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DEC -5 1990

James B. Cross

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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|--------------------------------------|---------------|
| In the Matter of the Accusation of) | NO. H-1685 SD |
| C.S.W. PROPERTY MANAGEMENT,) | L-47640 |
| a California corporation) | |
| and D.L. MASON, individually) | |
| and as designated officer of) | |
| C.S.W. Property Management,) | |
|) | |
|) | |
| Respondents.) | |

DECISION AFTER REJECTION

The matter came on for hearing before Richard Ranger, Administrative Law Judge of the Office of Administrative Hearings, in San Diego, California, on February 7 and 8, 1990.

Timothy L. Newlove, Counsel, represented the complainant.

Robert O. Smylie and Jack Lenack, Attorneys at Law, represented respondent C.S.W. PROPERTY MANAGEMENT CORPORATION. Respondent D.L. MASON was present at the hearing and represented himself.

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1 Evidence both oral and documentary was presented, the
2 record was closed and the matter was submitted.

3 On March 20, 1990, the Administrative Law Judge
4 submitted a Proposed Decision which I declined to adopt as my
5 Decision herein. Pursuant to Section 11517(c) of the Government
6 Code of the State of California, respondents, C.S.W. PROPERTY
7 MANAGEMENT CORPORATION and D.L. MASON, were served with notice of
8 my determination not to adopt the Proposed Decision of the
9 Administrative Law Judge along with a copy of said Proposed
10 Decision. Said respondents were notified that the case would be
11 decided by me upon the record, the transcript of proceedings held
12 on February 7 and 8, 1990 and upon any written argument offered by
13 respondents and/or complainant.

14 Respondent C.S.W. Property Management Corporation has
15 agreed with the Department of Real Estate to enter into a
16 stipulated disposition of this matter based on the facts as
17 determined by the administrative law judge in the Proposed
18 Decision dated March 20, 1990 and a modification of the Order in
19 said Proposed Decision.

20 Respondent D.L. MASON has submitted written argument.

21 I have given careful consideration to the record in this
22 case, including the transcript of the proceedings of February 7
23 and 8, 1990, and the argument submitted by respondent MASON.

24 The following shall constitute the Decision of the Real
25 Estate Commissioner in this proceeding as to respondent D.L.MASON.

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1 FINDINGS OF FACT

2 I

3 J. Chris Graves, complainant, made and filed the
4 Accusation on June 2, 1989 in his official capacity as a Deputy
5 Commissioner, Department of Real Estate, State of California.

6 II

7 Respondent C.S.W. Property Management, dba Century
8 Southwest Realty, is a corporate real estate broker licensed by
9 the Department of Real Estate with a main business office of
10 record in the City of Oceanside. Respondent was formerly licensed
11 at a main office in Santa Monica, California from September 29,
12 1986 to February 1, 1988 with respondent D.L. Mason as its
13 designated officer. The corporate license expired September 28,
14 1990. The company was incorporated in 1980 and is owned in its
15 entirety by Ashley Thomas Murphy (Murphy), developer of a 232 unit
16 condominium project known as North Coast Village in the City of
17 Oceanside.

18 III

19 Respondent D.L. Mason is an individual real estate
20 broker licensed by the Department of Real Estate with a business
21 office of record in the City of San Marcos. Respondent is also
22 licensed as the designated officer of D.L. Mason & Associates,
23 Inc., addressed in San Marcos, and from 1986 to 1988 was the
24 designated officer of respondent CSW Property Management
25 (hereinafter sometimes "CSW"). He was hired by Murphy at \$1,000
26 per month to be the designated officer of CSW in September 1986,
27 and left CSW in November 1988.

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IV

During the employment of respondent MASON as designated officer of CSW, his responsibilities were limited to supervising the sales work of real estate salesperson Gary Gray, with another real estate salesperson, Pamela Coates, licensed to him but not under his actual supervision. Respondent Mason was not employed to provide any property management services at North Coast Village. Those services were under the supervision and control of Paulette Hawley, an officer of the corporation, and Pamela Coates, residence manager. Hawley is not licensed by the Department of Real Estate as a real estate broker or salesperson.

V

During June and July 1988, the Department conducted an audit of respondent CSW's trust fund activity covering the period August 1, 1986 to June 9, 1988. Substantial deficiencies existed.

VI

Respondent CSW maintained three trust accounts during the period of the audit, two of which were still in existence at the time of the audit. Trust Account No. 1 was opened at the Bank of America on Mission Avenue in Oceanside on July 15, 1987 and was still active as of June 9, 1988. Trust Account No. 2 was opened at the same Bank of America in Oceanside on February 20, 1987 and was still open as of June 9, 1988, but showed little activity. Trust Account No. 3 was opened by respondent at the Great American Trust Savings Bank in Oceanside on August 8, 1986 and was closed on February 27, 1987. Each of the accounts was set up by respondent for management of the condominium units at North

1 Coast Village, and on each of the accounts Paulette Hawley, an
2 unlicensed person, and Pamela Coates, a real estate salesperson,
3 were the signatories on the accounts.

4 VII

5 The North Coast Village Condominium Project consists of
6 232 units of which 147 units were owned by various purchasers at
7 the time of the Department's audit. The remaining 85 units were
8 owned by Thomas Murphy, developer of the project. Many of the
9 sold units were not occupied by the owners but were rented or
10 leased with respondent CSW providing the property management
11 services for fees ranging from 10% to 15% of the rent money
12 charged and collected.

13 VIII

14 During the audit period of respondent CSW's management
15 of North Coast Village units it received rental payments and
16 security deposits in trust for the owners which at various times
17 respondent CSW deposited or caused to be deposited into its trust
18 accounts.

19 IX

20 Respondent CSW did not maintain columnar control records
21 of the receipt and disbursement of the trust funds into and from
22 its three trust accounts. Respondent merely maintained check
23 stubs of checks written on the accounts.

24 X

25 Respondent CSW did maintain separate records for each
26 trust fund beneficiary or transaction during the audit period but
27 did not record the date of deposits of trust funds, the date of

1 related disbursements, and the check numbers.

2 XI

3 As of June 9, 1988, respondent CSW had a trust account
4 shortage of \$95,461.95. Its balances in the two open trust
5 accounts at Bank of America totaled \$2973.00 with \$2713.43 in one
6 of the accounts, and \$260.47 in the other. Respondent CSW was
7 withdrawing management and maintenance fees from the accounts in
8 lump sums without specific accounting, and accounting records
9 prior to August 1986 were not produced. Unit owners did not
10 authorize respondent CSW to withdraw trust funds from the
11 accounts.

12 XII

13 On July 1, 1988, respondent CSW caused \$76,463.73 to be
14 deposited into Trust Account No. 1 to cure the trust fund
15 shortage. The funds were provided by "Murphy Development
16 Corporation" by means of its check issued against another account
17 at Bank of America, Oceanside, but nothing in the record
18 establishes that \$76,463.73 was sufficient to cure the trust fund
19 shortage at that time.

20 XIII

21 D.L. MASON did not personally participate in the
22 management of condominium units at North Coast Village. He was
23 not involved in the maintenance of trust fund records or receipt
24 of trust funds for owners. He was not a signatory on any of the
25 property management trust accounts set up and maintained by CSW.
26 Instead, Paulette Hawley actually managed the condominium units at
27 North Coast Village under the general direction of corporate

1 president and developer Thomas Murphy. Although respondent MASON
2 agreed to and became the designated officer of an entity with
3 "property management" in its name, MASON was not aware of the
4 property management activity performed by C.S.W.

5 XIV

6 Respondent CSW did not retain and produce trust fund
7 records for a three year period on nine North Coast Village units
8 CSW managed for owners Epstein, Rubel, Tourtillotte, Whitson,
9 Llad, Carrington, and McNeill.

10 XV

11 Respondent MASON did not review, date and sign some of
12 the lease agreements and related documents prepared by
13 salespersons in his employ. It appears that respondent MASON was
14 only involved in sales of units and sales documents.

15 DETERMINATION OF ISSUES

16 I

17 The conduct of respondent CSW, in failing to maintain
18 records of the deposit and disbursement of funds into and from
19 Trust Accounts Nos. 1, 2 and 3, as described in Paragraph IX
20 hereinabove, constitutes a violation of Section 2831, Chapter 6,
21 Title 10, California Code of Regulations (hereinafter the
22 "Regulations").

23 II

24 The conduct of respondent CSW, in maintaining separate
25 records for each beneficiary or transaction in an incomplete
26 manner, as described in Paragraph X hereinabove, constitutes a
27 violation of Regulation 2831.1 of the Code.

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III

The conduct of respondent CSW in disbursing trust funds from Trust Account Nos. 1 and 2 resulting in a reduction of the balance of funds in the said accounts to an amount which was less than the then-existing aggregate trust fund liability of respondent CSW to the owners of the trust funds in the sale accounts without the prior written consent of the owners thereof, as described in Paragraph XI hereinabove, constitutes a violation of Section 10145 of the Code and Regulation 2832.1.

IV

The conduct of respondent CSW, in failing to produce for inspection the records described in Paragraph XIV hereinabove, constitutes a violation of Section 10148 of the Code.

V

The conduct of respondent MASON, in allowing respondent CSW to violate Sections 10145, 10148 and 10177(d) of the Code and Regulations 2831, 2831.1 and 2832.1, as described hereinabove, at a time when MASON was the designated officer of CSW, notwithstanding the fact that he did not have knowledge of the property management activity of CSW which was the basis of said violations, constitutes a failure by respondent MASON to exercise reasonable supervision of the activities of respondent CSW which require a real estate license. Said conduct is cause to suspend or revoke the real estate license and license rights of respondent MASON under Section 10177(h) of the Code.

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1 ORDER

2 The real estate broker license and license rights issued
3 to respondent D.L. MASON by the Department of Real Estate are
4 revoked; provided, however, a restricted real estate broker
5 license shall be issued to respondent pursuant to Section 10156.5
6 of the Business and Professions Code if respondent makes
7 application therefor within sixty (60) days from the effective
8 date of this Decision. The restricted license issued to
9 respondent MASON shall be subject to all of the provisions of
10 Section 10156.7 of the Business and Professions Code and to the
11 following limitations, conditions and restrictions imposed under
12 authority of Section 10156.6 of the Code:

13 1. The restricted license issued to respondent MASON
14 may be suspended prior to hearing by Order of the Real Estate
15 Commissioner in the event of respondent's conviction or plea of
16 nolo contendere to a crime which bears a significant relation to
17 respondent's fitness or capacity as a real estate licensee.

18 2. The restricted license issued to respondent MASON
19 may be suspended prior to hearing by Order of the Real Estate
20 Commissioner on evidence satisfactory to the Commissioner that
21 respondent MASON has violated provisions of the California Real
22 Estate Law, the Subdivided Lands Law, Regulations of the Real
23 Estate Commissioner or conditions attaching to the restricted
24 license.

25 3. Respondent MASON shall not be eligible to apply for
26 the issuance of an unrestricted real estate license nor the
27 removal of any of the conditions, limitations or restrictions of

1 a restricted license until one (1) year has elapsed from the date
2 of issuance of the restricted license to respondent MASON.

3 4. Respondent MASON shall, within six (6) months from
4 the effective date of this Decision, present evidence satisfactory
5 to the Real Estate Commissioner that respondent MASON has, since
6 the most recent issuance of an original or renewal real estate
7 license, taken and successfully completed the continuing
8 education requirements of Article 2.5 of Chapter 3 of the Real
9 Estate Law for renewal of a real estate license. If respondent
10 fails to satisfy this condition, the Commissioner may order the
11 suspension of the restricted license until respondent MASON
12 presents such evidence. The Commissioner shall afford respondent
13 MASON the opportunity for a hearing pursuant to the Administrative
14 Procedure Act to present such evidence.

15 5. Respondent MASON shall report in writing to the
16 Department of Real Estate as the Real Estate Commissioner shall
17 direct by his Decision herein or by separate written order issued
18 while the restricted license is in effect, such information
19 concerning respondent's activities for which a real estate license
20 is required as the Commissioner shall deem to be appropriate to
21 protect the public interest. Such reports may include, but shall
22 not be limited to, periodic independent accountings of trust funds
23 in the custody and control of respondent MASON and periodic
24 summaries of salient information concerning each real estate
25 transaction in which respondent MASON engaged during the period
26 covered by the report.

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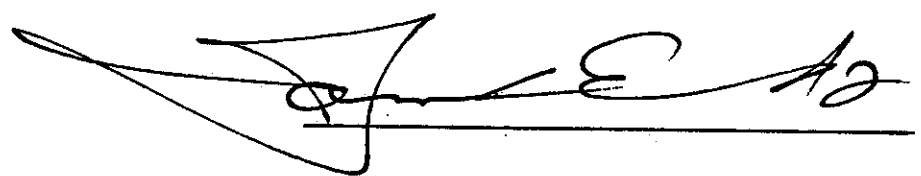
6. Respondent MASON shall, within six months from the
effective date of the restricted license, take and pass the
Professional Responsibility Examination administered by the
Department including payment of the appropriate examination fee.
If respondent MASON fails to satisfy this condition, the
Commissioner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

7. Respondent MASON shall not be the designated officer
of a corporate real estate broker during the term of his
restricted real estate broker license.

This Decision shall become effective at 12 o'clock noon
on December 26 1990.

IT IS SO ORDERED 11-26-90.

JAMES A. EDMONDS, JR.
Real Estate Commissioner



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DEC-5 1990

DEPARTMENT OF REAL ESTATE
BY Laura B. Orona

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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| In the Matter of the Accusation of) | NO. H-1685 SD |
| C.S.W. PROPERTY MANAGEMENT,) | L-47640 |
| a California corporation) | |
| and D.L. MASON, individually) | |
| and as designated officer of) | |
| C.S.W. Property Management,) | |
|) | |
|) | |
| Respondents.) | |

DECISION AFTER REJECTION UPON STIPULATED SETTLEMENT

The matter came on for hearing before Richard Ranger, Administrative Law Judge of the Office of Administrative Hearings, in San Diego, California, on February 7 and 8, 1990.

Timothy L. Newlove, Counsel, represented the complainant.

Robert O. Smylie and Jack Lenack, Attorneys at Law, represented respondent C.S.W. PROPERTY MANAGEMENT CORPORATION. Respondent D.L. MASON was present at the hearing and represented himself.

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1 Evidence both oral and documentary was presented, the
2 record was closed and the matter was submitted.

3 On March 20, 1990, the Administrative Law Judge
4 submitted a Proposed Decision which I declined to adopt as my
5 Decision herein. Pursuant to Section 11517(c) of the Government
6 Code of the State of California, respondents, C.S.W. PROPERTY
7 MANAGEMENT CORPORATION and D.L. MASON, were served with notice of
8 my determination not to adopt the Proposed Decision of the
9 Administrative Law Judge along with a copy of said Proposed
10 Decision. Said respondents were notified that the case would be
11 decided by me upon the record, the transcript of proceedings held
12 on February 7 and 8, 1990 and upon any written argument offered by
13 respondents and/or complainant.

14 Respondent C.S.W. Property Management Corporation has
15 agreed with the Department of Real Estate to enter into a
16 stipulated disposition of this matter based on the facts as
17 determined by the administrative law judge in the Proposed
18 Decision dated March 20, 1990 and a modification of the Order in
19 said Proposed Decision.

20 Based on said stipulation, the following shall
21 constitute the Order of the Decision After Rejection of the Real
22 Estate Commissioner in this proceeding as to respondent C.S.W.
23 PROPERTY MANAGEMENT CORPORATION.

24 ORDER

25 The license and license rights of respondent C.S.W.
26 PROPERTY MANAGEMENT CORPORATION under the provisions of Part 1 of
27 Division 4 of the Business and Professions Code are hereby revoked.

1 However, respondent C.S.W. PROPERTY MANAGEMENT
2 CORPORATION shall be entitled to apply for and be issued a
3 restricted corporate real estate broker license pursuant to
4 Section 10156.5 of the Code if it makes application therefor
5 and pays to the Department of Real Estate the appropriate fee
6 for said license within sixty (60) days of the effective date
7 of the Decision herein; provided, however, if respondent
8 applies for the restricted license within the specified time
9 period, it shall be suspended for 20 days from its effective
10 date of issuance; provided further that the suspension shall be
11 stayed on satisfaction of all the following conditions:

12 (a) respondent C.S.W. PROPERTY MANAGEMENT CORPORATION petitions
13 the Commissioner prior to the effective date of this Decision
14 to pay a monetary penalty pursuant to Section 10175.2 of the
15 Business and Professions Code in the amount of five thousand
16 dollars (\$5,000); (b) the Commissioner in exercising his
17 discretion under Section 10175.2 agrees by signing this order
18 that it would not be against the public interest to permit
19 respondent to pay a monetary penalty; and (c) the payment of
20 the monetary penalty shall be in the form of a cashier's check
21 or certified check made payable to the Recovery Account of the
22 Real Estate Fund. Payment must be made prior to the effective
23 date of the Decision in this matter.

24 The restricted corporate real estate broker license
25 issued to respondent C.S.W. PROPERTY MANAGEMENT CORPORATION shall
26 be subject to all of the provisions of Section 10156.7 of the

27

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1 Business and Professions Code and the following limitations,
2 conditions and restrictions imposed under authority of Section
3 10156.6 of the Code.

4 A. The restricted license may be suspended after
5 hearing by Order of the Real Estate Commissioner in the event of
6 respondent's conviction (including conviction of a plea of nolo
7 contendere) to a crime which bears a significant relationship to
8 respondent's fitness or capacity as a real estate licensee.

9 B. The restricted license may be suspended after
10 hearing by Order of the Real Estate Commissioner on evidence
11 satisfactory to the Commissioner that respondent C.S.W. PROPERTY
12 MANAGEMENT CORPORATION has violated provisions of the California
13 Real Estate Law, the Subdivided Lands Law, Regulations of the Real
14 Estate Commissioner or conditions attaching to said restricted
15 license.

16 C. Respondent C.S.W. PROPERTY MANAGEMENT CORPORATION
17 shall obey all laws of the United States, the State of California
18 and its political subdivisions, and shall further obey and comply
19 with all rules and regulations of the Real Estate Commissioner.

20 D. Respondent C.S.W. PROPERTY MANAGEMENT CORPORATION
21 shall submit to the Department a Trust Funds Position Statement
22 as of the last day of each March, June, September and December for
23 so long as said restricted license shall remain in effect. The
24 Position Statement shall consist of the following:

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- (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 statements 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 account(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).

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(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.

Except as hereby modified and amended, the Proposed
Decision dated March 20, 1990 is hereby adopted as the Decision of
the Real Estate Commissioner as to respondent C.S.W. PROPERTY
MANAGEMENT CORPORATION only.

This Decision shall become effective at 12 o'clock noon
on December 26 1990.

IT IS SO ORDERED 11-26-90

JAMES A. EDMONDS, JR.
Real Estate Commissioner

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APR 24 1990

DEPARTMENT OF REAL ESTATE
BY Laura B. Orner

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DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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|--------------------------------------|---------------|
| In the Matter of the Accusation of) | NO. H-1685 SD |
| C.S.W. PROPERTY MANAGEMENT) | L-47640 |
| a California corporation) | |
| and D.L. MASON, individually) | |
| and as designated officer of) | |
| C.S.W. Property Management,) | |
|) | |
|) | |
| Respondents.) | |
|) | |

NOTICE

TO: C.S.W. PROPERTY MANAGEMENT and D.L. MASON, Respondents
and
ROBERT O. SMYLLIE and ROBERT LENACK, Attorneys for
respondent C.S.W. PROPERTY MANAGEMENT

YOU ARE HEREBY NOTIFIED that the Proposed Decision
herein dated March 20, 1990 of the Administrative Law Judge is not
adopted as the Decision of the Real Estate Commissioner. A copy
of the Proposed Decision dated July 19, 1988 is attached hereto
for your information.

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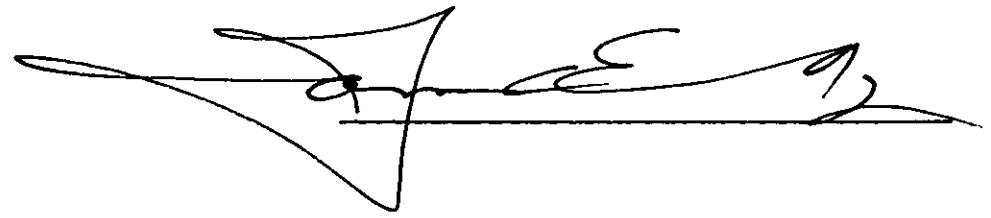
1 In accordance with Section 11517(c) of the Government
2 Code of the State of California, the disposition of this case will
3 be determined by me after consideration of the record herein
4 including the transcript of the proceedings held on February 7 and
5 8, 1990 and any written argument hereafter submitted on behalf of
6 respondent and complainant.

7 Written argument of respondent to be considered by me
8 must be submitted within 15 days after receipt of the transcript
9 of the proceedings of February 7 and 8, 1990 at the office of the
10 Department of Real Estate unless an extension of the time is
11 granted for good cause shown.

12 Written argument of complainant to be considered by me
13 must be submitted within 15 days after receipt of the argument of
14 respondent at the Los Angeles office of the Department of Real
15 Estate unless an extension of the time is granted for good cause
16 shown.

17 DATED: 4-12-90.

18 JAMES A. EDMONDS, JR.
19 Real Estate Commissioner

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DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation)
Against:)
)
C.S.W. PROPERTY MANAGEMENT,) Agency No. H-1685 SD
a California Corporation and)
D. L. MASON, individually and) OAH No. L-47640
as designated officer of)
C.S.W. Property Management,)
)
Respondents.)
_____)

PROPOSED DECISION

On February 7 and 8, 1990, Richard E. Ranger, Administrative Law Judge of the Office of Administrative Hearings, heard this case at San Diego, California.

Timothy Newlove, Counsel, represented complainant.

Robert O. Smylie and Robert Lenack, Attorneys at Law, represented respondent C.S.W. Property Management. Respondent D. L. Mason represented himself without counsel.

Evidence was received and the case was submitted for decision after oral argument.

FINDINGS OF FACT

1. J. Chris Graves, complainant, made and filed the accusation on June 2, 1989 in his official capacity as a Deputy Commissioner, Department of Real Estate, State of California.
2. Respondent C.S.W. Property Management, dba Century Southwest Realty, is a corporate real estate broker licensed by the Department of Real Estate with a main business office of record in the City of Oceanside. Respondent was formerly licensed at a main office in Santa Monica, California from September 29, 1986 to February 1, 1988 with respondent D. L. Mason as its designated officer. The corporate license expires September 28, 1990. The company was incorporated in 1980 and is owned in its entirety by Ashley Thomas Murphy (Murphy), developer of a 232 unit condominium project known as North Coast Village in the City of Oceanside.

3. Respondent D. L. Mason is an individual real estate broker licensed by the Department of Real Estate with a business office of record in the City of San Marcos. Respondent is also licensed as the designated officer of D. L. Mason & Associates, Inc., addressed in San Marco, and from 1986 to 1988 was the designated officer of respondent CSW Property Management. He was hired by Murphy at \$1,000 per month to be the designated officer of CSW in September 1986, and left CSW in November 1988.

4. During the employment of respondent Mason as designated officer of CSW, his responsibilities were limited to supervising the sales work of real estate salesperson Gary Gray, with another real estate salesperson, Pamela Coates, licensed to him but not under his actual supervision. Respondent Mason was not employed to provide any property management services at North Coast Village. Those services were under the supervision and control of Paulette Hawley, an officer of the corporation, and Pamela Coates, residence manager. Hawley is not licensed by the Department of Real Estate as a real estate broker, or salesperson.

5. During June and July 1988, the Department conducted an audit of respondent CSW's trust fund activity covering the period August 1, 1986 to June 9, 1988. Substantial deficiencies existed.

6. Respondent maintained three trust accounts during the period of the audit, two of which were still in existence at the time of the audit. Trust account no. 1 was opened at the Bank of America on Mission Avenue in Oceanside on July 15, 1987 and was still active as of June 9, 1988. Trust account no. 2 was opened at the same Bank of America in Oceanside on February 20, 1987 and was still open as of June 9, 1988, but showed little activity. Trust account no. 3 was opened by respondent at the Great American Trust Savings Bank in Oceanside on August 8, 1986 and was closed on February 27, 1987. Each of the accounts was set up by respondent for management of the condominium units at North Coast Village, and on each of the accounts Paulette Hawley, an unlicensed person, and Pamela Coates, a real estate salesperson, were the signatories on the accounts.

7. The North Coast Village condominium project consists of 232 units of which 147 units were owned by various purchasers at the time of the Department's audit. The remaining 85 units were owned by Thomas Murphy, developer of the project. Many of the sold units were not occupied by the owners but were rented or leased with respondent providing the property management services for fees ranging from 10% to 15% of the rent money charged and collected.

8. During the audit period of respondent CSW's management of North Coast Village units it received rental payments and security deposits in trust for the owners which at various times respondent CSW deposited or caused to be deposited into its trust accounts.

9. Respondent CSW did not maintain columnar control records of the receipt and disbursement of the trust funds into and from its three trust accounts. Respondent merely maintained check stubs of checks written on the accounts.

10. Respondent CSW did maintain separate records for each trust fund beneficiary or transaction during the audit period but did not record the date of deposits of trust funds, the date of related disbursements, and the check numbers.

11. As of June 9, 1988, respondent CSW had a trust account shortage of \$95,461.95. Its balances in the two open trust accounts at Bank of America totaled \$2973.00 with \$2713.43 in one of the accounts, and \$260.47 in the other. Respondent CSW was withdrawing management and maintenance fees from the accounts in lump sums without specific accounting, and accounting records prior to August 1986 were not produced. Unit owners did not authorize respondent CSW to withdraw trust funds from the accounts.

12. On July 1, 1988, respondent CSW caused \$76,463.73 to be deposited into trust account no. 1 to cure the trust fund shortage. The funds were provided by "Murphy Development Corporation" by means of its check issued against another account at Bank of America, Oceanside, but nothing in the record establishes that \$76,463.73 was sufficient to cure the trust fund shortage at that time.

13. There is no evidence that respondent D. L. Mason personally participated in the management of condominium units at North Coast Village, that he was involved in the maintenance of trust fund records or receipt of trust funds for owners, or that he was a signatory on any of the property management trust accounts set up and maintained by CSW.

14. The evidence does establish that Paulette Hawley actually managed the condominium units at North Coast Village under the general direction of corporate president and developer Thomas Murphy.

15. Respondent CSW did not retain and produce trust fund records for a three year period on nine North Coast Village units CSW managed for owners Epstein, Rubel, Tourtillotte, Whitson, Llad, Carrington, and McNeill.

16. Respondent Mason did not review, date and sign some of the lease agreements and related documents prepared by salespersons in his employ. It appears that respondent Mason was only involved in sales of units and sales documents.

17. Currently the property management activities of North Coast Village are operated under the fictitious name of Ocean Park Management Corporation with Gary Gray as designated officer. There is no evidence of Ocean Park as a fictitious name registered with the Department for respondent CSW.

DETERMINATION OF ISSUES

A. Cause exists pursuant to Business and Professions Code section 10177(d) to suspend or revoke the license of respondent CSW for violations of Title 10, California Code of Regulations, section 2831 by reason of its failure to maintain records of deposits and disbursements of trust funds into trust accounts.

B. Cause exists pursuant to Business and Professions Code section 10177(d) to suspend or revoke the license of respondent CSW for violations of Title 10, California Code of Regulations, section 2831.1 by reason of its failure to maintain complete separate records for beneficiaries and transactions.

C. Cause exists pursuant to Business and Professions Code section 10177(d) to suspend or revoke the license of respondent CSW for violation of section 10145 and Title 10, California Code of Regulations Section 2832.1 by reason of its substantial trust account shortages.

D. Cause exists pursuant to Business and Professions Code section 10177(d) to suspend or revoke respondent CSW's license for violation of section 10148 by reason of its failure to produce trust account records for inspection.

E. Cause exists pursuant to Business and Professions Code sections 10177(d) and (h) to suspend or revoke respondent Mason's license in that he permitted respondent CSW's violations set forth in Determination of Issues A, B, C and D. However, the facts clearly establish that respondent Mason had no effective control over, or involvement in the property management activities of respondent CSW.

ORDER

1. The real estate license and license rights issued to respondent C.S.W. Property Management are revoked pursuant to Determination of Issues A, B, C and D.

2. All real estate broker's licenses and license rights issued to respondent D. L. Mason are revoked pursuant to Determination E. However, a restricted real estate broker's license or licenses shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor within thirty (30) days from the effective date of this decision. The restricted license(s) issued to respondent shall be subject to all the provisions of section 10156.7 and to the following limitations, conditions and restrictions imposed under the authority of section 10156.6:

a. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.


b. 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 (2) years have elapsed from the date of issuance of the restricted license to respondent.

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 effective, such information concerning respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest. Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of respondent and periodic summaries of relevant information concerning each real estate transaction in which the respondent engaged during the period covered by the report.

d. Respondent shall, within six (6) months from the effective date of this decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law

for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

Dated: MAR. 20, 1990


RICHARD E. RANGER
Administrative Law Judge

RER:mh

*Sacto
JFF*

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

DEC 27 1989

DEPARTMENT OF REAL ESTATE
BY *Laura B. Crow*

In the Matter of the Accusation of

C.S.W. PROPERTY MANAGEMENT, et al.,

}
}

Case No. H-1685 SD

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 _____

1350 FRONT STREET, ROOM 2026, SAN DIEGO, CALIFORNIA 92101

on the 7th & 8th day of FEBRUARY, 19 90, at the hour of 10:00 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

By *T. [Signature]*
Counsel

Dated: December 27, 1989

cc: C.S.W. Property Management
D.L. Mason
Robert O. Smylie, Esq.
Sacto.
OAH
RE 501 (Rev. 7/87)
FJF

*Suits
2/2/73*

JUN - 2 1973

DEPARTMENT OF REAL ESTATE
Laura B. O'Neil

1 TIMOTHY L. NEWLOVE, Counsel
2 Department of Real Estate
3 107 South Broadway, Room 8107
4 Los Angeles, CA 90012
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DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

11 In the Matter of the Accusation of) NO. H-1685 SD
12 C.S.W. PROPERTY MANAGEMENT) A C C U S A T I O N
13 a California corporation;)
14 and D.L. MASON, individually)
15 and as designated officer of)
16 C.S.W. Property Management,)
17 Respondents.)

18 The Complainant, J. Chris Graves, a Deputy Real Estate
19 Commissioner of the State of California, for cause of accusation
20 against C.S.W. PROPERTY MANAGEMENT, a California corporation and
21 D.L. MASON, individually and as designated officer of C.S.W.
22 Property Management alleges as follows:

- 23 1. The Complainant, J. Chris Graves, a Deputy Real
24 Estate Commissioner of the State of California, makes this
25 Accusation in his official capacity.
26 2. Each respondent is presently licensed and/or has
27 license rights under the Real Estate Law, Part 1 of Division 4 of

1 the California Business and Professions Code (hereinafter referred
2 to as the "Code").

3 3. At all times mentioned herein, respondent C.S.W.
4 PROPERTY MANAGEMENT dba Century Southwest Realty (hereinafter
5 "CSW"), was licensed by the California Department of Real Estate
6 (hereinafter "Department") as a corporate real estate broker.

7 4. At all times mentioned herein, respondent D.L. MASON
8 (hereinafter "MASON") was licensed by the Department as a real
9 estate broker in his individual capacity. At all times material
10 herein from September 29, 1986 to the present, respondent MASON
11 was the designated officer of respondent CSW. As the designated
12 officer of CSW, respondent MASON was responsible under Section
13 10159.2 of the Code for the supervision of the activities of said
14 corporate real estate broker for which a license is required.

15 5. At all times material herein, respondent CSW
16 operated a real property management business within the meaning of
17 Section 10131(b) of the Code. In the operation of said real
18 property management business, respondent CSW performed property
19 management services for certain real properties owned by third
20 persons. The said services included, but were not necessarily
21 limited to, leasing or renting and collecting rents from the said
22 real properties and making payments from the rental funds
23 collected in connection with the expenses of said properties, all
24 for or in expectation of compensation. At all times material
25 herein, the property management activity of respondent CSW
26 involved the management of units at North Coast Village located at
27 999 North Pacific Street, Oceanside, California.

1 6. All further reference to respondent CSW shall be
2 deemed to refer to, in addition to CSW, the officers, directors,
3 employees, agents and real estate licensees employed by and
4 associated with CSW who at all times mentioned herein were engaged
5 in the furtherance of the business or operations of CSW and who
6 were acting within the course and scope of their authority and
7 employment.

8 7. At all times material herein, respondent CSW
9 operated the above-described property management business under
10 the fictitious name of Ocean Park Management Corporation, although
11 the real estate license of CWS did not bear said fictitious name.
12 All further reference to respondent CSW shall refer to, in
13 addition to CSW, Ocean Park Management Corporation.

14 8. In performing the acts described hereinbelow,
15 respondents, CSW and MASON, and each of them, were at all times
16 performing acts for which a real estate license is required, for
17 or in expectation of compensation.

18 9. From June, 1988 to July, 1988, the Department
19 conducted an audit of respondent CSW concerning trust fund
20 handling and record-keeping by respondent in its real property
21 management business. The time period covered in said audit was
22 from August 1, 1986 to and including June 9, 1988, and, unless
23 otherwise mentioned, the relevant period of time referenced in
24 this Accusation shall be the same.

25 10. At all times material herein in the operation of
26 the above-described property management business, respondent CSW
27 received trust funds in the form of rental receipts and security

1 deposits and deposited or caused to be deposited and disbursed or
2 caused to be disbursed said trust funds into and from the
3 following-described bank accounts:

4 a. Ocean Park Management
5 Corporation Trust Account
6 Bank of America
7 Oceanside, California
(hereinafter "Trust Account No. 1")

8 b. CSW Property Management
9 Trust Account
10 Bank of America
11 Oceanside, California
(hereinafter "Trust Account No. 2")

12 c. CSW Property Management
13 Trust Account aka North Coast Village
14 Great American First Savings Bank
15 Oceanside, California
16 (closed on February 27, 1987)
17 (hereinafter "Trust Account No. 3")

18 11. At all times material herein in the operation of
19 the above-described property management business, respondent CSW
20 failed to maintain columnar control records of the receipt and
21 disbursement of trust funds into and from Trust Account Nos. 1, 2
22 and 3. The only records maintained by respondent CSW in this
23 regard were check stubs of checks written on said accounts.

24 12. At all times material herein in the operation of
25 the above-described property management business, respondent CSW
26 maintained separate records for each beneficiary or transaction
27 regarding the receipt and disbursement of trust funds into and
from Trust Account Nos. 1, 2 and 3. However, said separate
records were incomplete in that said records did not contain the
date trust funds were deposited, the date of each related

1 disbursement and the check number of each related disbursement.

2 13. From August 1, 1986 to June 9, 1988, respondent CSW
3 disbursed or allowed the disbursement of trust funds from Trust
4 Account Nos. 1 and 2 without the prior written consent of every
5 principal who then was an owner of funds in the said accounts,
6 wherein the disbursements reduced the balance of funds in the said
7 accounts as of June 9, 1988 to an amount which was \$95,461.95 less
8 than the existing aggregate trust fund liability of respondent CSW
9 to all owners of the funds in the said accounts. On or about July
10 1, 1988, respondent CSW caused to be deposited \$76,463.73 into
11 Trust Account No. 1 as a partial cure of said trust fund
12 liability.

13 14. In the course of the audit described in Paragraph 8
14 hereinabove, a Department auditor requested respondent CSW to
15 produce certain documents relating to the above-described property
16 management business. Respondent CSW was unable to produce the
17 following described documents pursuant to said request:

18 a. Check stubs showing details of the receipt and
19 disbursement of trust funds from Trust Account No. 1 prior to
20 January, 1988.

21 b. Check stubs showing details of the receipt and
22 disbursement of trust funds from Trust Account No. 2 prior to
23 December 10, 1987.

24 c. Check stubs showing details of the receipt and
25 disbursement of trust funds from Trust Account No. 3 from August,
26 1986 to February, 1987.

27

/

1 d. Trust funds records relating to management of the
2 following units at North Coast Village prior to August 1, 1986:

| 3 | <u>Unit</u> | <u>Owner</u> |
|----|------------------|--------------|
| 4 | G302 | Epstein |
| 5 | F308 | Rubel |
| 6 | G122, B201, F307 | Tourtillotte |
| 7 | F112 | Whitson |
| 8 | A111 | Llao |
| 9 | B222 | Carrington |
| 10 | B3 | McNeill |

11 FIRST CAUSE OF ACCUSATION

12 (Violation by respondent CSW of Regulation 2831
13 and Section 10177(d) of the Code)

14 15. As a First Cause of Accusation, complainant
15 incorporates herein by this reference the Preamble and each of the
16 allegations in Paragraphs 1 through 11 hereinabove.

17 16. The conduct of respondent CSW, in failing to
18 maintain records of the deposit and disbursement of funds into and
19 from Trust Accounts Nos. 1 and 2 and 3, as described in Paragraph
20 11 hereinabove, constitutes a violation of Section 2831, Chapter
21 6, Title 10 of the California Code of Regulations (hereinafter the
22 "Regulations"). Said conduct and regulations are cause to revoke
23 or suspend the real estate license and license rights of
24 respondent CSW under the provisions of Section 10177(d) of the
25 Code.

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SECOND CAUSE OF ACCUSATION

(Violation by respondent CSW of Regulation 2831.1
and Section 10177(d) of the Code)

17. As a Second Cause of Accusation, complainant incorporates herein by this reference the Preamble and each of the allegations in paragraphs 1 through 12 hereinabove.

18. The conduct of respondent CSW, in maintaining separate records for each beneficiary or transaction in an incomplete manner, as described in Paragraph 12 hereinabove, constitutes a violation of Regulation 2831.1 of the Code. Said conduct and violations are cause to revoke or suspend the real estate license and license rights of respondent CSW under the provisions of Section 10177(d) of the Code.

THIRD CAUSE OF ACCUSATION

(Violation by respondent CSW of Regulation 2832.1 and
Sections 10145 and 10177(d) of the Code)

19. As a Third Cause of Accusation, complainant incorporates herein by this reference the Preamble and each of the allegations in Paragraphs 1 through 13 hereinabove.

20. The conduct of respondent CSW in disbursing trust funds from Trust Account Nos. 1 and 2 resulting in a reduction of the balance of funds in the said accounts to an amount which was less than the then-existing aggregate trust fund liability of respondent CSW to the owners of the trust funds in the said accounts without the prior written consent of the owners thereof, as described in Paragraph 13 hereinabove, constitutes a violation of Section 10145 of the Code and Regulation 2832.1. Said conduct

1 and violations are cause to suspend or revoke the real estate
2 license and license rights of respondent CSW under the provisions
3 of Section 10177(d) of the Code.

4 FOURTH CAUSE OF ACCUSATION

5 (Violation by respondent CSW of Sections 10148
6 and 10177(d) of the Code)

7 21. As a Fourth Cause of Accusation, complainant
8 incorporates herein by this reference the Preamble and each of the
9 allegations in Paragraphs 1 through 14 hereinabove.

10 22. The conduct of respondent CSW, in failing to
11 produce for inspection the records described in Paragraph 14
12 hereinabove, constitutes a violation of Section 10148 of the Code
13 and is grounds for the suspension or revocation of the real estate
14 license and real estate license rights of respondent CSW under the
15 provisions of Section 10177(d) of the Code.

16 FIFTH CAUSE OF ACCUSATION

17 (Violation by respondent MASON of
18 Section 10177(h) of the Code)

19 23. As a Fifth Cause of Accusation, complainant
20 incorporates herein by this reference the Preamble and each of the
21 allegations in Paragraphs 1 through 14 and 16, 18, 20 and 22
22 hereinabove.

23 24. The conduct of respondent MASON in allowing
24 respondent CSW to violate Sections 10145, 10148 and 10177(d) of
25 the Code and Regulations 2831, 2831.1 and 2832.1 as described in
26 Paragraphs 16, 18, 20 and 22 hereinabove, constitutes a failure by
27 respondent MASON to exercise reasonable supervision of the

1 activities of respondent CSW which require a real estate license.
2 Said conduct is cause to suspend or revoke the real estate license
3 and license rights of respondent MASON under Section 10177(h) of
4 the Code.

5
6 WHEREFORE, complainant prays that a hearing be conducted
7 on the allegations on this Accusation and, that upon proof
8 thereof, a decision be rendered imposing disciplinary action
9 against all licenses and license rights of respondents C.S.W.
10 PROPERTY MANAGEMENT, a California corporation and D.L. MASON,
11 individually and as the designated officer of C.S.W. Property
12 Management under the Real Estate Law (Part 1 of Division 4 of the
13 Business and Professions Code) and for such other and further
14 relief as may be proper under other applicable provisions of law.

15 Dated at San Diego, California
16 this 2nd day of June, 1989.

17
18 J. CHRIS GRAVES
19 Deputy Real Estate Commissioner
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21
22
23
24

25 cc: C.S.W. Property Management
26 D.L. Mason
27 Sacto.
FJF

lbo