section 2834 of the
13 Regulations.

14 XIII

15 The acts and/or omissions of Respondent DBA as alleged
16 above constitute grounds for disciplinary action under the
17 following provisions:

- 18 (a) As to Paragraphs VIII and IX(a), IX(b), IX(c),
19 IX(d), and IX(e), under Section 10145 of the
20 Code in conjunction with Section 10177(d) of the
21 Code;
- 22 (b) As to Paragraph X(a), X(b), X(c), X(d), and X(e),
23 under Section 10145 of the Code in conjunction
24 with Section 10177(d) of the Code;
- 25 (c) As to Paragraph XI(a), under Section 2831 of the
26 Regulations in conjunction with Section 10177(d)
27 of the Code;

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- (d) As to Paragraph XI(b), under Section 2831.1 of the Regulations in conjunction with Section 10177(d) of the Code;
- (e) As to Paragraph XI(c), under Section 2831.2 of the Regulations in conjunction with Section 10177(d) of the Code;
- (f) As to Paragraph XI(d), under Section 2832.1 of the Regulations in conjunction with Section 10177(d) of the Code; and,
- (g) As to Paragraph XII, under Section 2834 of the Regulations in conjunction with Section 10177(d) of the Code.

SECOND CAUSE OF ACCUSATION

XIV

Within the last three years, Respondent BUTCHER failed to exercise reasonable supervision over the property management activities of DBA. In particular, BUTCHER permitted, ratified and/or caused the conduct described above to occur and failed to take reasonable steps, including but not limited to the establishment of policies, rules, procedures, and systems to review, oversee, inspect and manage the trust account records of DBA; and a system for monitoring compliance with such policies, rules, procedures and systems, to ensure compliance by the company with the Real Estate Law.

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XV

The acts and/or omissions of Respondent BUTCHER alleged in XIV above constitute cause for disciplinary action pursuant to Section 10177(h) of the Code.

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


JOHN SWEENEY
Deputy Real Estate Commissioner

Dated at Fresno, California,
this 6th day of November, 2003